



City of
Newcastle



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 26 February 2019

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**

19 February 2019

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ORDINARY COUNCIL MEETING 26 February 2019
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REPORT ON NOTICE OF MOTION - ITEM-7 NOM 26/02/19 - CITY OF NEWCASTLE VIP EVENT

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ITEM-9	NOM 26/02/19 - CLIMATE RELATED FINANCIAL AND RISK DISCLOSURE
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CONFIDENTIAL REPORTS	Nil
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NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - PUBLIC VOICE COMMITTEE 4 DECEMBER 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 181204 Public Voice Committee Minutes

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Public Voice Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 4 December 2018 at 5.35pm.

PRESENT

Deputy Lord Mayor (Councillor D Clausen), Councillors M Byrne, J Church, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson (arrived 5.46pm), A Rufo, E White (arrived 5.40pm) 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), A Murphy (Director City Wide Services), J Vescio (Executive Officer, Chief Executive Office and Acting Manager Corporate and Community Planning), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), M Murray (Policy Officer, Lord Mayor's Office), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcast).

PRAYER

The Deputy 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 Deputy Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr Duncan

The apologies submitted on behalf of the Lord Mayor, Councillor Nelmes and Councillor Dunn be received and leaves of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Winney-Baartz

Councillor Winney-Baartz declared a non-pecuniary, non-significant interest in Item 1 - DA2018/00948 - 25 Marshall Street, New Lambton Heights as she had from time to time worked at the adjacent property and stated that she would remain in the Chamber for discussion on the item.

Councillor Rufo

Councillor Rufo declared a non-pecuniary, less than significant conflict of interest in Item 1 - DA2018/00948 - 25 Marshall Street, New Lambton Heights stating that he knew a neighbour affected by the development application.

Councillor Elliott

Councillor Elliott declared a non-significant, non-pecuniary interest in Item 1 - DA2018/00948 - 25 Marshall Street, New Lambton Heights as she had been a neighbour of the applicant for a number of years.

Councillor Clausen

Deputy Lord Mayor, Councillor Clausen declared a less than significant, non-pecuniary interest in Item 1 - DA2018/00948 - 25 Marshall Street, New Lambton Heights stating that he had previously lived across the road from the development and had no financial interest in the property. Councillor Clausen stated he would remain in the Chamber for discussion on the item.

Councillor Clausen

Deputy Lord Mayor, Councillor Clausen declared a less than significant, non-pecuniary interest in Item 2 - DA2018/00105 - 39 Church Street Mayfield as he had previously lived across the road from the development and had no financial interest in the property. Councillor Clausen stated he would remain in the Chamber for discussion on the item.

PUBLIC VOICE SESSIONS

ITEM-1 PV 04/12/18 - DA2018/00948 - 25 MARSHALL STREET NEW LAMBTON HEIGHTS - DEMOLITION OF DWELLING ERECTION OF FIVE TWO STOREY DWELLINGS

Ms Susan McCarthy and Mr Jason Walpole addressed Council and outlined concerns and objections to the development application.

Councillors White and Robinson arrived during the presentation to Council.

Ms Emma Mason, deWitt Consulting on behalf of the DA applicant addressed Council in support of the development application.

ITEM-2 PV 04/12/18 - DA2018/00105 - 39 CHURCH STREET MAYFIELD - DEMOLITION OF CHURCH BUILDING

Dr Ann Hardy addressed Council and outlined concerns and objections to the development application.

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At this stage of the meeting, Councillor Robinson declared a non-pecuniary, less than significant interest in Item 2 - DA2018/00105 - 39 Church Street, Mayfield stating that his children attended the Church located on the site and that he knew the engineer John Burke who was representing the DA applicant.

Mr Barney Collins, EJE Heritage Architecture and Mr John Burke, Burke Engineering on behalf of the DA applicant addressed Council in support of the development application.

The meeting concluded at 6.54pm.

MINUTES - ORDINARY COUNCIL MEETING 11 DECEMBER 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 181211 Ordinary Council Meeting Minutes

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Ordinary Council Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 11 December 2018 at 5.32pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, 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), A Murphy (Director City Wide Services), A Jones (Chief Financial Officer), E Kolatchew (Manager Legal), J Rigby (Manager Assets and Projects), M Bisson (Manager Regulatory, Planning and Assessment), K Hyland (Manager Major Events and Corporate Affairs), I Challis (Contracts Management Specialist), J Vescio (Executive Officer, Chief Executive Office and Interim Manager Corporate and Community Planning), M Murray (Policy Officer, Lord Mayor's Office), C Field (Executive Officer, Lord Mayor's Office), P Nelson (Project Consultant *Confidential Item 27*), D Fischetti (Media Officer), K Sullivan (Council Services/Minutes) and A Leach (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

MOTION

Moved by Cr Luke, seconded by Cr Robinson

The apology submitted on behalf of Councillor Dunn be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Church

Councillor Church declared a less than significant non-pecuniary interest in Item 130 - Cooks Hill, The Hill and Hamilton South Heritage Conservation Areas Boundary Adjustments - Endorsement of Amendment to Newcastle LEP 2012 stating that he lived in the suburb and would manage the conflict and remain in the Chamber.

Councillor White

Councillor White declared a significant pecuniary interest in Item 128 - Determination of PAYG Taxation for Councillors, stating that although it was not normal to declare when it was in relation to 'our own', it was a matter under which taxation law, superannuation law, of which she was a representative of both members and involved in during her employment. Councillor White stated she would manage the conflict by leaving the Chamber for discussion on the item.

Councillor Clausen

Councillor Clausen declared a less than significant non-pecuniary interest in Confidential Item 28 - Review of Business Improvement Associations stating that in his capacity as a Ward 3 Councillor he was a member of the New Lambton Chamber of Commerce. Councillor Clausen stated that being a member did not constitute a significant conflict of interest under the Code of Conduct and would remain in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - PUBLIC VOICE COMMITTEE 20 NOVEMBER 2018

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

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

Carried

MINUTES - ORDINARY COUNCIL MEETING 27 NOVEMBER 2018

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

The draft minutes of the 27 November 2018 Ordinary Council Meeting as circulated be taken as read and confirmed, subject to an amendment to Item 113 to remove the inclusion of Councillor Church in the listing for the division. Councillor Church was not present in the Chamber when the division was called due to his significant pecuniary interest.

Carried

LORD MAYORAL MINUTE

ITEM-23 LMM 11/12/18 - CITY OF NEWCASTLE 'BUY LOCAL' PROCUREMENT POLICY

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

- 1 Examines the benefits available to the City of Newcastle of purchasing goods, services and works from suppliers/contractors located within the Greater Newcastle region, including the benefits of local purchasing on generating local employment, building relationships with local suppliers, and fostering local innovation and emerging sectors;
- 2 Develops a draft Newcastle Buy Local Policy for Council's consideration, which includes an appropriate additional weighting(s) in the City's procurement processes for businesses operating in the Newcastle LGA, Greater Newcastle and the broader Hunter.

**Carried
unanimously**

ITEM-24 LMM 11/12/18 - RICHMOND VALE RAIL TRAIL WORKING PARTY

MOTION

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

- 1 Notes that the Richmond Vale Rail Trail is a proposed 32-kilometre cycling and walking track along the former Richmond Vale rail line between Kurri Kurri and Hexham, along the former Chichester to Newcastle water pipeline between Shortland and Tarro, and through the Hunter Wetlands National Park;
- 2 Acknowledges the significant body of work already completed by the City of Newcastle, City of Cessnock and City of Lake Macquarie towards the realisation of the Richmond Vale Rail Trail;
- 3 Notes the Greater Newcastle Metropolitan Plan Strategy 12 'Enhance the Blue and Green Grid and the urban tree canopy' encourages the completion of the Richmond Vale Rail Trail as an opportunity to promote healthy lifestyles, extend recreation opportunities and contribute to expanding the Blue and Green Networks;
- 4 Establishes a Richmond Vale Rail Trail Working Party comprising Councillors, Council Officers and community members from City of Newcastle, City of Cessnock and City of Lake Macquarie, aimed at delivering what will be a truly iconic infrastructure project for the Greater Newcastle Metropolitan Area.

**Carried
unanimously**

REPORTS BY COUNCIL OFFICERS

ITEM-124 CCL 11/12/18 - CODE OF CONDUCT COMPLAINTS STATISTICS REPORT

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

Council receives and notes City of Newcastle's Code of Conduct Statistics Complaints Report for the period 1 September 2017 to 31 August 2018 at **Attachment A**.

**Carried
unanimously**

ITEM-126 CCL 11/12/18 - ADOPTION OF EFFECTIVE COMMUNICATION BETWEEN COUNCILLORS AND STAFF POLICY

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

That Council adopts the Effective Communication Between Councillors and Staff Policy at **Attachment A**.

**Carried
unanimously**

ITEM-129 CCL 11/12/18 - SANCTUARY ESTATE, FLETCHER - ADOPTION OF AMENDMENT TO NEWCASTLE LEP 2012

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

Council resolves to:

- i) Endorse the Planning Proposal (**Attachment A**) prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to amend Newcastle Local Environmental Plan 2012 (LEP).
- ii) Forward the Planning Proposal to the Department of Planning and Environment (DPE) requesting that a draft LEP be prepared and made.

For the Motion:

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

Against the Motion:

Nil.

Carried

ITEM-132 CCL 11/12/18 - TEMPORARY SUSPENSION OF ALCOHOL FREE ZONES FOR UPCOMING EVENTS 2019

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- i) Council approves the temporary suspension of the Alcohol Free Zone (AFZ) for Nobbys Beach car parks 1 and 2, Horseshoe Beach car park and Wharf Road between Nobbys Road roundabout and the Pilot Station on Saturday 19 January 2019 from 6am to midnight, for the purpose of staging 'By The C' concert at Camp Shortland. This suspension is subject to the event organiser, Zaccaria Concerts & Touring, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and City of Newcastle.
- ii) Council approves the temporary suspension of the AFZ for Nobbys Beach car parks 1 and 2, Horseshoe Beach car park and Wharf Road between Nobbys Road roundabout and the Pilot Station on Friday 15 March 2019 from 6am to midnight, for the purpose of staging 'Foreshore Live' concert at Camp Shortland. This suspension is subject to the event organiser, Mothership Events, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and City of Newcastle.
- iii) Council approves the temporary suspension of the AFZ for Nobbys Beach car parks 1 and 2, Horseshoe Beach car park and Wharf Road between Nobbys Road roundabout and the Pilot Station on Saturday 16 March 2019 from 6am to midnight, for the purpose of staging 'Live at the Foreshore' concert at Camp Shortland. This suspension is subject to the event organiser, Mothership Events, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and City of Newcastle.
- iv) Council approves the temporary suspension of the AFZ in Keightley Lane, Newcastle on Thursday 25 April 2019 from 6am to 6pm for the purpose of allowing ANZAC Day Activities. This suspension is subject to the organiser Newcastle Diggers Club, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and City of Newcastle.

**Carried
unanimously**

ITEM-134 CCL11/12/18 - LAND ACQUISITION - PART 12 ALBERT STREET WICKHAM - ROUNDABOUT AND ASSOCIATED WORKS

MOTION

Moved by Cr Byrne, seconded by Cr Mackenzie

That Council resolves to:

- i) Authorise the acquisition of part Lot 165 DP669083 as shown at **Attachment A** for an amount that is within 10% of the Valuation referred to in this report (**Attachment B**) on the terms outlined in this report.

- ii) Grant authority to the Chief Executive Officer or his delegate to execute all relevant documentation to effect the transaction.

**Carried
unanimously**

**ITEM-125 CCL 11/12/18 - ADOPTION OF THE REVISED PRIVACY
MANAGEMENT PLAN**

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

Council adopts the revised Privacy Management Plan at **Attachment A**.

AMENDMENT

Moved by Cr Elliott

Reference - Privacy Management Plan, Clause 25, Page 11 - *How Does Council provide access to, and ensure the accuracy of, personal information? (amendment in bold)*

Amend table in relation to Information Privacy Principles (IPP 8) and Health Privacy Principles (HPP 8) to read '*At the request of the individual to whom the information relates, CN **must** make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information is accurate, relevant, up to date and not misleading.*

The mover and seconder accepted Councillor Elliott's amendment into the motion.

The motion moved by Councillor Clausen and seconded by Councillor Mackenzie, as amended, was put to the meeting.

**Carried
unanimously**

**ITEM-127 CCL 11/12/18 - REPORT ON REVIEW OF ADVISORY COMMITTEES
AND ADOPTION OF ADVISORY COMMITTEE CHARTERS**

MOTION

Moved by Lord Mayor, Cr Nelmes, seconded by Cr Winney-Baartz

- 1 That Council deal with the item in seriatim.
- 2 That Council:
 - a) establish the Infrastructure Advisory Committee with the Terms of Reference at **Attachment A** and appoint Councillor Dunn as the Chairperson, Councillor White as the Deputy Chairperson and Councillor Robinson as a committee member;

- b) establish the Strategy and Innovation Advisory Committee with the Terms of Reference at **Attachment B** and appoint Councillor Clausen as the Chairperson, Councillor Byrne as the Deputy Chairperson and Councillor Luke as a committee member;
- c) establish the Community and Culture Advisory Committee with the Terms of Reference at **Attachment C** and appoint Councillor Duncan as the Chairperson, Councillor Rufo as the Deputy Chairperson and Councillor Elliott as a committee member; and
- d) establish the Liveable Cities Advisory Committee with the Terms of Reference at **Attachment D** and appoint Councillor Mackenzie as the Chairperson, Councillor Winney-Baartz as the Deputy Chairperson and Councillor Church as a committee member;

with effect from 1 July 2019 until the day prior to the Ordinary Council election in 2020.

3 That Council continue, as standing committees, the:

- a) Guraki Aboriginal Advisory Committee with Terms of Reference at **Attachment E** and appoint Councillor White as the Co-Chairperson, Councillor Winney-Baartz as the Deputy Chairperson and Rufo as a committee member;
- b) the Disability Inclusion Advisory Committee, renamed to the Access Inclusion Advisory Committee, with Terms of Reference at **Attachment F** and appoint Councillor Bryne as the Co-Chairperson, Councillor Duncan as the Deputy Chairperson and Councillor Rufo as a committee member; and
- c) Youth Council with Terms of Reference at **Attachment G** and appoint Councillor Winney-Baartz as the Co-Chairperson, and Councillors Clausen and Robinson as committee members.

4 That Council continue, the:

- a) Asset Advisory Committee with current membership; and
- b) Audit and Risk Committee with current membership.

until the day prior to the Ordinary Council election in 2020.

5 That Council continue the Public Art Reference Group (working party) and appoint Councillor Duncan as the Chairperson, Councillor Mackenzie as the Deputy Chairperson and Councillor Winney-Baartz as a reference group member, with the Reference Group to be dissolved with effect from 30 June 2019.

- 6 That Council dissolve all other advisory or similar committees established by Council, including but not limited to advisory committees, working parties, reference groups, consultative groups, with effect from 30 June 2019.
- 7 That Council adopt the Guidelines for meeting practice - Advisory Committees at **Attachment H**.
- 8 That Council adopt the Standard Operating Procedures for Working Parties at **Attachment I**.

Carried

ITEM-128 CCL 11/12/18 - DETERMINATION OF PAYG TAXATION FOR COUNCILLORS

Councillor White left the Chamber for discussion on the item.

MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

That Councillor fees be subject to income tax withholding in accordance with 446-5 of Schedule 1 of the *Taxation Administration Act 1953* from 1 January 2019.

Councillor Clausen gave notice of a substantive foreshadowed motion.

The motion moved by Councillor Clausen and seconded by Councillor Winney-Baartz was put to the meeting.

For the Motion:

Lord Mayor, Cr Nelmes, and Councillors Byrne, Clausen, Duncan, Mackenzie, Robinson and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Luke and Rufo.

Carried

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

That Council

- 1 Notes that as a result of Federal and State taxation and local government legislation, elected councillors in NSW are not paid superannuation.
- 2 Notes research from the Association of Superannuation Funds of Australia (ASFA) that the average superannuation balance for women in 2016 was 40% less than that for men. Notes that requiring the compulsory payment of superannuation to mayors and councillors in NSW would help bridge the superannuation gender gap and assist in attracting more diversity in local government.

- 3 Notes that at its 2017 Annual Conference, Local Government NSW adopted the following motion: *"That Local Government NSW lobbies the NSW Government and Remuneration Tribunal to make it mandatory that councils make superannuation payments to mayors and councillors and that these payments must be in addition to the stipend paid to elected officials. The superannuation payments would be at the Superannuation Guarantee rate, as determined by the Commonwealth and which varies from time to time. Payments would be made to complying superannuation funds."* (2017 LGNSW Annual Conference, Motion No. 80).
- 4 Writes to the Federal and State Ministers and Shadow Ministers for Local Government in support of the Local Government NSW motion, requesting amendment to relevant State and Federal legislation requiring councillors to be paid compulsory superannuation, as has been the case since 1991 for all Australians.

Carried

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

ITEM-130 CCL 11/12/18 - COOKS HILL, THE HILL AND HAMILTON SOUTH HERITAGE CONSERVATION AREAS BOUNDARY ADJUSTMENTS - ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP 2012

Councillor Church stated that he had reconsidered his declaration in relation to Item 130 - Cooks Hill, The Hill and Hamilton South Heritage Conservation Areas Boundary Adjustments - Endorsement of Amendment to Newcastle LEP 2012 and left the Chamber for discussion on the item.

MOTION

Moved by Cr Duncan, seconded by Cr Mackenzie

Council resolves to:

- i) Endorse the attached Planning Proposal (**Attachment A**), prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to amend the Newcastle Local Environmental Plan 2012 (LEP) to enable boundary adjustments to the existing Cooks Hill, Hamilton South Garden Suburb and the Hill Heritage Conservation Areas (HCA).
- ii) Forward the Planning Proposal to the Minister for Planning for Gateway determination pursuant to Section 3.34 of the EP&A Act.
- iii) Advise the Secretary of the Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 3.36(1) of the EP&A Act.
- iv) Consult with the community and relevant government agencies as instructed by the Gateway determination.

- v) Receive a report back on the Planning Proposal as per the requirements of Section 3.34 of the EP&A Act.

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

Against the Motion: Councillor Luke.

Carried

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

ITEM-131 CCL 11/12/18 - ADOPTION OF HAMILTON RESIDENTIAL PRECINCT HERITAGE CONSERVATION AREA - AMENDMENT TO NEWCASTLE LEP 2012

MOTION

Moved by Cr Duncan, seconded by Cr Byrne

Council resolves to:

- i) Endorse the Planning Proposal (**Attachment A**) prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to amend the Newcastle Local Environmental Plan 2012 (LEP) to create a Heritage Conservation Area (HCA) for the Hamilton Residential Precinct. Site location plan is attached (**Attachment B**).
- ii) Forward the Planning Proposal to the Department of Planning and Environment (DPE) requesting that a draft LEP be prepared and made pursuant to Section 3.36(1) of the EP&A Act.
- iii) Advise the Secretary of the DPE that City of Newcastle (CN) does not seek to exercise delegations for undertaking Section 3.36(1) of the EP&A Act.

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

Against the Motion: Councillor Luke.

Carried

ITEM-133 CCL 11/12/18 - MANAGEMENT OF PARKING WITHIN THE LOCAL GOVERNMENT AREA

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Byrne

Council authorises the Chief Executive Officer to establish and operate or remove parking schemes as provided under the Road Transport (General) Regulation 2013 within the Local Government Area.

For the Motion:

Lord Mayor, Cr Nelmes, Councillors Byrne, Clausen, Duncan, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Luke and Rufo.

Carried

NOTICES OF MOTION

ITEM-34 NOM 11/12/18 - MINIMISING DISRUPTION

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

That Council

- 1 Notes the continued unprecedented construction boom underway in the City of Newcastle, including the City's own record capital program.
- 2 Notes the temporary inconvenience this can cause Novocastrians, especially due to road works.
- 3 Notes the reforms being introduced by the re-elected Andrews Victorian Government, and considers opportunities to replicate and build on these reforms for road construction works within the City of Newcastle local government area, especially for works being undertaken by the City, or for traffic management plans being endorsed by the City's traffic committee.

**Carried
unanimously**

ITEM-35 NOM 11/12/18 - HEALTH BURDEN OF COAL-FIRED ELECTRICITY GENERATION IN NSW

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

That Council:

- 1 Notes the publication of the report, "The Health Burden of Fine Particle Pollution from Electricity Generation in NSW", written by leading epidemiologist Dr Ben Ewald, investigating the serious health damage caused by NSW's five coal-fired power stations.
- 2 Notes specifically the findings of the report that in the Lower Hunter each year, the five coal-fired power stations cause 51 premature deaths (equivalent 477 years lost); 37 low birthweight babies (less than 2500g); and 63 new cases of type 2 diabetes.
- 3 Notes that the Environmental Pollution licences for Eraring, Mount Piper and Vales Point power stations are now under review by the NSW EPA (EPLs 761, 13007, 1429 respectively). The reviews will conclude and new licences will be issued by 6 January, 1 January and 24 December respectively.
- 4 Makes a submission to the review of the EPLs for Eraring, Mount Piper and Vales Point at the earliest, and definitely by mid-December, including requesting the NSW Government to set pollution limits consistent with world's best practice, including but not limited to stack emission limits to SO₂, NO_x and mercury, and to require the installation of Selective Catalytic Reduction (SCR) and Flue Gas Desulfurisation (FGD) technology. These controls are standard practice in most countries.
- 5 Writes to the Environment Minister Gabrielle Upton and the Shadow Environment Minister Penny Sharpe noting the ongoing success of the Newcastle Local Air Quality Monitoring Network and seeking the following commitments:
 - a) an expansion of the Office of Environment and Heritage Air Pollution Monitoring (APM) Network to include 2 or 3 additional Air Monitoring Stations in the vicinity of each power station;
 - b) the location of the new Air Monitoring Stations be determined in collaboration with the affected communities; and
 - c) the APM data be readily available to the community at a standard consistent with the Newcastle Local Air Quality Monitoring Network.

PROCEDURAL MOTION

Moved by Cr Church

The matter lay on the table to consider a report on staff on the implications of adopting this resolution.

The Lord Mayor sought comment from the Chief Executive Officer on the procedural motion.

Following the Chief Executive Officer's response, Councillor Church withdrew the procedural motion.

The motion moved by Councillor Mackenzie and seconded by Councillor Byrne was put to the meeting.

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

Against the Motion: Councillors Church and Elliott.

Carried

ITEM-36 NOM 11/12/18 - PARIS CLIMATE AGREEMENT

In seconding the motion, Councillor Clausen added a Part B.

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

That City of Newcastle

- A 1 Notes the UNEP's 2018 Emissions Gap Report found that Australia is currently not on track to meet our unconditional Paris Climate Agreement carbon emissions reduction targets by 2030. The report instead found that "There has been no improvement in Australia's climate policy since 2017 and emission levels for 2030 are projected to be well above the [Nationally Determined Contribution] target."
 - 2 Commits formally to the principles and targets of the Paris Climate Agreement.
 - 3 Develops a pathway to achieve the greenhouse gas (GHG) emissions reductions necessary to align with the principles of the Paris Climate Agreement and a 1.5 degree Celsius outcome, as the foundation for the update and review of the Newcastle 2020 Carbon and Water Management Action Plan in 2019-2020.
- B That Council notes the planned upcoming visit of independent Climate Councillor and ANU Climate Change Institute Professor Will Steffen to Newcastle in early 2019 and offers to provide in-kind support for this visit including use of a room at City Hall for a public lecture and roundtable stakeholder discussions.

Carried

CONFIDENTIAL REPORTS

PROCEDURAL MOTION

Moved by Cr Duncan, seconded by Cr Winney-Baartz

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

For the Procedural Motion:

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

Against the Procedural Motion:

Councillor Luke.

Carried

Council resolved into confidential session at 7.09pm.

During confidential session:

- All staff except for the Interim Director People and Culture, Manager Legal and Meeting Secretaries left the Chamber at 7.23pm for Confidential Item 26 - Chief Executive Officer Performance Review
- Stephen Blackadder, Blackadder Associates, was present during Confidential Item 26 - Chief Executive Officer Performance Review to answer questions of Councillors
- The Interim Director People and Culture distributed Confidential Item 26 - Chief Executive Officer Performance Review to Councillors and collected the report at the conclusion of the item
- The Chief Executive Officer, Directors and remaining staff returned to the Chamber at the conclusion of Confidential Item 26 - Chief Executive Officer Performance Review
- Paul Nelson, Project Consultant, was present for Confidential Item 27 - Office Accommodation to provide a briefing to Councillors
- Confidential Item 27 - Office Accommodation was distributed to Councillors and staff and collected at the conclusion of the item
- A procedural motion was moved by Councillors Luke and Mackenzie and carried to read Confidential Item 27 - Office Accommodation and receive the briefing
- Simon Murphy, IAP Team Leader, AECOM, Matthew Endacott, Senior Urban Renewal and Engagement Consultant, AECOM, and Greg Waters, Practice Leader, Centium Group were present for Item 28 - Review of Business Improvement Association Model to provide a briefing to Councillors
- Confidential Item 28 - Review of Business Improvement Association Model was distributed to Councillors and collected at the conclusion of the item
- A procedural motion was moved by Councillors Clausen and Duncan and carried to read Item 28 - Review of Business Improvement Association Model and receive the briefing

- The Lord Mayor declared a non-pecuniary less than significant interest in Confidential Item 28 - Review of Business Improvement Association Model stating that one of the presenters was known to her having worked with Council on the Vanguard Conference, Urban Growth revitalising Newcastle and small bars in the past
- The Lord Mayor noted the time at 9.16pm and called for a motion to extend the meeting past 9.30pm
- A procedural motion was moved by Councillors Winney-Baartz and Mackenzie and carried to extend the meeting to conclude when business was finalised

PROCEDURAL MOTION

Moved by Cr Duncan, seconded by Cr Mackenzie

Council move back into open Council.

Carried

Council resolved into open Council at 11.06pm.

At this stage of the meeting the Lord Mayor stated that Councillor Elliott had left the meeting and not returned her copy of Confidential Item 28 - Review of Business Improvement Association Model and when asked to return it by the Manager of Legal she had declined. The Lord Mayor requested these actions be recorded in the minutes.

The Chief Executive Officer reported the outcomes of confidential Items 24, 25, 27 and 28.

The Lord Mayor reported the outcome of confidential Item 26.

**ITEM-24 CON 11/12/18 - MINOR CIVIL WORKS IN ROAD RESERVES
CONTRACT 2019/088T**

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- 1 For Contract No. 2019/088T - Minor Civil Works in Road Reserves, Council accept the tenders of:
 - i All Kerbs and Concrete Pty Ltd;
 - ii Eire Constructions Pty Ltd;
 - iii Ian Rich Asphalt Pty Ltd;
 - iv Mr Diggitt Pty Ltd;
 - v Accurate Asphalt & Road Repairs Pty Ltd;
 - vi Lawcon Constructions Pty Ltd;
 - vii Hunter Wide Civil Pty Ltd;
 - viii Knock Contractors Pty Ltd; and
 - ix Bolla Contracting Pty Ltd.

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- 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**

ITEM-25 CON 11/12/18 - COTTAGE CREEK BRIDGE REPLACEMENT - CONTRACT NO. 2018/372T

MOTION

Moved by Cr Robinson, seconded by Cr Clausen

- 1 Council does not accept any of the tenders for the Cottage Creek Bridge Replacement for Contract No. 2018/372T and calls fresh tenders for the replacement of the Cottage Creek Bridge decking only.
- 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**

ITEM-27 CON 11/12/18 - OFFICE ACCOMMODATION

MOTION

Moved by Cr Clausen, seconded by Cr Byrne

- A
 - 1 Council resolve to sell 282 King Street, Newcastle for a sum no less than the latest valuation plus 19%, plus GST, and transfer proceeds from the sale of the asset to City of Newcastle's Land and Property Reserve.
 - 2 Council grant authority to the Chief Executive Officer or his delegate to execute all relevant documentation between Council and a Purchaser.
 - 3 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 the Chief Executive Officer determines otherwise.
- B Council recognises the importance to local heritage that the City Administration Centre (CAC) provides to the City of Newcastle, that a sale is supported on the basis of adaptive reuse of the building and proceeds be reinvested for the benefit of the City.

For the Motion:

Lord Mayor, Cr Nelmes, and Councillors Byrne, Clausen, Duncan, Luke, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Mackenzie, Robinson and Rufo.

Carried

ITEM-28 CON 11/12/18 - REVIEW OF BUSINESS IMPROVEMENT ASSOCIATIONS

MOTION

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

- 1 Receives the AECOM report 'Review of Business Improvement Associations (BIA) in Newcastle' at **Attachment A**.
- 2 Notes that the AECOM report was released publicly in full on 10 December 2018.
- 3 Receives the confidential (redacted) investigation report of Centium at **Attachment B**.
- 4 Terminates:
 - i) the Funding and Service Deed between Newcastle City Council and Newcastle Business Improvement Association dated 23 August 2011 with effect from 31 December 2018;
 - ii) the Funding and Service Deed between Newcastle City Council and Hamilton Business Improvement Association dated 1 September 2011 with effect from 30 June 2019;
 - iii) the Funding and Service Deed between Newcastle City Council and Mayfield Business Improvement Association 1 September 2011 with effect from 30 June 2019; and
 - iv) the Funding and Service Deed between Newcastle City Council and Wallsend Business Improvement Association dated 1 September 2011 with effect from 30 June 2019.
- 5 Enters into new legal agreements with each of the BIAs and New Lambton Village by no later than 1 July 2019 with the new agreements to provide for a percentage of the special rates levied to be payable to the BIAs in return for specific services to promote, beautify and develop the relevant benefit areas (or for another purpose as resolved by Council from time to time).
- 6 Calls for tenders for additional specific services to promote, beautify and develop the relevant benefit areas (or for another purpose as resolved by Council from time to time) or directly expends the balance of the special rates levied not otherwise provided to the BIAs.

- 7 Receives a report by no later than 30 June 2019 proposing a new model for BIAs in accordance with option 3 detailed within the AECOM at **Attachment A** including a determination on the percentage of the special rates to be provided to the BIAs and/or the subject of a tender/direct expenditure by City of Newcastle.
- 8 This confidential report relating to the matters specified in s. 10A(2)(d) of the Local Government Act 1993 be treated as confidential and remain confidential (except for the AECOM Report at **Attachment A** which has been made publicly available) until such time as the Chief Executive Officer (CEO) determines otherwise.

For the Motion:

Lord Mayor, Cr Nelmes, and Councillors Byrne, Clausen, Duncan, Mackenzie, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Luke, Robinson and Rufo.

Carried

ITEM-26 CON 11/12/18 - CHIEF EXECUTIVE OFFICER PERFORMANCE REVIEW

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

- 1 Council receives the 2018 Chief Executive Officer annual performance review report 'Performance Review Chief Executive Officer 2018' submitted by Blackadder Associates Pty Ltd (**Attachment A**).
- 2 Council endorses the increase of 2.5% from the CEO performance review.
- 3 Council acknowledges the increase to the CEO's total remuneration package will be effective from the CEO's 12 month anniversary date of 13 December 2018.
- 4 This confidential report relates to the matters specified in section 10A(2)(d) of the Local Government Act 1993 be treated as confidential and remain confidential until Council determines otherwise.

**Carried
unanimously**

The meeting concluded at 11.15pm.

REPORTS BY COUNCIL OFFICERS

ITEM-1 **CCL 26/02/19 - QUARTERLY BUDGET REVIEW - DECEMBER 2018**

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

PURPOSE

To provide Council with the Quarterly Budget Review Statement as at 31 December 2018, in accordance with clause 203 of the Local Government (General) Regulation 2005.

RECOMMENDATION

- 1 That Council receive the December Quarterly Budget Review Statement (**Attachment A**) and adopts the revised budget as detailed therein.

KEY ISSUES

- 2 The December Quarterly Budget Review Statement includes adjustments to the current adopted budget to reflect trends identified in the actual operating performance to date for the 2018/19 financial year. The operational budget variations identified within the December Quarterly Budget Review Statement had no net effect and City of Newcastle's (CN) budgeted annual operating surplus remaining in-line with the adopted budget of \$6.5m for the year ended 30 June 2019.
- 3 The operational position forecast in the December Quarterly Budget Review Statement is lower than the actual operating surplus position reported at the end of December. This reflects that in some cases the below average level of expenditure generated by CN's work program over the first half of the financial year will balance out as the year progresses.
- 4 The net funds budgeted to be used in the 2018/19 financial year has been improved by \$1.6m. This results in budgeted net funds used of \$4m for the full financial year, which represents a draw down on funds previously restricted for this purpose.
- 5 The 2018/19 works program was reviewed as part of the December Quarterly Budget Review Statement and scheduling changes were made to projects to ensure CN was best placed to respond to community priorities. Overall the scheduling changes had no effect on the total program which remained at \$100m.

FINANCIAL IMPACT

- 6 The budget variations recommended through the December Quarterly Budget Review Statement are presented in more detail in the attached report.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 7 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

- 8 The adoption of the recommendation will enable ongoing implementation of CN's adopted 2018-2022 Delivery Program and 2018/19 Operational Plan in a cost effective and efficient manner. If the recommended budget adjustments are not approved, it will significantly impact on CN's ability to undertake the projects outlined in the 2018/19 project program (as adjusted in the September Quarterly Budget Review Statement) and will ultimately impact on the organisation's ability to meet the current and future years' operational plans. In order to ensure that CN remains financially fit for the future and continues on its path to financial sustainability it is essential that it continues to meet its annual operational plans.

RISK ASSESSMENT AND MITIGATION

- 9 Adoption by 26 February 2019 will meet legislative obligations to submit a Quarterly Budget Review Statement to Council within two months of the end of each quarter.

RELATED PREVIOUS DECISIONS

- 10 Adoption of the 'Our Budget' (2018-2022 Delivery Program and 2018/19 Operational Plan) on 26 June 2018.

CONSULTATION

- 11 A monthly workshop is conducted with the Councillors to provide detailed information and a forum to ask questions.

OPTIONS

Option 1

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

Option 2

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

REFERENCES

ATTACHMENTS

Attachment A: December 2018 Quarterly Budget Review Statement

Distributed under separate cover

ITEM-2 CCL 26/02/19 - EXECUTIVE MONTHLY PERFORMANCE REPORT

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

PURPOSE

That Council:

- 1 Receives the monthly financial position and year to date (YTD) performance against the 2018/19 Operational Plan as at the end of January 2019; and
- 2 Receives the 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

- 3 The executive monthly performance report for January 2019 be received.

KEY ISSUES

- 4 At the end of January 2019 the consolidated YTD actual operating position is a surplus of \$18.4m which represents a positive variance of \$12.3m against the budgeted YTD surplus of \$6.1m. This budget variance is due to a combination of income and expenditure variances which are detailed in **Attachment A**. The full year revised budget for 2018/19 is a surplus of \$6.5m.
- 5 The net funds generated as at the end of January 2019 is a surplus of \$28.7m (after capital revenues, expenditure and loan principal repayments). This is a positive variance to the YTD budgeted surplus of \$5.9m. This is primarily due to a timing variance in the delivery of Council's works program with a higher amount of project expenditure (both capital and operational expenditures) expected to be incurred during the final quarter of the financial year.
- 6 Council's temporary surplus funds are invested consistent with Council's Investment Policy, Investment Strategy, the Act and Regulations. Details of all Council funds invested under s.625 of the Act are provided in the Investment Policy and Strategy Compliance Report (section 4 of **Attachment A**).

FINANCIAL IMPACT

- 7 The variance between YTD budget and YTD actual results at the end of January 2019 is provided in the Executive Monthly Performance Report.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 8 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

- 9 The distribution of the report and the information contained therein is consistent with:
- i) CN's adopted annual financial reporting framework,
 - ii) CN's Investment Policy and Strategy, and
 - iii) Clause 212 of the Regulation and s.625 of the Act.

RISK ASSESSMENT AND MITIGATION

- 10 No additional risk mitigation has been identified this month.

RELATED PREVIOUS DECISIONS

- 11 At the Ordinary Council Meeting held on 25 September 2018 Council adopted to receive an executive monthly performance report for July to May no later than one month after the month being reported as part of the annual financial reporting framework.
- 12 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

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

BACKGROUND

- 14 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

15 The recommendation as at Paragraphs 1 and 2. This is the recommended option.

Option 2

16 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 - January 2019

Distributed under separate cover

**ITEM-3 CCL 26/02/19 - AUDIT AND RISK COMMITTEE AND INTERNAL
AUDIT ANNUAL REPORT**

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER LEGAL

PURPOSE

To table the Audit and Risk Committee (Committee) Annual Report for the 2017/2018 financial year to Council and note the 2018/2019 Forward Internal Audit Plan.

RECOMMENDATION

That Council:

- 1 Receives the Audit and Risk Committee's Annual Report for the 2017/2018 financial year at **Attachment A**; and
- 2 Notes the 2018/2019 Forward Internal Audit Plan at **Attachment B**.

KEY ISSUES

- 3 The Committee is required to report annually to Council in accordance with the Committee Charter and the Office of Local Government's Internal Audit Guidelines.
- 4 The Committee also provides oversight of City of Newcastle's (CN) Forward Internal Audit Plan.

FINANCIAL IMPACT

- 5 Committee external members are remunerated for their services as well as CN engaging an external service provider to undertake internal audits. All expenses relating to internal audit were within the adopted budget for 2017/18.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 6 **Open and collaborative leadership**
 - 7.2a Conduct Council business in an open, transparent and accountable manner.
 - 7.4a Continuous improvement in services delivery based on accountability, transparency and good governance.

7 Open and Transparent Governance Strategy

4.5 Promote an organisation that eliminates or minimises risk.

4.6 Ensure accountability for public money and high levels of service, governance, quality, professional conduct and compliance with professional standards and other legislative requirements.

IMPLEMENTATION PLAN/IMPLICATIONS

8 The Committee meets five times per year in accordance with the Committee Charter. Meetings for 2018/2019 are scheduled for:

- i) 29 August 2018
- ii) 11 October 2018
- iii) 6 December 2018
- iv) 14 March 2019
- v) 23 May 2019

RISK ASSESSMENT AND MITIGATION

9 CN has an established Enterprise Risk Management Framework which provides a consistent and structured approach to identifying, managing and embedding risk management into CN's overall strategic and operational processes. Maintaining a Committee and an Internal Audit function is a key control to identifying, managing and mitigating risks. Internal Audit works in collaboration with senior management to create value by identifying opportunities to improve the efficiency and effectiveness of CN operations.

RELATED PREVIOUS DECISIONS

10 At the Ordinary Council meeting held on 27 February 2018, Council adopted the Committee Charter.

11 At the Ordinary Council Meeting held on 26 September 2017, Cr Jason Dunn and Cr John Mackenzie were appointed as Councillor Members of the Audit Committee, representing the newly elected Council.

CONSULTATION

12 The annual report was approved by the Committee at its meeting held on 6 December 2018.

BACKGROUND

13 The Committee "plays a pivotal role in the governance framework to provide CN with independent oversight and monitoring of CN's audit processes, including the CN's internal control activities. This oversight includes internal and external reporting, risk management activities, internal and external audit and

compliance.” (the Division of Local Government, *Internal Audit Guidelines*, September 2010).

- 14 The Committee membership of three (3) independent members and two (2) Councillors is in accordance with the Office of Local Government Internal Audit Guidelines (September 2010) and the Committee Charter (approved by Council on 27 February 2018).
- 15 A function of the Committee is to oversee the internal audit function which focuses on evaluating and improving the effectiveness of risk management, control and governance processes of CN Internal Audit partners with Service Units and the Executive Leadership Team to deliver practical and realistic recommendations for improvement across the organisation.

OPTIONS

Option 1

- 16 The recommendation as at Paragraph 1 and 2. This is the recommended option.

Option 2

- 17 Council does not adopt the recommendation. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Audit and Risk Committee – Annual Report 2017/2018

Attachment B: 2018/2019 Forward Internal Audit Plan

Attachment A

**Audit and Risk Committee
Annual Report to Council 2017/2018**



1. PURPOSE

To provide an annual report to Council on the Audit and Risk Committee's oversight of the internal audit function, the management of risk and effectiveness of internal controls.

2. BACKGROUND

The Audit and Risk Committee "plays a pivotal role in the governance framework to provide Council with independent oversight and monitoring of the Council's audit processes, including the Council's internal control activities. This oversight includes internal and external reporting, risk management activities, internal and external audit and compliance." (the Division of Local Government, *Internal Audit Guidelines*, September 2010).

The Audit and Risk Committee was established on 19 May 2009 by Ordinary Council Resolution. The Committee is made up of three external, independent members and two Councillor Members. This membership is in accordance with the Office of Local Government Internal Audit Guidelines (September 2010) and the Audit and Risk Committee Charter.

At the Ordinary Council Meeting held 27 February 2018, Council adopted the Audit and Risk Committee Charter to replace the previous Audit and Risk Committee Charter adopted by Council 25 November 2014. The Audit and Risk Committee Charter contains Audit and Risk Committee responsibilities. Broadly, these include oversight of Council's risk management control framework, legislative compliance and internal audit. The Audit and Risk Committee also reviews the external audit opinion and recommendations and other aspects of financial governance and reporting.

The Committee has no power of direction over the external audit or the manner in which the external audit is planned or undertaken. The Committee has no executive powers. It cannot make decision on behalf of CN or direct Council officers in the performance of their duties. Internal audit and the Audit and Risk Committee support the Chief Executive Officer to oversee CN's risk management and controls. Both functions are referenced in CN's Enterprise Risk Management Framework.

3. COMMITTEE MEMBERS

3.1 Councillor Membership

At the Ordinary Council Meeting held on 26 September 2017, Cr Jason Dunn and Cr John Mackenzie were appointed as Councillor Members of the Audit and Risk Committee, representing the newly elected Council.

3.2 External Membership

The current status of external members is:

- (a) Mr. Col Gellatly (Chair) resigned from the Audit and Risk Committee on 10 April 2018. Mr. Gellatly had served on the Audit and Risk Committee since September 2013.

- (b) Mr. Micah Jenkins' contract expired on 31 December 2017. Mr. Jenkins had served on the Audit and Risk Committee since September 2013.
- (c) Mr. Stephen Coates was appointed to the Audit and Risk Committee from 1 July 2017 for a period of three years. Mr. Coates was appointed as Audit Chair on 26 June 2018 as a result of the open tender process to replace Mr. Col Gellatly
- (d) As a result of an open tender process, Mr. Stephen Horne was appointed to replace Mr. Micah Jenkins as an independent member from 1 January 2018 for a period of three years.
- (e) As a result of an open tender process, Mr. Greg McKenna was appointed as an independent member from 25 June 2018 for a period of three years.

4. MEETINGS

4.1 Attendance

Audit and Risk Committee Member attendance for the 2017/2018 financial year meetings are shown in the following Table 1.

Members	Meeting Dates			
	17 August 2017	12 October 2017	1 February 2018	16 May 2018
Col Gellatly	✓	✓	✓	
Micah Jenkins	✓	✓		
Stephen Coates	✓	✓	✓	✓
Stephen Horne			✓	✓
Cr Dunn	✓	✓	Apology	Apology
Cr Mackenzie		✓	✓	✓
Cr Waterhouse	Apology			

4.2 Meeting Activity

Audit and Risk Committee meeting activity during 2017/2018 financial year included:

- (a) Approval of 2019-2021 three-year Forward Internal Audit Plan.
- (b) Endorsement of completed internal audits and implementation actions.
- (c) Receipt of briefings from PricewaterhouseCoopers and the Audit Office of NSW on CN's annual external financial audit plan and draft audit report.
- (d) Receipt at each meeting of the most recent Monthly Financial Performance Report.

A number of standing items are included in the Audit and Risk Committee business cycle. These are:

- (a) Annual insurance report.
- (b) Bi-annual review of Work Health & Safety Statistics.
- (c) Risk management report at each meeting.
- (d) Annual report on large write-offs.
- (e) Review of the annual external audit plan and briefing on the draft external audit report.
- (f) Bi-annual report on the performance and financial statements for Business Improvement Associations.

4.3 *Risk Management*

Risk management key activities are reported at each meeting of the Audit and Risk Committee. The Committee maintains interest in the implementation status of CN's Enterprise Risk Management Framework and clarification of risk data to inform business planning and decision making, including the internal audit plan.

4.4 *Performance Self-Assessment*

Due to the significant change in the Audit and Risk Committee during the financial year 2017/2018, the Performance Self-Assessment has been postponed to allow new members to have adequate experience to complete the assessment.

4.5 *Remuneration*

The total annual payment to the Audit Risk Committee external members for 2017/2018 was \$20,500.

The amount of \$26,324 was approved in the 2018/2019 budget for the Audit and Risk Committee. Councillor members of the Audit and Risk Committee are not paid.

5. INTERNAL AUDIT

CN outsources most of the internal audit function. Outsourcing ensures a high level of independence and autonomy from CN's management, and also ensures that specialised knowledge and skills can be procured to conduct audits of high risk areas which could impact the achievement of CN's objectives.

Internal resources were allocated to complete two audit engagements in the 2017/2018 Internal Audit Program.

On 16 June 2015, Council accepted the schedule of hourly rates tender of O'Connor Marsden & Associates Pty Limited to perform internal audit services from July 2015 for a period of three years with an option to extend the period of the agreement for one year by written agreement. This contract was not extended. On 30 July 2018 CN accepted the schedule of hourly rates tender of Centium to perform the Internal Audit Services from 1 August 2018 to 30 June 2021. The Contract for Centium was approved by the Tender Panel. This is a non-exclusive agreement that allows CN to appoint other, specialist audit providers as necessary.

The Audit and Risk Committee and internal audit provider are supported by an Internal Audit Co-ordinator.

The 6 internal audits completed for the 2017/2018 program were:

- (a) RMS Drives Audit
- (b) National Heavy Vehicle Accreditation Scheme (NHVAS)
- (c) Superannuation
- (d) Leave Management
- (e) Infrastructure Program Management Health Check
- (f) Councillors' Expenses

6. FORWARD INTERNAL AUDIT PLAN

Management takes a risk-based approach to formulate a three year, rolling forward internal audit plan. The audit planning process requires management to periodically consider risk levels, strategic objectives, audit history and other factors to determine audit priorities. These criteria are weighted to provide a scoring method so that audit priorities can be ranked. The 2019/2021 forward internal audit plan was approved by the Audit and Risk Committee on the 16th of May 2018.

Due to the recent redesign of CN combined with the change in the provision of internal audit services and the membership to the Audit and Risk Committee, the approved three year plan has been reviewed and amended to incorporate the existing three year plan into a high level strategic approach to Internal Audit that will incorporate a specific focus on current and emerging risks to CN. Ten high level topics have been recommended over a three year period. All topics will be covered over the next 2-3 years with approximately 4 audits being completed per year. The 2018-2019 Forward Internal Audit Plan is included at Attachment B.

Completion of the audit program will be subject to management of costs within the budget allocated. The allocated total budget for internal audit for 2018/2019 is \$289,078.

7. EXTERNAL AUDIT

The Audit and Risk Committee has continued to review CN's financial position and commitment towards achieving financial sustainability.

The Audit and Risk Committee met on 11 October 2018 to receive briefings on the draft audit and CN's financial statements in respect of the year ended 30 June 2018. A management report of significant financial matters for the year ended 30 June 2018 was reviewed.

Attachment B

Forward Internal Audit Plan 2018/2019



TOPIC	RESPONSIBILITY	TIMING	SCOPE
RMS DRIVES	Internal Audit Coordinator	Q1 2018/2019	Compulsory Compliance Audit for use of the RMS Database. Two extensions obtained due to change of internal auditor
Delegations, Fraud and Corruption and Control	Centium	Q2 2018/2019	To assess the adequacy of framework-level controls over CN's delegation policies and practices; and To assess the adequacy and effectiveness of the CN's fraud and corruption control framework.
National Heavy Vehicle Accreditation Scheme	Internal Audit Coordinator	Q3 2018/2019	An annual internal audit and bi-annual external audit are required to maintain heavy vehicle accreditation. The audit is limited to the Maintenance Management System. Compliance Audit.
Procurement & Tendering	Centium	Q3 2018/2019	The objective of this review is to assess whether CN has an adequate procurement and tendering management framework and system in place in order to minimise risk and facilitate the achievement of CN's objectives.
Financial Controls to Include Cash Handling	Internal Audit Coordinator	Q3 2018/2019	To assess the effectiveness of the CN's overall financial controls in place to include cash handling.
Customer Engagement	Centium	Q3 2018/2019	To assess the effectiveness of the framework and processes in place for CN to engage with customers to include satisfaction, complaints and feedback.
Strategic Objectives Assurance Mapping	Internal Audit Coordinator	Q4 2018/2019	To assess whether CN has an adequate procurement and tendering management framework and system in place in order to minimise risk and facilitate the achievement of CN's objectives.

CITY OF NEWCASTLE

TOPIC	RESPONSIBILITY	TIMING	SCOPE
Records Management	Centium	Q4 2018/2019	To Examine: <ul style="list-style-type: none"> • Council's existing records management practices and capabilities • Assess the extent to which CN complies with mandatory obligations such as the State Records Act as well as the standards and policies issued by the State Records Authority, such as GA39 (for local government). The output of the review will be a high-level roadmap / program of actions required to achieve compliance.
Recruitment and Performance	Centium	Q1 2019/2020	to assess the effectiveness of CN controls and processes to manage and oversee recruitment and performance to include: <ul style="list-style-type: none"> • Recruitment Policies and Procedures • Recruitment Planning and Approval • Recruitment advertising and selection • Applicant screening and notification • Ongoing staff performance
RMS Drives	Internal Audit Coordinator	Q1 2019/2020	Compulsory Compliance Audit for use of the RMS Database. Two extensions obtained due to change of internal auditor
IT Assurance Mapping	Internal Audit Coordinator	Q1 2019/2020	Prepare an assurance map for CN's IT functions, identifying risk control gaps and assessing the adequacy of existing assurances.
ICT & Cyber Security	Centium	Q1 2019/2020	To assess the adequacy of continuity and recovery controls over CN's critical IT systems. The review will also assess the adequacy of CN's controls that protect against cyber attacks and its ability to efficiently and effectively detect and respond to them if such attacks occur.

ITEM-4 CCL 26/02/19 - ADMINISTRATION OF 2020 COUNCIL ELECTIONS

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER LEGAL

PURPOSE

The purpose of this report is for Council to determine election arrangements for the Local Government elections in the Newcastle Local Government Area in September 2020.

RECOMMENDATION

That Council:

- 1 Resolves, pursuant to s.296(2) and (3) of the Local Government Act 1993 (NSW) ("the Act"), that an election arrangement be entered into by contract for the Electoral Commissioner to administer the 2020 elections of the Council, provided that the cost does not increase by more than 10% of the 2017 election costs; and
- 2 Resolves, pursuant to s.296(2) and (3) of the Act, as applied and modified by s.18, that any Council poll arrangement and any constitutional referendum to be conducted during the 2020 elections, be entered into by contract for the Electoral Commissioner to administer for the Council.

KEY ISSUES

- 3 Section 296AA(1) of the Act requires Council, at least 18 months before the next Ordinary elections of the Council, to decide whether to:
 - i) To enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the Council; or
 - ii) That the elections of the Council are to be administered by the Chief Executive Officer (CEO) of the Council.
- 4 The next Local Government elections for the Newcastle Local Government Area are due to be held in September 2020. Thus, in order to comply with section 296AA(1) of the Act, Council must make a decision on this matter by March 2019.
- 5 The Independent Pricing and Regulatory Tribunal (IPART) is currently conducting a review of the costs of conducting local government elections in NSW. The purpose of IPART's review is to ensure a robust methodology for determining costs is applied, in order to minimise the financial burden on

councils and to ensure local government elections are conducted efficiently and cost effectively. IPART is to report to the Minister for Local Government by 30 August 2019. Until the review is complete the NSW Electoral Commission (NSWEC) is unable to provide an estimate of the costs to administer this Council's election in 2020.

- 6 The NSW Government is proposing to introduce legislation in the first parliamentary sitting period of 2019 following the NSW State Election to amend the Local Government Act 1993 (the LGA) to extend the deadline for councils to make a decision on the administration of their elections under sections 296AA and 296. If this legislation is passed, the deadline for determining how Council will administer the elections would be extended to 1 January 2020. If the deadline was extended, and the cost estimate from the NSWEC is higher than expected, Council could subsequently review its decision to appoint the NSWEC to administer the 2020 elections.

FINANCIAL IMPLICATIONS

- 7 NSWEC's cost to administer Council's elections in 2017 was \$754,561 (excluding GST).
- 8 The costs of the 2020 election are dependent upon the outcome of the IPART review. Budget for the 2020 election will be sought in the 2020/21 budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 9 Nil.

RISK ASSESSMENT AND MITIGATION

- 10 Appointing the NSWEC to conduct the 2020 Local Government election on behalf of CN mitigates risk to CN.

RELATED PREVIOUS DECISIONS

- 11 At the Ordinary Council Meeting held on 24 February 2015, Council resolved to have the NSWEC administer the 2016 Local Government elections.
- 12 On 9 December 2014, Council resolved to have the NSWEC administer the 2015 Ward 4 by-election.
- 13 On 26 August 2014, Council resolved to have the NSWEC administer the 2014 Lord Mayoral by-election.

CONSULTATION

- 14 CN staff has consulted with the NSWEC.

OPTIONS

Option 1

15 The recommendation as at Paragraphs 1 and 2. This is the recommended option.

Option 2

16 Council resolves, pursuant to section 296AA(2) of the Act, to have the CEO administer the 2020 elections and engage an electoral services provider. This is not the recommended option.

Option 3

17 Council resolves, pursuant to section 296AA(2) of the Act, to have the CEO personally administer the 2020 elections. This is not the recommended option.

BACKGROUND

18 Under the Act, Local Government elections are held every four years. The Act was amended in 2011 (and again in 2014) to remove the monopoly of the NSWEC in conducting Local Government elections. Under s.296AA of the Act, the Council must determine whether the CEO is to administer elections or to enter into an arrangement for the NSWEC to administer the elections.

19 In addition to the Local Government elections, a Council can also have a constitutional referendum and / or a Council poll. If Council chooses to conduct either of these then, under s.296AAA of the Act, Council must also determine whether they are administered by the CEO or the NSWEC.

REFERENCES

ATTACHMENTS

Nil.

ITEM-5 CCL 26/02/19 - TABLING OF PECUNIARY INTEREST RETURNS - 1 NOVEMBER 2018 - 31 JANUARY 2019

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER LEGAL

PURPOSE

For the Chief Executive Officer to table the pecuniary interest returns received from designated persons between 1 November 2018 and 31 January 2019.

RECOMMENDATION

- 1 Council note the tabling of the pecuniary interest returns (for the period 1 November 2018 to 31 January 2019) by the Chief Executive Officer in accordance with the Local Government Act 1993 (NSW).

KEY ISSUES

- 2 Section 449(1) of the Local Government Act 1993 (NSW) (Act) requires Councillors and designated persons to lodge a pecuniary interest return in the form prescribed by the Local Government (General) Regulation 2005 (NSW) within three months after becoming a Councillor or a designated person.
- 3 Section 441 of the Act provides that designated persons are:
 - (a) The Chief Executive Officer (CEO) (General Manager);
 - (b) Senior staff;
 - (c) Council officers designated because of the exercise of Council functions; and
 - (d) Committee members because of the exercise of Council functions.
- 4 Section 450A of the Act requires the CEO to keep a register of pecuniary interest returns lodged and to table it at a meeting of Council.
- 5 In accordance with Section 739 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:
 - (a) The designated person requested such information be deleted on the grounds that it would place their personal safety or their family's safety at risk; and

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

FINANCIAL IMPACT

- 6 Not applicable.

COMMUNITY STRATEGIC PLAN ALIGNMENT

7 Open and Collaborative Leadership

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

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

8 Open and Transparent Governance Strategy

3.5 Open and Transparent Disclosures.

IMPLEMENTATION PLAN/IMPLICATIONS

9 On the day following the meeting, the register of pecuniary interest returns may be accessed by members of the public at CN Newcastle City Administrative Centre during business hours without an appointment.

10 At all other times, the register of pecuniary interest returns is available for inspection in accordance with the Government Information (Public Access) Act 2009 (NSW). CN's procedure requires a person to make an appointment to view the register during business hours.

RISK ASSESSMENT AND MITIGATION

11 Compliance with legislative requirements for tabling pecuniary interest returns is a key process supporting the Open and Transparent Governance Strategy.

RELATED PREVIOUS DECISIONS

12 The pecuniary interest returns for newly commenced staff were tabled on 27 November 2018 for designated persons who commenced with CN between 1 August 2018 and 31 October 2018.

13 The annual pecuniary interest returns were last tabled at Council's Ordinary Meeting held on 23 October 2018.

CONSULTATION

- 14 Not applicable.

BACKGROUND

15 Not Applicable.

OPTIONS

Option 1

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

Option 2

17 Council does not adopt the recommendation. The Act requires 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

Tabled.

ITEM-6 CCL 26/02/19 - ENDORSEMENT OF PLANNING AGREEMENT - 464-470 KING STREET, NEWCASTLE

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

PURPOSE

This report seeks Council's endorsement of the Planning Agreement for 464-470 King Street, Newcastle (in relation to the development of the Verve Residences) to enable construction of a pedestrian and cycle link.

RECOMMENDATION

That Council:

- 1 Endorse the Planning Agreement – 464-470 King Street Newcastle (**Attachment A**) to enable construction of a pedestrian and cycle link between King Street and Hunter Street with a value of \$1.472m; and
- 2 Authorise the Chief Executive Officer to execute the Planning Agreement.

KEY ISSUES

- 3 At the Ordinary Council Meeting held on 28 August 2018 Council resolved to place the draft Planning Agreement for DA2016/00346 – 464-470 King Street Newcastle (Verve Residences development) on public exhibition for 28 days. The draft Agreement, containing two components – public art and a pedestrian and cycle link was exhibited from Monday 3 September 2018 to Tuesday 2 October 2018 and no submissions were received.
- 4 Following public exhibition, the draft Planning Agreement was reported to the Ordinary Council Meeting held on 27 November 2018 for adoption. Council resolved that “Item 113 lay on the table until the first Ordinary Council Meeting of 2019” to allow the public art component of the Verve development to be referred to the Public Art Reference Group (PARG).
- 5 The PARG was briefed on 20 December 2018 and was advised that the Verve public art proposal met the requirements of the Newcastle Development Control Plan (DCP) and was previously approved by a former manager who acted outside their delegations.
- 6 The public art component does not need to be included in the draft Planning Agreement as it relates to a condition of consent for the Verve development and is not a developer contribution. As such, it has been removed from the draft Planning Agreement.

- 7 The draft Planning Agreement has been amended to only apply to works required to complete the construction of a pedestrian / cycle link between King Street and the northern extremity of Lot 3 DP 593753 (470 King Street Newcastle West) and the dedication of land. The draft Planning Agreement includes \$1,472,537.00 worth of works, including the dedication of the land free of cost. **Attachment B** outlines the land to be dedicated to CN and location of pedestrian / cycle link.
- 8 The pedestrian / cycle link will provide connectivity and green space enhancement to the West End (**Attachment C**). It includes a footpath made from concrete and other materials, hard and soft landscaping elements including planter boxes and tree pits and trees, plants and shrubs, street lights and fencing / balustrading along the creek edge in accordance with CN's requirements. Annexed to the draft Planning Agreement (Schedule Three) is the Developer's Plan for the pedestrian / cycle link which has been approved by CN.
- 9 Construction of the pedestrian / cycle link is anticipated to commence in March 2019 and be completed by June 2019. CN will demolish two buildings it purchased and owns on Hunter Street to support the works. The link will ultimately connect along Cottage Creek through to Honeysuckle, consistent with the Honeysuckle Foreshore Public Domain Plan.
- 10 Legal advice is that the amended draft Planning Agreement does not require re-exhibition.

FINANCIAL IMPACT

- 11 The Planning Agreement requires the pedestrian / cycle works with a value of \$1.472m and dedication of land 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, and rectify any defects identified by CN.
- 12 The implementation and monitoring of the Planning Agreement by CN staff will be undertaken within the current allocated work program and budget. Ongoing costs associated with the long-term ownership and maintenance of the land and infrastructure proposed to be dedicated to CN will be accommodated in CN's annual operational budgets.
- 13 To support the pedestrian / cycle works, CN will demolish two buildings on Hunter Street to be funded through the 2018/19 works program.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 14 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 CN business in an open, transparent and accountable manner.
- 7.3a Provide opportunities for genuine engagement with the community to inform CN's decision-making.

IMPLEMENTATION PLAN/IMPLICATIONS

- 15 The Planning Agreement includes provisions relating to the carrying out of the pedestrian / cycle work and outlines the process for the approval and completion of works, as well as the rectification of defects and maintenance of works by the developer. The Planning Agreement also includes a process for resolving disputes.

RISK ASSESSMENT AND MITIGATION

- 16 The negotiation and drafting of the draft Planning Agreement is consistent with CN's Planning Agreement Policy which is on CN's website: 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.
- 17 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.
- 18 The draft Planning Agreement has been reviewed from a legal perspective. The Agreement will be registered on the title of the land to be dedicated to CN and provides for security in the event the developer does not dedicate that land.

RELATED PREVIOUS DECISIONS

- 19 At the Ordinary Council Meeting held on 28 August 2018, Council resolved to exhibit the draft Planning Agreement for 28 days.
- 20 At the Ordinary Council Meeting held on 27 November 2018, Council resolved Item 113 lay on the table until the first Ordinary Council Meeting of 2019.

CONSULTATION

- 21 The draft Planning Agreement was exhibited from Monday 2 September 2018 to Monday 3 October 2018 and no submissions were received. Legal advice is that the amended draft Planning Agreement does not require re-exhibition.
- 22 The PARG was briefed on the public art component of the Verve development on 20 December 2018.

BACKGROUND

- 23 Development Consent (DA2016/00346) was granted on 27 September 2016 for demolition of buildings, erection of a 20 storey mixed use development including 197 residential apartments, three ground level retail units, two first floor commercial units, four floors of parking, associated site works and a 202 lot strata subdivision. The development consent included a requirement for the developer to pay CN a development contribution of \$1,472,537.00.
- 24 The development application was accompanied by a Letter of Offer by the developer to enter into a Planning Agreement in lieu of the payment of development contributions. A modification was approved by officers under delegation to DA2016/00346 (21 August 2017) to defer the timing of payment of the development contribution to allow a draft Planning Agreement to be negotiated and reported to Council.
- 25 The Hunter Street Revitalisation Final Strategic Framework adopted by Council in 2010, shows the proposed pedestrian and cycle way link as an opportunity to provide connectivity and green space enhancement to the West End.
- 26 Hunter Central Coast Development Corporation are considering options for a pedestrian connection from Hunter Street to Honeysuckle adjacent to Cottage Creek which will provide (once constructed) a connection from King Street to the harbour, consistent with the Honeysuckle Foreshore Public Domain Plan.

OPTIONS

Option 1

27 The recommendation as at Paragraphs 1 and 2. This is the recommended option.

Option 2

28 Council resolves not to endorse the Planning Agreement. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Draft Planning Agreement

Attachment B: Land Dedication Plan

Attachment C: Location of Pedestrian / Cycle Link

Planning Agreement

THIS PLANNING AGREEMENT is made on the day of 2018

PARTIES

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

AND

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

BACKGROUND

- A. By Letter of Offer dated 14 October 2015 the Developer offered to construct a pedestrian and cycle link between King Street to the northern extremity of Lot 3 DP593753.
- B. On or about 4 April 2016 the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. On 21 August 2017 the Council pursuant to the provisions of Section 96 (as it then was) of the Environmental Planning & Assessment Act modified the conditions of consent referred to in the Notice of Determination dated 27 September 2016, as set out in the copy of the letter dated 21 August 2017 which is annexed to this Agreement as Schedule 2A.
- D. The Developer has agreed to make the Development Contributions, as hereinafter set out, towards the Public Facilities.
- E. The Developer is the Landowner of the Lot 3 in DP593753 and Lot 2 in DP81601.

OPERATIVE PROVISIONS

1. Planning Agreement under the Act

2. The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This Agreement applies to the Land, being that part of Lot 3 in DP593753 and that part of Lot 2 in DP81601 shown on the Land Dedication Plan which is annexed to this Agreement at Schedule 3 and forms part of this Agreement and Development Application Number DA2016/00346 and any subsequent amendment approved by the Council.

3.1 Operation of this Agreement

This Agreement commences on the date on which it has been executed by all parties.

- 3.2 The party who executes this Agreement last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Agreement to any other person who is

a party.

4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

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

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

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

Construction Certificate has the same meaning as in the Act.

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

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

Dedication Land has the same meaning as Land.

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

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

GST has the same meaning as in the GST Law.

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

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

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

Party means a party to this agreement, including their successors and assigns.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Subdivision Certificate has the same meaning as in the Act.

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

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

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

- a) Headings are inserted for convenience only and do not affect the interpretation of this agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f) A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.
- g) A reference to a Clause, part, schedule or attachment is a reference to a Clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

5.1 The Developer is to make Development Contributions to the Council being the dedication of the Land and the Works required to complete the construction of a pedestrian/cycle link

between King Street and the northern extremity of Lot 3 DP593753, or an Extended Work Zone as agreed by both parties, in accordance with Conditions 3(a) and 15(a) of Development Application 2016/00346.02.

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

6. Application of the Development Contributions

- 6.1** The Development Contributions made by the Developer under the terms of this Agreement consisting of Work or Work items must be completed on or before the issue of the Final Occupation Certificate in respect of the Building Works and Subdivision the subject of Development Application 2016/00346.02 as varied for the time being and from time to time.
- 6.2** The Development Contribution by way of dedication of the Land shall be effected on or before the registration of the plans of stratum subdivision of Lot 3 DP593753 situate 464-470 King Street Newcastle West.

7. Application of Part 7 Division 3 of the Act to the Development Condition

- 7.1** The provisions of Part 7 Division 3 of the Act do not apply to the development and by this Agreement are specifically excluded in their application to the Development.
- 7.2** Subject to the Developer completing the Work by the date set out in Clause 6.1 of this Agreement the Council agrees to and accepts Development Contributions in full satisfaction of the total monetary contribution of \$1,472,537.00 (as indexed in accordance with the Development Consent) to be paid to the Council pursuant to Section 94A (as it then was) of the Environmental Planning & Assessment Act 1979 in accordance with condition 3 of the Notice of Determination of Development Application Number DA2016/00346 dated 27 September 2016 (Section 94 Contribution).

8. Procedures Relating to Dedication

- 8.1** A Development Contribution comprising the dedication of the Land is made for the purposes of this Agreement when:-
- 8.1.1** a deposited plan is registered in the register of plans held with the Registrar General that:
- a) creates a public reserve under the *Local Government Act 1993*, or
- 8.1.2** the Council is given an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer (as Landowner) as transferor that is effective to transfer the title to the Land to the Council when executed by the Council as transferee and registered.
- 8.2** For the purposes of Clause 8.1.2:
- 8.2.1** the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Land to be dedicated, and
- 8.2.2** within 7 days of receiving it from Developer, the Council is to execute it and return it to Developer, and

- 8.2.3** within 7 days of receiving it from the Council (properly executed), the Developer is to lodge it for registration with the Registrar General, and
- 8.2.4** the Developer is to do all things reasonably necessary to enable it to be registered.
- 8.3** The Land required to be dedicated under this Agreement is to be dedicated free of all Registered and unregistered encumbrances and affectations, except as otherwise agreed in writing by the Council.
- 8.4** If, having used all reasonable endeavours, the Developer cannot comply with Clause 9.3, the Developer may request that Council agree to accept the Land subject to those encumbrances and affectations, and:-
- 8.4.1** Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the Land for the purpose for which it is to be dedicated under this Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges, and
- 8.4.2** in all other cases, Council may withhold its agreement in its absolute discretion.
- 9. Design and Construction**
- 9.1** Annexed to this Agreement at Schedule Three is the Developer's Plan for the pedestrian/cycle link between King and the northern extremity of Lot 3 DP593753 which Developer's Plan has been accepted and approved by the Council.
- 9.2** No amendment to this Agreement or any variation to the Work or any Work Items nor the creation of any Extended Work Zone or any Work or Work Items to be incorporated therein, will be effective unless there is agreement in writing made between the Developer and the Council and, if necessary, the lodgement by the Developer with the Council of an Application to amend a Development Approval relating to the Works and/or the lodgement of a Development Application in relation to the Extended Work Zone.
- 9.3** For the purpose of Clause 9.2 any variation to any Work or Work Item or the creation of an Extended Work Zone and Work or Work Items incorporated therein must comply with Council's requirement and be consistent with the objectives of the Development Contribution as set out in this Agreement.
- 9.4** The Developer must not apply for any Construction Certificate or seek any other approvals for a Work item (other than lodging a Development Application) comprising Works unless it has first submitted the construction drawings for the Work item to the Council and considered any comments in respect of Work item from Council.
- 10. Standard of Construction of Work**
- 10.1** Any Work that the Developer is required to carry out under this Agreement is to be carried out in accordance with:-
- 10.1.1** the requirements of any relevant approval issued by a relevant authority;
- 10.1.2** any Australian standards and other laws applicable to the Work;
- 10.1.3** the Council Specification Documents; and

- 10.1.4** in a proper and Workmanlike manner, complying with current industry practice and standards relating to the Work.
- 10.2** If there is any inconsistency between the requirements of any relevant approval, any Australian standards or laws, or the Council Specification Documents, then the requirements of any relevant Approval, Australian standards or other applicable laws prevail to the extent of the inconsistency.
- 10.3** The Developer must appoint Council as the certifier in respect of any Works comprising embellishment Works for the purpose of issuing a Construction Certificate in respect of those Works.
- 11. Variation to Work**
- 11.1** The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied in accordance with this Clause without the necessity for an amendment to this Agreement.
- 11.2** For the purposes of Clause 11.1 the Developer may make a written request to the Council to approve:-
- a) a variation to the design or specifications of a Work; and/or
 - b) any variation to the Development Contribution to ensure that the value of the Work and Work Items do not exceed the value of the Section 94 Contributions hereinbefore referred to and for these purposes the Developer will obtain and provide to the Council a Quantity Surveyor's Bill of Quantities to ensure that the Work and Work Items meet the agreed budget figure of \$1,472,537.00
- 11.3** The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under Clause 11.2.
- 11.4** In the event of there being an agreement made between the Developer and the Council providing for an Extended Work Zone an amended plan of works as agreed to by the parties will be deemed to form part of this Planning Agreement and in those circumstances the Developer will obtain and provide to the Council a Quantity Surveyor's Bill of Quantities relating to the value of the Works/Work Items to be carried out by the Developer in the Extended Work Zone based on the amended plan relating to the Extended Work Zone. The Bill of Quantities will be the basis of an account to be submitted by the Developer to the Council for Work or Work Items incorporated into the Extended Work Zone.
- 11.5** The Council will be responsible to meet the costs of any Work carried out or Work Items included in the Extended Work Zone.
- 12. Maintenance and Management of Works**
- 12.1** The parties may, by agreement in writing, specify Work items to which the maintenance period applies and the standard and other particulars of maintenance required.
- 12.2** If the maintenance period applies to a Work, the Developer is to maintain the Work during that period, in accordance with the standard and other particulars of maintenance agreed between the parties.
- 12.3** The maintenance to be carried out by the Developer is limited to the watering of trees and plants and specifically excludes cleaning of the pedestrian/cycle link and removal of Council bins from the Land.

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

12.5 In this Clause, maintenance period means the period of three (3) months commencing on and from the date that Council accepts responsibility for Work under Clause 13.

13. Acceptance of Risks in Works

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

13.1.1 when the Work located on Land to be dedicated to Council is completed for the purposes of this Agreement in accordance with Clause 11; or

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

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

14. Access to Land by Council

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

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

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

15. Access to Land by Developer

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

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

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

16. Council's Obligations relating to Work

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

17. Protection of People and Property

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

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

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

17.1.3 nuisances and unreasonable noise and disturbances are prevented.

18. Completion of Work

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

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

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

19. Rectification of Defects

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

19.2 The Developer is to comply with a rectification notice at its own cost according to its terms and to the satisfaction of the Council.

19.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a rectification notice that has been given to it under Clause 19.1.

19.4 In this Clause:-

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

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

19.4.3 Rectification notice means a notice in writing:-

- a) identifying the nature and extent of a defect;
- b) specifying the Works or actions that are required to rectify the defect;
- a) specifying the date by which or the period within which the defect is to be rectified.

20. Works as Executed Plan

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

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

21. Provision of Security

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

22. Security for Dedication of Land

- 22.1** If the Developer does not dedicate the Land required to be dedicated under this Agreement, or any part thereof, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that Land for compensation in the amount of \$1 without having to follow the pre-acquisition procedures under the Just Terms Act.
- 22.2** The Council is to only acquire Land pursuant to Clause 22.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Land required to be dedicated under this Agreement.
- 22.3** Clause 22.1 constitutes an Agreement for the purposes of Section 30 of the Just Terms Act.
- 22.4** If, as a result of an acquisition referred to in Clause 22.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council for that amount upon a written request being made by the Council or the Council can call on any Security for that purpose.
- 22.5** The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land that is required to be dedicated under this Agreement.
- 22.6** The Developer and Developer are to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this Clause 22, including without limitation:-
- 22.6.1** signing any documents or forms,
 - 22.6.2** giving Land owner's consent for the lodgement of any Development Application,
 - 22.6.3** producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 22.6.4** paying the Council's costs arising from this Clause 22.
- 22.7** In this Clause, Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

23. Breach of Obligations

- 23.1** If the Council considers that the Developer is in breach of any obligation under this Agreement it may give a notice to the Developer:
- 23.1.1** specifying the nature and extent of the breach,
 - 23.1.2** requiring the Developer to Rectify the breach to the Council's satisfaction, and
 - 23.1.3** specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 23.2** A notice given under Clause 23.1 is to allow the Developer not less than 28 days (or such further period as the Council considers reasonable in the circumstances) to Rectify the breach.
- 23.3** If the Developer does not comply with the notice given under Clause 23.1 relating to the carrying out of Work under this Agreement, the Council may step-in and remedy the breach.
- 23.4** Nothing in Clause 23.3 affects the Council's other rights to enforce this Agreement.

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

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

23.6.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

23.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

23.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

24. Council to Consult before Enforcing this Agreement

24.1 This Clause applies to any of the Developer's obligations under this Agreement.

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

24.2.1 the reason for the non-compliance,

24.2.2 the likely effects of the non-compliance, and

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

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

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

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

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

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

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

25. Enforcement in Court

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

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

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

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

26. Dispute Resolution – Expert Determination

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

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

26.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.

26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

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

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

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

26.6 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

26.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

27. Dispute Resolution - Mediation

27.1 This Clause applies to any Dispute under this Agreement other than a Dispute to which Clause 27 applies.

27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

27.3 If a notice is given under Clause 27.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.

27.4 If the Dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time, and must request the President of the Law Society, or the President's nominee, to select a mediator.

27.5 If the Dispute is not resolved by mediation within a further 28 days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

27.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.

27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

28. Registration of this Agreement

28.1 In this Clause 28, **Dedication Land** means any part of the Land which is to be dedicated to Council.

28.2 The Parties agree to register this Agreement for the purposes of Part 7 Clause 7.6 of the Act on the title to the Dedication Land, after Lot 3 in DP593753 and Lot 2 in DP81601 are subdivided to create the Dedication Land as a separate Lot as shown in the Land Dedication Plan at Schedule 3 to this Agreement.

28.3 Within 10 business days of the Developer being notified by LPI of the creation of the part of the Dedication Land as a separate lot, the Developer is to deliver to the Council in registrable form:-

28.3.1 an instrument requesting registration of this Agreement on the title to each lot containing any Dedication Land, executed by the Developer and any other person required by the Registrar-General to execute such instrument, and

28.3.2 the written irrevocable consent of each person referred to in Part 7 Clause 7.6 of the Act to that registration.

28.4 The Developer and Developer at their cost are to:

28.4.1 do such other things as are reasonably necessary to enable registration of this Agreement to occur, and

28.4.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.

28.5 If this Agreement is registered on the title to a Lot which contains Dedication Land and that lot is subsequently subdivided such that any of the newly formed lots do not contain any part of the Dedication Land then the Parties agree to do all things as are reasonably necessary to ensure that the Agreement is not registered on the title to those newly formed lots which do not contain the Dedication Land, including by instructing the Registrar-General not to register this Agreement on the title to those lots.

28.6 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:-

28.6.1 in so far as the part of the Land concerned is not Dedication Land, and

28.6.2 in relation to any other part of the Dedication Land, once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any other reason.

29. Release

29.1 Each Party releases the other Party from any Claim it may have against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of the other Party's negligence or default, or if Work is undertaken by one party at the request of another party which Work is not the subject of this Agreement.

30. Indemnity

30.1 Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the claim arises because of the other party's negligence or default or if Work is undertaken by one party at the request of another party which Work is not the subject of this Agreement.

31. Insurance

31.1 The Developer must, during the currency of this Agreement, effect and maintain with a reputable insurer public liability insurance for a minimum amount of Twenty Million Dollars.

31.2 The Developer must ensure that its builder effects and maintains, contractor's all risk insurance covering the Works and Work items to be carried out by the builder on behalf of the Developer in accordance with the terms of this Agreement, until the Work is completed in accordance with the terms of this Agreement.

32. Notices

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

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

Council
 Attention: ##
 Address: ##
 Fax Number: ##
 Email: ##

Developer
 Attention: ##
 Address: ##
 Fax Number: ##
 Email: ##

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

32.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:-

- 32.3.1** If it is delivered, when it is left at the relevant address.
- 32.3.2** If it is sent by post, 2 business days after it is posted.
- 32.3.3** If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 32.3.4** If sent by email on the day of transmission provided that the sender does not receive notification of non-delivery of the email.

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

33. Approvals and Consent

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

34. Assignment and Dealings

Neither party to this Agreement may transfer or assign its rights or obligations under this Agreement without the consent in writing of the other party.

35. Costs

Each party will pay their own costs of and incidental to the negotiation, preparation, execution and stamping of this Agreement and any document relating to this Agreement.

36. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

37. Further Acts

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

38. Governing Law and Jurisdiction

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

39. Joint and Individual Liability and Benefits

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

40. No Fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

41. Representations and Warranties

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

42. Severability

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

43. Modification

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

44. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

45. GST**45.1** In this Clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and **Tax Invoice** have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.

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

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in Working out the amount of GST on that supply.

- 45.2** Subject to Clause 45.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 45.3** Clause 45.4 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 45.4** No additional amount is payable by the Council under Clause 45.4 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 45.5** If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 45.5.1** to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
- 45.5.2** that any amounts payable by the Parties in accordance with Clause 45.2 (as limited by Clause 45.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 45.6** No payment of any amount under this Clause 48, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided the recipient with a Tax Invoice or Adjustment Note as the case may be.
- 45.7** Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 45.8** This Clause continues to apply after expiration or termination of this Agreement.
- 46. Trustee Provisions**
- 46.1** The Council acknowledges that:-
- 46.1.1** The Developer is entering into this Agreement as Trustee for The Park Unit Trust ("Trust") and not in any other capacity.
- 46.1.2** The Trustee is not liable to the Council or any other person in any capacity other than as Trustee of the Trust.
- 46.1.3** The liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced by the Council against the Trustees only to the extent to which it can be satisfied out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability. This limitation applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- 46.1.4** The Council may not sue the Trustee in any capacity other than as Trustee of the Trust, including seeking the appointment of a receiver (except in relation to the property of the Trust), liquidator, an administrator or any other similar person to the

Trustee or prove in and liquidation of or affecting the Trustee (except in relation to the property of the Trust).

46.1.5 The Council waives its rights and releases the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Agreement, which cannot be paid or satisfied out of any property held by the Trustee. The provisions of this Clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or willful default.

46.1.6 No attorney, agent or delegate appointed in accordance with this Agreement has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or willful default of the Trustee for the purposes of this Clause 46.

47. Explanatory Notes Relating to this Agreement

47.1 The Appendix contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulations.

47.2 Under Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not be used to assist in construing this Agreement.

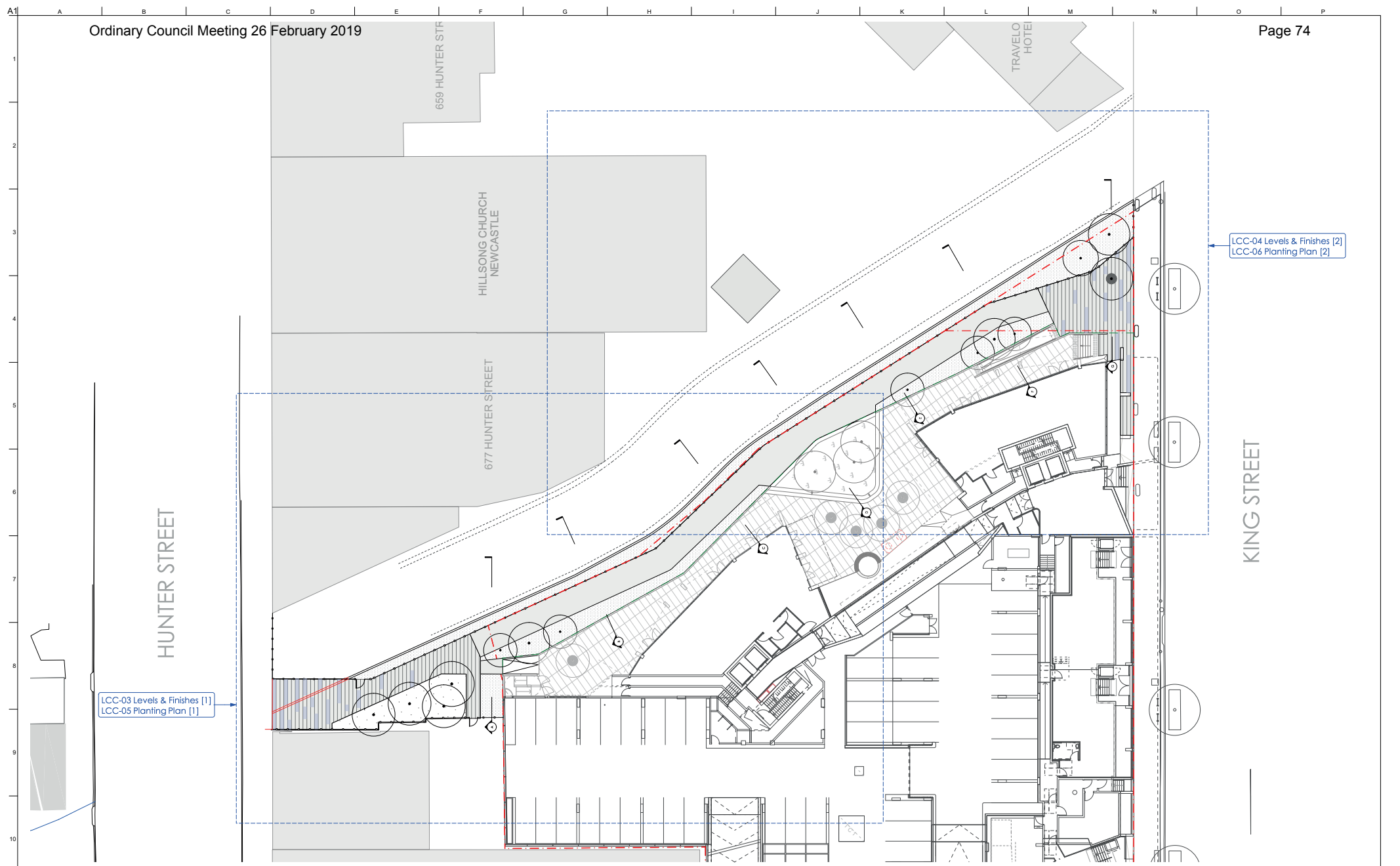
SCHEDULE 1 – LAND

Means that part of Lot 3 in DP593753 and that part of Lot 2 in DP81601 shown on the Land Dedication Plan at Schedule 3 to this Agreement.

DRAFT

SCHEDULE 2 – PLAN OF WORKS

DRAFT



Issue	Description	Date	By
D	REVISED FOR REVIEW	21/4/18	DH
C	REVISED FOR REVIEW	13/4/18	DH
B	REVISED FOR REVIEW	19/3/18	DH
A	DRAFT FOR REVIEW	2/3/18	DH

- Dimension in millimetres.
 - Confirm all dimensions and levels on site prior to commencing work.
 - Use figured dimensions only.
 - Use full spools.
 - Comply with relevant authorities requirements, the Building Code of Australia and all relevant Australian Standards when executing works described in this drawing.

Copyright in all documents and drawings prepared by JILA and in any work executed from those documents and drawings shall remain the property of JILA or on creation vest in JILA.

LANDSCAPE ARCHITECT

jane irwin landscape architecture

Level 5
 69-77 Vincentown Ave
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 Australia 2011
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 www.jila.net.au

IN COLLABORATION WITH

CKDS ARCHITECTURE

jila

hill thalis
 ARCHITECTURE & URBAN PROJECTS PTY LTD

CLIENT

Windham King Developments

PROJECT TITLE

Verve Residences - Cottage Creek
 Public Domain

464-470 King St,
 Newcastle

Not For Construction

DRAWING TITLE	
General Arrangement Plan	
Scale @ A1	1:200
Job No	150904
Drawing No	LCC-02
Drawing Status	Notes
Issue	D

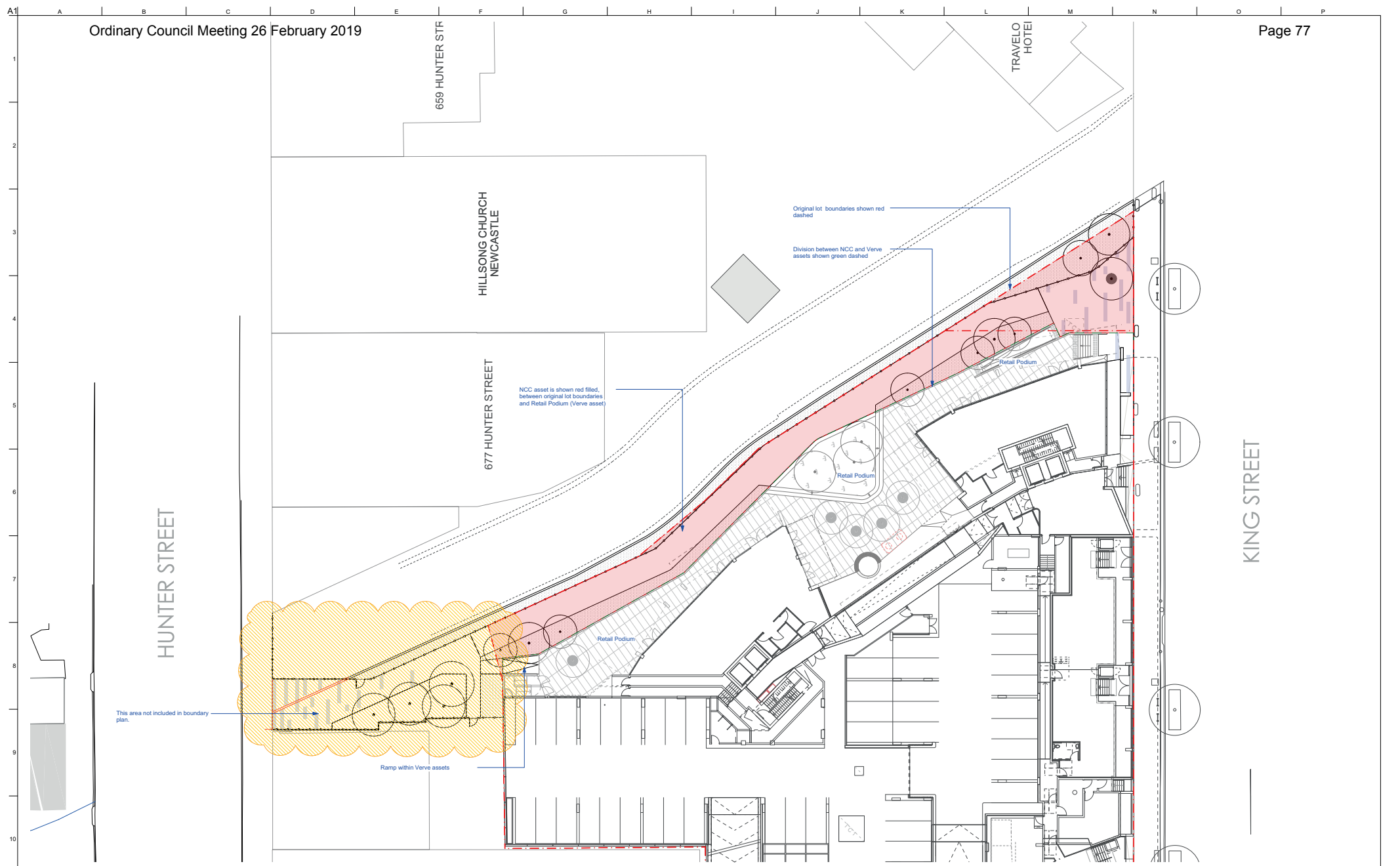
SCHEDULE 2A – NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION TO MODIFY DETAILS OF DEVELOPMENT CONSENT

See attached letter dated 21 August 2017 from Newcastle City Council to Windham Developments Pty. Ltd.

DRAFT

SCHEDULE 3 – LAND DEDICATION PLAN

DRAFT



Not For Construction

FOR INFORMATION			
C	BOUNDARIES FINAL	20/6/18	CW
B	BOUNDARIES FINAL	20/6/18	CW
A	BOUNDARIES FOR REVIEW	19/6/18	CW
Issue	Description	Date	By

- Dimension in millimetres.
 - Confirm all dimensions and levels on site prior to commencing work.
 - Use figured dimensions only.
 - Use full spool.
 - Comply with relevant authorities requirements, the Building Code of Australia and all relevant Australian Standards when executing works described in this drawing.

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IN COLLABORATION WITH

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 ARCHITECTURE & URBAN PROJECTS PTY LTD

CLIENT
 Windham King Developments

PROJECT TITLE
 Verve Residences - Cottage Creek
 Public Domain

464-470 King St,
 Newcastle

DRAWING TITLE	
Boundaries Plan	
Scale @ A1 1:200	
Job No 150904	Drawing Status Notes
Drawing No LCC-00	Issue C

Executed as an Agreement.

**Executed on behalf of the
COUNCIL OF THE CITY OF NEWCASTLE**

**Jeremy Bath
Chief Executive Officer**

Signature of Witness

Full Name:

Position:

**Executed by WINDHAM DEVELOPMENTS PTY. LIMITED
ACN 604 854 300 pursuant to Section 127 of the
Corporations Act 2001 by:-**

**Warwick Miller
Director**

**Duncan John Miller
Director**

Section 1.02 Appendix 2 – Explanatory Note Template

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note Draft Planning Agreement

Under Part 7 Clause 7.4 of the Environmental Planning and Assessment Act 1979

1. Parties

Council of the City of Newcastle (Planning Authority)
Windham Developments Pty. Limited ACN 604 854 300 (Developer)

2. Description of Subject Land

Lot 2 DP 81601 being that part of the said Lot shown in the Land Dedication Plan annexed at Schedule 3 to this Agreement.

3. Description of Proposed Change to Environmental Planning Instrument/Development Application:-

- 1) Provision of Development Contribution payable by the Developer under DA2016/00346 by way of Works referred to in this Agreement.

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

- a) Provision of public open/recreation space for the Newcastle community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.
- b) Provides for dedication of the Land in favour of the Council of the City of Newcastle.
- c) Provides for maintenance by the Developer of the Land for a limited period of time.
- d) Provides for rectification by the Developer of any defective Works the subject of the Planning Agreement.
- e) Provides for dispute resolution whether by means of expert determination or mediation.
- f) Provides that the agreement is governed by the Laws of New South Wales.
- g) Provides that a New Tax System (Goods and Services Tax) (Act 1999) (Cth) applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement:

Provision of public open/recreation space for the Newcastle Community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979:

Provision of public open/recreation space for the Newcastle Community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.

How the Draft Planning Agreement Promotes the Public Interest:

For Planning Authorities:

- a) Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities – Not applicable.
- b) Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted – Not applicable.
- c) Councils – How the Draft planning Agreement Promotes the Elements of the Council's Charter
 - 1.Improvement of connectivity between King and Hunter Streets as envisaged in the Hunter Street Revitalisation Final Strategic Framework.
 - 2.Provide an overflow path across Hunter Street the need for which has been identified in the Newcastle City Wide Flood Plane Risk Management Study and Plan (June 2012).

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The draft Planning Agreement conforms with City of Newcastle Capital Works Program

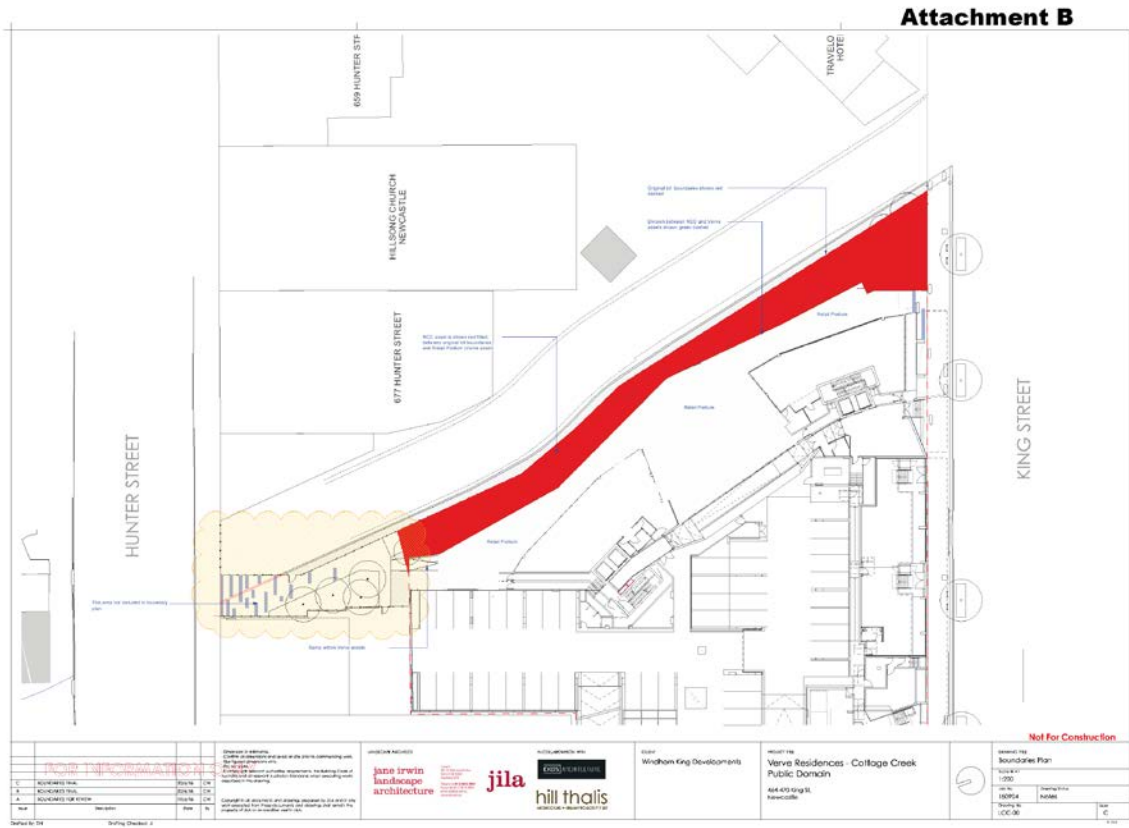
Does the Planning Agreement contain requirements that must be complied with before a construction certification, occupation certificate or subdivision certificate is issued

Section 9.4 of the draft agreement states the following:

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

Signed and Dated by All Parties

Attachment B



Attachment C



**ITEM-7 CCL 26/02/19 - ENDORSEMENT OF PLANNING AGREEMENT -
5 HALL STREET, MARYVILLE**

REPORT BY: GOVERNANCE
**CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PURPOSE

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

RECOMMENDATION

That Council:

- 1 Endorse the Planning Agreement - 5 Hall Street Maryville (**Attachment A**); and
- 2 Authorise the Chief Executive Officer to execute the Planning Agreement.

KEY ISSUES

- 3 At the Ordinary Council Meeting held on 23 October 2018, Council resolved to endorse the Planning Agreement for 5 Hall Street Maryville and to authorise the Chief Executive Officer to execute the Planning Agreement.
- 4 Following this resolution an error was identified in the public exhibition information whereby an Explanatory Note was not included with the draft Planning Agreement that was exhibited in 2018. The Explanatory Note is a requirement of exhibition under the Environmental Planning and Assessment Regulation 2000.
- 5 As a result of the omission of the Explanatory Note, the draft Planning Agreement was required to be re-exhibited with the Explanatory Note to comply with legislative requirements. The draft Planning Agreement was re-exhibited from Monday 26 November 2018 to Monday 14 January 2019 and five submissions were received.
- 6 A detailed review of the submissions is provided in **Attachment B** and the following issues were raised:
 - i) consideration of detours of shared pathway during construction of new infrastructure
 - ii) preservation of mangroves in front of the development
 - iii) change in function of shared pathway

- iv) implementation of Strategic Position Paper Low Lying Areas
 - v) developer should not be able to choose where development contributions are spent
 - vi) preservation of native trees
 - vii) removal of grass
 - viii) impact on amenity of Maryville
 - ix) content of Explanatory Note
- 7 A late submission was received on 29 January 2019 which did not raise any additional issues already considered in this report. As a late submission, it has not been listed in the submissions table.
- 8 The issues raised in the submissions have been addressed in the assessment of the development application and the detailed design of the shared pathway. The process for approval of the final construction drawings is through a Section 138 Roads Act application – not the Planning Agreement.
- 9 The intent of the draft Planning Agreement is to allow the works to be completed in lieu of the payment of development contributions by City of Newcastle (CN). Following re-exhibition, no changes have been made to the draft Planning Agreement that was endorsed by Council on 23 October 2018.

FINANCIAL IMPACT

- 10 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 rectification of any defects identified by CN.
- 11 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

- 12 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

- 13 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.
- 14 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

- 15 The negotiation and preparation of the draft Planning Agreement is consistent with CN's Planning Agreement Policy. 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.
- 16 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

- 17 At the Ordinary Council Meeting held on 28 August 2018, Council resolved to exhibit the draft Planning Agreement for 28 days.
- 18 Council resolved at the Ordinary Council Meeting held on 23 October 2018 to endorse the Planning Agreement and authorise the Chief Executive Officer to execute the Planning Agreement.

CONSULTATION

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

- 20 The draft Planning Agreement was re-exhibited from Monday 26 November 2018 to 14 January 2019. Five submissions were received and one late submission.

BACKGROUND

- 21 Development Consent (DA2016/01024) was granted on 21 March 2017 for demolition of structures, erection of 31 x two-storey dwellings, associated site works and staged 31 lot strata subdivision. The development consent included a requirement for the developer to pay CN a development contribution of \$82,770.
- 22 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 publicly exhibited.
- 23 DA2016/01024 approved the construction of upgrades to the shared pathway along the length of the development boundary adjacent to Throsby Creek. The Development Consent also included a condition of consent requiring the developer to submit to CN detailed construction drawings of the proposed works for approval. The works were approved by CN on 3 October 2018.
- 24 The draft Planning Agreement requires the developer to:
- 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.
 - iii) Rectify defects to CN's satisfaction and maintain the works for 12 months.
- 25 The works proposed under the draft Planning Agreement total approximately \$277,500, which significantly exceeds the \$82,770 development contribution required to be paid to CN.
- 26 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. A plan showing the indicative location is provided in **Attachment C**.
- 27 Through the assessment of DA2016/01024, advice was sought from the NSW Office of Water and NSW Department of Fisheries. Both agencies advised 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.

OPTIONS

Option 1

28 The recommendation as at Paragraphs 1 and 2. This is the recommended option.

Option 2

29 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: Draft Planning Agreement - 5 Hall Street, Maryville

Attachment B: Summary of Submissions

Attachment C: Indicative Location – Proposed Shared Pathway Works

Attachment A

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 Newcastle City Council on 21 March 2017.
- 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)

5 Hall Street Maryville - Velocity Planning Agreement

Newcastle City Council
Cape Wickham Pty Ltd

Schedule 1

(Clause 5)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Approximate Value
Item	Public Purpose	Manner & Extent and Key Elements	Timing	
1	Cycleway/walkway	Demolish, remove and replace existing 2.5m cycleway with new concrete 3.0m cycleway along foreshore (approximately 350 lm x \$250)	Prior to occupation of stage 3	\$87,500.00
2	Cycleway/walkway	Provision of dedicated walkway adjacent cycleway (width varies from 1.8 -2.4m including hand rails / seating etc (approximately 200 lm x \$950)	Prior to occupation of stage 3	\$190,000.00
			Total	\$277,500

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under Part 7 Clause 7.4 of the Environmental Planning and Assessment Act 1979

Parties

City of Newcastle of 282 King Street Newcastle, NSW 2300 (Council)
Cape Wickham Pty Ltd as Trustee of the Cape Wickham Unit Trust of PO Box 93 Lorn, NSW 2320 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

Lot 100 DP 746334 5 Hall Street Maryville

Description of Development Application

DA2016/01024 - Demolition of Structures, Erection of 33 x two storey dwellings, associated site works and staged 33 Lot Strata Subdivision.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the draft Planning Agreement is to provide for the embellishment of open space to create a new pedestrian path and cycleway adjacent to 5 Hall Street Maryville.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment 1979 (Act)*. It is an agreement between the Council and the Developer. The Draft Planning Agreement is a voluntary agreement under which Development Contributions are made by the Developer for public purposes.

Effect of the Draft Planning Agreement

The draft Planning Agreement:

- Relates to DA2016/01024
 - Does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development
 - Provides for the embellishment of open space to create a new pedestrian path and cycleway, including hand rail, seating and lighting.
 - Provides for maintenance by the Developer of the Land for a limited period of time.
-

- Provides for rectification by the Developer of any defective Works the subject of the Planning Agreement.
- Provides for dispute resolution whether by means of expert determination or mediation.
- Provides that the agreement is governed by the Laws of New South Wales.
- Provides that a New Tax System (Goods and Services Tax) (Act 1999) (Cth) applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement:

Provides for the embellishment of open space in lieu of the payment of a monetary development contribution to the City of Newcastle.

The works included in the draft Planning Agreement will create a new pedestrian path and upgraded cycleway, including hand rail, seating and lighting adjacent to 5 Hall Street Maryville.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in section 1.3 (a), (b), (c) and (g) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted

N/A

Councils – How the Draft planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's Charter by:

Exercising community leadership, having regard to the long term and cumulative effects of its decisions and facilitating the involvement of councillors, members of the public, users of facilities and services and Council staff in the development, improvement and co-ordination of local government.

All Planning Authorities – Whether the Draft Planning Agreement conforms with the Authority's Capital Works Program

The Draft Planning Agreement conforms with City of Newcastle Capital Works Program.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate.

N/A

Attachment B

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
1	<ul style="list-style-type: none"> • Cycleway along Throsby Creek is a major commuter route, as well as recreational route, it is important that an appropriate and easily accessible detour is put in place during construction. • Council should specify what detour is to be provided because I often see developments that have closed footpaths, multi-use paths and cycleways without any thought to providing a detour. 	<p>The construction of the upgrade to the shared pathway is likely to commence in March/April 2019 and will take approximately 2-3 weeks (depending on weather).</p> <p>Detours will be put in place during this time to ensure safe public access is available during the construction of the shared pathway.</p>
2	<ul style="list-style-type: none"> • Could you investigate whether the developers intend to proceed with the removal of the mangroves in front of their development and if this complies with the Newcastle Council's preservation of proscribed trees or the Water Catchment Management plan? Hunter Water, NSW EPA or NSW Fisheries may have some input in this matter. • Below are some images from the current advertising. How can this landscape be achieved with <i>no works in the riparian zone, including no removal of aquatic vegetation?</i> Or is this giving the new owners a false impression of their outlook? There is some evidence of branches and small mangrove dying for some reason along this stretch of the creek. 	<p>Approval was granted to the development on 27 March 2017, subject to the imposition of 78 conditions of consent. The development encompasses the former Hunter Valley Research Foundation land and works on land owned by Hunter Water (adjacent to Throsby Creek).</p> <p>No approval has been issued for works in Throsby Creek.</p> <p>Due to the location of the site, DA2016/01024 was referred to the NSW Office of Water and NSW Department of Fisheries during the assessment process for their comment and advice. Both agencies advised that they had no objection to the development as there was to be no works in the riparian zone, including no removal of aquatic vegetation.</p> <p>Hunter Water has also been consulted on the upgrades to the shared pathway and they have raised no objection.</p> <p>The approved development does not include removal of mangroves from Throsby Creek.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
	<ul style="list-style-type: none"> • Do not want to be forced to walk on the new path that has been moved to the bank of the creek to allow for a short-specified bike track. • With the addition of the walking path at the creek bank, we ask that there is signage (a symbol of bike and walking person) on the bike track in front of the development to make it very clear that the path in front of the development can still be used by pedestrians. 	<p>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).</p> <p>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.</p> <p>Appropriate signage will be included in the upgraded infrastructure.</p>
	<ul style="list-style-type: none"> • In the Strategic Position Paper Low Lying Areas City of Newcastle 2017 it is proposed that at stage 4 with a 0.3m of sea level rise we would need to install a levee to a height of 2.5m above mean sea level and install groundwater controls. What consideration has been given to this in the development of the footpath? Is any upgrade desirable at this moment? 	<p>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.</p> <p>The position paper identifies practical and timely measures that can be implemented when sea level rise benchmarks are met. 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.</p> <p>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.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
	<ul style="list-style-type: none"> • The amount of \$277,500 was a very cheap price for what was in effect a land grab. The proposed development of the path is in fact emphasizing the importance of a bike track, supporting the concept of Velo city translated <i>bicycle city</i>. • The reality is that there was no necessity for this development at all. • The path which extends well beyond the short stretch in front of Velocity functions well. It is a pleasant way to walk and ride with the grass strip to the creek. It doesn't have the proposed vast expanse of concrete that will raise the temperature in the area on a hot summer day by many degrees. Not good for pedestrians, bad for the unit owners. • We should be minimizing concrete surfaces in our urban environment not increasing it. • The developer should not be choosing where the developer contribution money is spent. There is nothing wrong with the existing long stretch of shared walk way and creek bank. If the developer wants to undertake this development and council agrees, then all funds for it should come from the developer's project budget. There are many other important community projects that need the money from developer contributions. 	<p>The proposed shared pathway development incorporates existing trees and landscaping and is also proposing additional mass planting and grassed areas. This will ensure the area remains shaded.</p> <p>The provision of the shared path and walkway was agreed by CN and can only be provided through a Planning Agreement with the developer. The developer cannot be compelled to provide these works which are outside of CN's Contribution Plan.</p> <p>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.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
	<ul style="list-style-type: none"> • The development has been positioned far too close to the beautiful old eucalypts and other natives that have shaded the path for many years. • The incursion into the Tree Protection Zone (TPZ) must have breached the safe root area of the trees. This would seem to jeopardise the stability of the trees. The extreme lopping of the crowns adjacent to the new buildings, together with the imbalance of the remaining limbs overhanging the path, unbalancing the tree, could also jeopardise the stability of the trees. • the demolition and construction work for the proposed new pathway will have the potential to damage the large eucalypts on the border of the pathway. How can council ensure that the developer takes due care in any work that may be carried out on the pathway and that all work must proceed in accordance with relevant Australian tree-protection standards. • I can see there may be many future requests from worried residents to remove these valuable old trees. The cost to the environment and to the community would be devastating. How can the City of Newcastle Council ensure preservation of these valuable assets? 	<p>The retention and removal of trees within the residential development was reviewed during the assessment of the development application.</p> <p>CN recently undertook an inspection on site following an enquiry regarding retention of trees. The inspection found the identified trees have been retained.</p> <p>Condition 60 of DA2016/01024 requires a Landscape Practical Completion Report to be submitted to the Principle Certifying Authority prior to the issue of a Final Occupation Certificate. The report is to verify that all landscaping works (including the shared pathway) have been carried out in accordance with the comprehensive landscape plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.</p> <p>The draft Planning Agreement also requires the developer to maintain the works to the shared pathway for a 12 month period.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
3	<ul style="list-style-type: none"> • Replacing grass with more concrete is of no benefit to the public and is not justifiable by the Developer. This construction would only enhance the outlook and amenity of the area for a "select" few who ultimately live in this development. • This construction as lodged would surely involve the removal of the mangroves growing along this stretch of the Creek. Any publicity, artist impressions of the Velocity development do not show mangroves growing on the Creek and in fact the walkway shows it extending out over the existing stone walls of Throsby Creek. • This development would surely impact further on the existing eucalypts and native trees growing with the boundary of the Velocity development, turning somewhat green and sensitive environment into a concrete urban landscape. • It is of serious concern that if the removal of grass banks, mangroves and further removal of native trees on the development site then this is a serious threat to the entire Throsby Creek environs and would set a precedent for more destruction of the fragile environment of Throsby Creek. 	<p>As noted above the removal of mangroves has not been approved as part of this development. The widening of the shared pathway does not eliminate all of the grassed area adjacent to the development and also includes retention of trees and additional mass planting.</p> <p>The environmental impact of the upgrade of the shared pathway has been considered through the assessment of the development application and review of the design of the shared pathway. Advice was also sought from the NSW Office of Water, NSW Department of Fisheries and Hunter Water prior to Council issuing a development consent.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
4	<ul style="list-style-type: none"> • I strongly object to the agreement and feel it decreases Maryville's amenity. The works proposed on the shared pathway will impact the trees by the works and also in the reduction of water to their roots if the grass is removed and concreted over. The trees will die! • The urban forest that was, has been reduced to an unhealthy tree line. • The impact to the thousands of shared path users will last for months for 500mm width increase and a cost of over \$277,000. • Footpath ramps would benefit Maryville residents far more and for less money. 	<p>The impact on the proposed development on existing trees and mangroves was assessed through the development application process.</p> <p>The draft Planning Agreement seeks to allow the works to be completed in lieu of the payment of development contributions. It is not the mechanism to approve the detailed design of the shared pathway.</p> <p>The process for approval of these final construction drawings is through a Section 138 Roads Act application – not through the Planning Agreement.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
5	<p><u>Environmental Risk to Riparian Zone and Significant Trees</u></p> <p>The planning Agreement should be modified to include specific provisions requiring:</p> <ol style="list-style-type: none"> 1. The protection of all the trees identified as "to be retained and protected" in the Velocity development landscape plan in accordance with Australian and Council standards. 2. That all works associated with the Planning Agreement be undertaken in such a way as to minimise any detrimental impact on flora or fauna in the adjacent riparian zone or the Throsby Creek Waterway. 3. That the developer provide a contact number for complaints or enquiries by members of the public, to be prominently displayed at all times at both ends of the proposed shareway works. 	<p>The <u>landscape</u> plan was approved as part of DA2016/01024 and enforced through conditions on the development consent. Following concerns from the community CN undertook a site inspection and met with the developer regarding the retention and protection of trees. The inspection found the identified trees have been retained and a number of measures to ensure the trees protection were discussed with the developer.</p> <p>Condition 60 of DA2016/01024 requires a Landscape Practical Completion Report to be submitted to the Principle Certifying Authority prior to the issue of a Final Occupation Certificate. The report is to verify that all landscaping works (including the shared pathway) have been carried out in accordance with the comprehensive landscape plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.</p> <p>During the DA assessment advice was sought from Hunter Water with regard to the proposed upgrade to the shared pathway. Hunter Water provided advice on how the pathway was to be designed to ensure there is no detrimental impact on the flora and fauna within the riparian zone and Throsby Creek Waterway. CN also included a condition on the shared pathway approval, that Hunter Water was also to approve the final design prior to the commencement of construction.</p> <p>CN is not the Principle Certifying Authority for the construction of the project and all enquiries should be addressed to City Plan Gosford Pty Ltd.</p>

Attachment B - Summary of Submissions

Submission Number	Points raised in submissions	Response
	<p><u>Lack of Clarity re planned construction work</u></p> <ol style="list-style-type: none"> 1. That the planned alignment of the intended construction works in relation to the rockwall riparian zone be clarified (and, if necessary, modified) before considers approving the Agreement 2. Council require the consideration of the location of seating be subject to consultation with, and approval by, either Hunter Water or the Throsby Creek Catchment Agencies Committee. 3. Council require that relevant construction plans be included with future exhibited draft Planning Agreements, if these are available at the time. 	<p>The draft Planning Agreement seeks to allow the works to be completed in lieu of the payment of development contributions. Although the draft planning agreement provides a process for approval of the detailed design of the works it does not approve the works, as this is done through CN officer delegation under a separate process.</p> <p>Both the original shared pathway concept and detailed design have been completed in consultation with Hunter Water (as they own the land). The approval for the shared pathway issued by CN included a condition that the design needed to be approved by Hunter Water prior to commencement of works.</p> <p>CN's Planning Agreements Policy is under review and consideration will be given to including this recommendation provided in the submission.</p>
	<p><u>Inadequacy of Explanatory Note</u></p> <ol style="list-style-type: none"> 1. Council review its Planning Agreements Policy to require that information provided in Explanatory Notes and other exhibited documentation is comprehensive, meaningful, and substantial, and includes transparent, robust and credible consideration of all relevant public interests costs and benefits of proposed Planning Agreements 	<p>The Explanatory Note was prepared using the template provided by the Department of Planning and Environment and requirements in the <i>Environmental Planning and Assessment Regulation 2000</i>.</p> <p>CN's Planning Agreements Policy is under review and can be updated to include the recommendation provided in the submission.</p>

Attachment C



DISCLAIMER: Although great care has been taken in the preparation of these documents/maps, City of Newcastle makes no representation or warranty as to the accuracy or completeness of any information contained in them. City of Newcastle accepts no responsibility for any misprints, errors, omissions or inaccuracies in these documents/maps or for loss or damages resulting from reliance on any information provided



Scale: 12,000.00 at A4

Created by CH Geospatial Information Services - Date: 12/02/2019

ITEM-8 CCL 26/02/19 - PUBLIC EXHIBITION OF WEST END STAGE TWO STREETScape PLAN

REPORT BY: INFRASTRUCTURE AND PROPERTY
CONTACT: DIRECTOR INFRASTRUCTURE AND PROPERTY /
MANAGER ASSETS AND PROJECTS

PURPOSE

To approve the Draft West End Streetscape - Stage 2 Plan (Draft Plan) for public exhibition.

RECOMMENDATION

That Council:

- 1 Place the Draft West End Streetscape - Stage 2 Plan as at **Attachment A** on public exhibition for a period of four weeks.
- 2 Receive a report following the public exhibition period.

KEY ISSUES

- 3 The Draft Plan builds on existing planning documents to provide the necessary detail for design and planning decisions for the precinct. The key deliverables for the community include:
 - i) Improved walkability and connections to public transport;
 - ii) A safe continuous bi-directional cycleway which connects to other shared pathways through the re-alignment of the carriageway; and
 - iii) Improved landscaping and the creation of green nodes and public spaces.

FINANCIAL IMPACT

- 4 The public exhibition of the Draft Plan does not commit City of Newcastle (CN) to any expenditure. A preliminary cost estimate to install the cycle lane and complete the landscape works is approximately \$15 Million. This estimate does not include upgrades to services, the roads, or latent site conditions.
- 5 Detailed design has been budgeted within the 2019/20 delivery program. The Draft Plan will be implemented as funding becomes available. It is anticipated that construction will be funded by a mix of special rate variation, s94A developer contributions, CN working funds and potential future grant funding.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 6 The Draft Plan aligns with the following Newcastle 2030 Community Strategic Plan Directions:

Integrated and Accessible Transport

- 1.1a Support implementation of the regional transport strategy; and
- 1.2a Continue to upgrade, extend and promote cycle and pedestrian networks.

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

- 4.2c Promote recreation, health and wellbeing programs.

Liveable Built Environment

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

IMPLEMENTATION PLAN/IMPLICATIONS

- 7 The implementation of the Draft Plan has been identified within CN's Hunter Street Revitalisation Masterplan Strategic Framework 2010 (HSRM Strategy), the State Government's draft Newcastle Urban Renewal Strategy 2012 (Draft NURS 2012) and the Newcastle Urban Renewal Strategy 2014 (NURS 2014). The Draft Plan will inform CN's four year delivery program.

RISK ASSESSMENT AND MITIGATION

- 8 A Communication Plan has been developed to mitigate risks of miscommunication and enable engagement with the community. The community engagement will include the following actions:
- i) Online notification through the CN website and social media pages;
 - ii) Advertisement in the Saturday edition of the Newcastle Herald;
 - iii) A four week exhibition period with paper copies of the Draft Plan and supporting information available at the CN Administration Centre and the Newcastle Region Library. An online version will be available through CN's *Have Your Say* webpage;
 - iv) An online survey allowing people to comment on the Draft Plan;

- v) Notification banners within the effected streets to notify commuters using the space of the proposed changes; and
 - vi) Community information sessions with CN officers to explain the plans and gather feedback on the draft designs.
- 9 Following public exhibition, it will be reported back to Council with a summary of submissions received, any recommended changes and a Plan for final adoption.

RELATED PREVIOUS DECISIONS

- 10 The HSRM Strategy was adopted by Council in December 2010 with one of the 44 actions being the development of a streetscape plan for the West End. The HSRM Strategy also identified the West End as a catalyst site in the revitalisation of the city.
- 11 A Notice of Motion on 25 July 2017 (**Attachment B**) related to a recommendation from the Cycling Advisory Committee. Council resolved that the strategy should, at a minimum nominate a clear, continuous, linear connection from west to east, including from Wickham interchange to the Newspace/Civic Precinct, and from there to Parnell Place.
- 12 At the Ordinary Council Meeting held on 28 November 2017, Council approved the release of the Draft West End Stage 1 - Public Domain Plan for community consultation for eight weeks.
- 13 At the Ordinary Council Meeting held on 27 March 2018, Council adopted the West End Stage 1 - Public Domain Plan.
- 14 A Notice of Motion on 27 November 2018 - Inner City Cycleway on Hunter Street (**Attachment C**) requested that the Draft West End Streetscape - Stage 2 Plan be placed on public exhibition in February 2019.

CONSULTATION

- 15 The proposed bicycle network for Worth Place to Albert Street (part of West End Stage 2) was considered by the Newcastle City Traffic Committee (NCTC) on 18 June 2018. The NCTC recommended the matter be presented at a Councillor Workshop prior to undertaking community consultation, with comments from the community consultation presented to NCTC for further consideration and endorsement.
- 16 A Councillor workshop was held on 9 October 2018. Outcomes included revised graphics (**Attachment D**) and that additional consultation with the Newcastle Advisory Committee be conducted before the plans are considered for public exhibition.

- 17 The Draft Plan was presented to the Cycling Advisory Committee on 20 December 2018. The group raised several technical issues that would be addressed by the NCTC and as part of the detailed design process. Local businesses have also been consulted regarding the proposed public exhibition.

BACKGROUND

- 18 The HSRM Strategy, adopted on 14 December 2010 identifies the West End as a catalyst project in the revitalisation of the city.
- 19 The State Government's Draft NURS 2012 and NURS 2014 follows and supports the HSRM Strategy concepts. Both strategies propose public domain improvements to key areas within the City Centre.
- 20 Concept plans for Trial Changes to Hunter Street, containing possible improvements to the streetscape, were reported to Council for endorsement in October 2013. This followed a comprehensive consultation process with local businesses regarding the proposal which received a 77% approval rating from 94 respondents.
- 21 Implementation of the Trail Changes to Hunter Street initiatives was suspended following the announcement of the Hunter Light Rail Project due to potential conflicting impacts between the two projects.
- 22 In 2014, Transport for NSW engaged Bitzios Consulting to produce detailed concept plans that address road space allocation for pedestrians, cycleways, parking and travel lanes. A technical working group, which included representatives from Roads and Maritime Services, Transport for NSW, Urban Growth and CN, was established to assist in development of cycleway proposals.
- 23 Bitzios Consulting assessed the impacts on traffic operations, on-street parking and pedestrians of the preferred priority works (which include a bi-directional cycleway on Hunter Street from Selma Street to Worth Place).
- 24 Revitalising Newcastle released the Newcastle City Centre Cycleway Network Strategy in May 2017. This indicated the bi-directional separated cycleway on Hunter Street from Selma Street to Worth Place.
- 25 The street layout for the Draft Plan was developed in close consultation with Traffic NSW and utilises the Bitzios Consulting plans as its base information.
- 26 In 2017 CN commenced master planning of the public domain plans through the City Centre precincts. In 2018 CN adopted the West End Stage 1 - Public Domain Plan and the East End Stage 1 Streetscape Plan. The Honeysuckle Foreshore Public Domain Plan is under development by Hunter & Central Coast Development Corporation. The Draft West End Streetscape - Stage 2 Plan will be the third CN funded public domain plan submitted for adoption.

OPTIONS

Option 1

27 The recommendation as at Paragraphs 1 and 2. This is the recommended option.

Option 2

28 Council does not resolve to exhibit the Draft Plan. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Draft West End Stage 2 - Streetscape Plan.

Attachment B: Notice of Motion - NOM 25/7/17 - Recommendation from the Cycling Advisory Committee.

Attachment C: Notice of Motion - NOM 27/11/18 - Inner City Cycleway on Hunter Street.

Attachment D: Revised graphical renders of the proposed works.

Attachments to be distributed under separate cover.

ITEM-9 CCL 26/02/19 - UNION STREET COOKS HILL - UPGRADE OF THE PEDESTRIAN FACILITIES BETWEEN LAMAN AND BULL STREETS

REPORT BY: INFRASTRUCTURE AND PROPERTY
CONTACT: DIRECTOR INFRASTRUCTURE AND PROPERTY /
MANAGER ASSETS AND PROJECTS

PURPOSE

To approve the proposed upgrade of the pedestrian facilities in Union, Laman and Bull Streets, Cooks Hill to increase pedestrian safety.

RECOMMENDATION

That Council:

- 1 Approves the proposed upgrade of the pedestrian facilities in Union, Laman and Bull Streets, Cooks Hill as shown at **Attachment A**.

KEY ISSUES

- 2 The subject area has high pedestrian and vehicle activity. Multiple submissions have been received from residents and business in recent years regarding pedestrian safety at this location.
- 3 The Hamilton South Local Area Traffic Management Study 2013 (LATM Study) recommended upgrading the existing pedestrian crossings in Union and Laman Streets to wombat crossings (a wombat crossing is the combination of a raised threshold with a pedestrian crossing).
- 4 The crossings are to include kerb extensions at each side of the road to narrow the road width for pedestrians and restrict vehicles overtaking on the left side. It is also proposed to install a pedestrian crossing in Bull Street east of Union Street as it meets the warrant for installation.
- 5 The proposed upgrades are shown at **Attachment A** and include:
 - i) Installation of a raised threshold with pedestrian crossing in Union Street north of Laman Street with kerb extensions on each side;
 - ii) Installation of a raised threshold with pedestrian crossing in Laman Street east of Union Street with kerb extensions;
 - iii) Installation of a kerb extension on the western side of Union Street north of Bull Street to slow down northbound traffic; and

- iv) The installation of a pedestrian crossing in Bull Street east of Union Street.

The proposed upgrades have been endorsed by the Newcastle City Traffic Committee (NCTC) and are referred to Council for final determination.

FINANCIAL IMPACT

- 6 Completion of design for the project is funded under the 2018/19 Pedestrian Access and Mobility Plan (PAMP) program. The construction cost estimate is \$614,000 and is included in the draft 2019/20 Operational Budget. As this project is high priority, if construction resources are available, construction funds may be sought through the March quarterly review process to commence construction in the 2018/19 financial year.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 7 The project aligns with the following Newcastle 2030 Community Strategic Plan Directions:

Integrated and Accessible Transport

- 1.2a Continue to upgrade, extend and promote cycle and pedestrian networks; and
- 1.3a Ensure safe road networks through effective planning and maintenance.

IMPLEMENTATION PLAN/IMPLICATIONS

- 8 The proposal is consistent with the Newcastle Transport Strategy 2014 to prioritise the needs of pedestrians and cyclists and reduce traffic speeds. Approval of the upgrade of pedestrian facilities is not delegated to CN officers and must be referred to Council for final determination.

RISK ASSESSMENT AND MITIGATION

- 9 The proposed works are intended to reduce risk and increase safety for pedestrians and cyclists. The proposal will provide improved pedestrian and cyclist accessibility, amenity and safety. The work will be undertaken in accordance with the relevant Austroads and Roads and Maritime Services (RMS) guidelines.

RELATED PREVIOUS DECISIONS

- 10 The recommended works are supported by the Hamilton South LATM Study approved by Council on 24 September 2013.

CONSULTATION

- 11 Community consultation was carried out between 26 April 2017 and 26 May 2017. The consultation leaflet shown at **Attachment B** was distributed to affected residents, non-resident owners, businesses and stakeholders such as bus operators, police, fire brigade, ambulance services and utility providers. Extensive consultation was undertaken in preparation of the Hamilton South LATM Study.
- 12 CN received positive responses to the consultation with the exception of one business in Union Street objecting to the bus stop in front of their premises as it removed parking. A site inspection was carried out and this resulted in the plan being revised to move the bus stop slightly north. A location plan is shown at **Attachment C** and feedback from the community consultation is summarised at **Attachment D**.

BACKGROUND

- 13 NCTC provided in-principle support for the proposed upgrade of the pedestrian facilities on 17 June 2017 following community consultation.

OPTIONS

Option 1

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

Option 2

- 15 Do not approve the proposed pedestrian crossing upgrade. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A:	Signposting and linemarking plan
Attachment B:	Consultation leaflet
Attachment C:	Location Plan
Attachment D:	Community consultation feedback

Attachment B

Community Consultation



To The Owner / Occupier

Union, Laman and Bull Streets, Cooks Hill
Proposed upgrade of zebra crossings

26 April 2017

Council proposes to upgrade the existing zebra crossings at the Union/Laman Street intersection to improve pedestrian and cyclist safety. The zebra crossings will be upgraded to 75mm high raised zebra crossings (wombat crossings) with kerb extensions to reduce pedestrian crossing width and allow one lane of vehicle travel in each direction only.

The proposal will require minor adjustments to bus stops to enable adequate bus manoeuvring space, resulting in adjustments to existing parking arrangements. These include the removal of the emergency services vehicle parking space (which is no longer required), adjacent 30min parking space on the western side of Union Street, and one space on the eastern side of Union Street. The proposal also includes provision of an at-grade zebra crossing in Bull Street to provide additional improvements in safety for pedestrians. The raised threshold east of this proposed zebra crossing will be retained to serve as an entry treatment to the existing 40 km/h Local Traffic Area.

A plan of the proposal is shown overleaf.

Council is seeking comments on this proposal. Your feedback is important to assist Council in making a final decision.

Please forward written comments by **26 May 2017** to The Interim Chief Executive Officer, Newcastle City Council, Attention: Traffic and Transport, PO Box 489, NEWCASTLE NSW 2300 or email: mail@ncc.nsw.gov.au, Phone: 4974 2000, Fax: 4974 2222.

For further information please contact Jocelyn Cardona, Council Traffic Engineer, on telephone 4974 2666.

Name: _____

Address: _____

Do you agree with the proposed upgrade to pedestrian crossings in Union, Laman and Bull Streets, Cooks Hill?

YES NO

Further comments: _____

Protecting your privacy: Newcastle City Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose of collecting personal details:** Council is collecting this information to determine the local community's views and opinions on the proposal outlined. **Intended recipients:** Information provided as part of the consultation will be used as part of the investigation into the proposal, and may be included in future reports on the issue. **Storage and security:** Information provided will be stored on Council's database and will be subject to Council's information and privacy policies. **Access:** Individuals can access data to check accuracy by contacting Council. **PLEASE NOTE: When making written comments or submissions to Council, the following information should be considered** – Should an objector consider that the disclosure of their name and address would result in detriment to them the words "OBJECTION IN CONFIDENCE" must be stated prominently at the top of the submission. Council may, however, be obliged to release full details of the submission including the name and address under the relevant access to information legislation, even if these words are in the submission.

Attachment C



Site Location

Attachment D

UNION, LAMAN AND BULL STREETS, COOKS HILL
SUMMARY OF RESPONSES

Reference	Address	Do you agree with the proposed pedestrian crossings?		COMMENTS
		YES	NO	
TR2017/00810	King St, Newcastle	✓		As a local resident who crosses the street at this location daily, these are very welcome upgrades. Especially the improvements to cycling infrastructure.
TR2017/00738	Bull St, Cooks Hill	✓		
TR2017/00699	Union St, Newcastle	✓		Thank you for making this crossing safer.
TR2017/00675	Avondale Rd, New Lambton	✓		Car space line markings on the bitumen would be a huge benefit in this western section of Laman St. Visitors to the area (eg WEA attendees) generally park very inefficiently by leaving large gaps between adjacent cars. This is a huge inconvenience to the residents as none of us have on-site parking. A visual guide would be very useful to some people, who at times also park over the few designated driveways in the vicinity. Please consider. Future development will put further pressure on availability, so parking efficiently would help.
TR2017/00666	Newcastle High School	✓ X 10		The volume of students who are 'almost' hit causes extensive concern. The proposed changes are needed for safety. The change to a single lane is vital, as many cars try and sneak through, endangering those on the crossing.
TR2017/716	AMIEU		✓	We have serious concerns with the proposed amendment to the bus stop on the western side of Union St, as the AMIEU office is the only driveway access in this full block. The proposed bus stop will completely cover the driveway, creating a chaotic situation during construction and an unsafe situation afterwards. WE have 10 staff working out of this address, and require the access of the driveway at all times of the day from 8.30am to 5pm, Monday to Friday. The office is also occasionally accessed on weekends. I strongly believe that the proposed placement of the bus stop across the driveway will not only cause an unsafe traffic flow to Union St, and the staff working in our offices, but also endanger bus commuters and the general public walking and driving in the area. Whilst the AMIEU have no issue with the zebra crossing being moved from the intersection further down the street, we propose that the bus stop itself be moved a further 30 metres.
TOTALS		14	1	Furthermore, as the PCBU of union staff I personally could be in breach of Section 19 of the WHS ACT 2011 if this development goes ahead. I have a primary duty of care for our staff, and will stringently oppose the development in its current form as it creates an unsafe work environment for the people under my care.

**ITEM-10 CCL 26/02/19 - ACCEPTANCE OF OFFER - GAS RELOCATION
- COUNCIL STREET, COOKS HILL**

**REPORT BY: INFRASTRUCTURE AND PROPERTY
CONTACT: DIRECTOR INFRASTRUCTURE AND PROPERTY /
MANAGER ASSETS AND PROJECTS**

PURPOSE

To accept a contract proposal for relocation of gas main assets in Council Street, Cooks Hill.

Tenders were not called for the contracted works, due to extenuating circumstances. Under Section 55(3)(i) of the *Local Government Act 1993* (Act), a Council resolution is required to approve an exemption.

RECOMMENDATION

That Council:

- 1 Not invite tenders for contract 2019/173T - Gas Main Relocation. A satisfactory result would not have been achieved through the calling of tenders as the gas main assets are owned by Jemena Gas Networks and they will undertake the required works.

KEY ISSUES

- 2 As part of the drainage upgrade project for Council Street, Cooks Hill, a gas main in the street needs to be relocated. This gas main is the property of Jemena Gas Networks.
- 3 Jemena Gas Networks provided City of Newcastle (CN) with a proposal to relocate the gas main, at a cost of \$242,230. Section 55 of the Act would normally require CN to undertake a tender process for a contract of this value.
- 4 Since Jemena own the gas main and will manage and oversee the works to relocate their asset, calling tenders would not have served any meaningful purpose.

FINANCIAL IMPACT

- 5 The estimated cost for gas relocation works is within the amount included in the 2018/19 adopted budget for this project.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 6 The project aligns with the following Newcastle 2030 Community Strategic Plan Directions:

Integrated and Accessible Transport

1.3a Ensure safe road networks through effective planning and maintenance

Inclusive Community

4.2a Ensure people of all abilities can enjoy our public places and spaces

Liveable Built Environment

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

IMPLEMENTATION PLAN/IMPLICATIONS

7 Under Section 55 of the Act, a Council must call tenders before entering into any contracts over \$150,000 in value. However, the Act lists a range of exceptions to this requirement. In this case a relevant exception is:

s55(3)(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

8 As the owner of the gas main, it is solely Jemena's decision as to who undertakes the relocation works.

9 The proposed gas main relocation is one of the first steps in delivering the Council Street renewal project.

RISK ASSESSMENT AND MITIGATION

10 The Council Street renewal project cannot occur without the proposed gas relocation works. Any delay in completing these works will result in additional costs, program delays and reputational damage.

RELATED PREVIOUS DECISIONS

11 On 26 April 2016 Council endorsed placing the draft plan for the rehabilitation of Council Street on public exhibition for four weeks.

12 On 26 July 2016 Council endorsed Option One for construction following public exhibition.

CONSULTATION

13 CN officers have been liaising with Jemena in regards to the gas main relocation. In early 2019 residents of Council Street were notified by CN about

the upcoming gas relocation works. Jemena are managing their own communication, including notifying residents of commencement of work, service interruptions and the like.

BACKGROUND

- 14 CN is renewing Council Street, Cooks Hill, between Darby and Bruce Streets. This project aims to address stormwater management by renewing the drainage infrastructure, replace the deteriorated footpath, roadway, kerb and gutter, and the installation of street trees.
- 15 Following the removal of street trees, the relocation of utilities (including gas mains) is required for drainage works to commence.

OPTIONS

Option 1

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

Option 2

- 17 Council does not adopt the recommendation at Paragraph 1. This is not the recommended option.

REFERENCES

ATTACHMENTS

Nil.

ITEM-11 CCL 26/02/19 - VISTA PARADE, KOTARA - INSTALLATION OF RAISED PEDESTRIAN CROSSING AND TRAFFIC CALMING DEVICES

REPORT BY: INFRASTRUCTURE AND PROPERTY
CONTACT: DIRECTOR INFRASTRUCTURE AND PROPERTY /
MANAGER ASSETS AND PROJECTS

PURPOSE

To approve the proposed upgrade of the existing children's crossing in Vista Parade fronting St James Primary School to a raised pedestrian crossing, and the construction of a traffic calming device near the intersection of Vista Parade and Princeton Avenue, Kotara.

RECOMMENDATION

That Council:

- 1 Approves the proposed upgrade of the pedestrian facilities and traffic calming measures in Vista Parade, between Princeton Avenue and Grayson Avenue as shown at **Attachment A**.

KEY ISSUES

- 2 Vista Parade is a key connector of the residential hub of Kotara. It also provides access to St Philip's Church and St James Primary School. Residents have raised concerns about speeding vehicles along Vista Parade and the safety of children at the existing children's crossing.
- 3 The Kotara and Adamstown Heights Traffic and Parking Study 2012 (Study) recommended upgrade of the existing children's crossing in Vista Parade to a raised pedestrian crossing to slow down traffic. This was supported by the residents, church and school community during the extensive consultation undertaken as part of the study.
- 4 A recent pedestrian survey conducted in Vista Parade confirmed that a pedestrian crossing is warranted in this location.
- 5 In addition to the upgrade of the children's crossing, City of Newcastle (CN) officers recommend construction of a road hump on the eastern end of Vista Parade near Princeton Avenue. This will slow traffic near the cycleway crossing and reduce the risk of cyclists being hit. A location plan of for the proposed works is shown at **Attachment B**.

- 6 Installation of the raised crossing and traffic calming device have been endorsed by the Newcastle City Traffic Committee (NCTC) and is referred to Council for final determination.

FINANCIAL IMPACT

- 7 The proposed works will be funded from CN's Operational Budget. \$40,000 has been allocated for design under the current 2018/19 program and \$85,000 has been allocated for construction in the draft 2019/20 budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 8 The project aligns with the following Newcastle 2030 Community Strategic Plan Directions:

Integrated and Accessible Transport

1.2a Continue to upgrade, extend and promote cycle and pedestrian networks; and

1.3a Ensure safe road networks through effective planning and maintenance.

IMPLEMENTATION PLAN/IMPLICATIONS

- 9 The proposal is consistent with the Newcastle Transport Strategy (2014) policy to prioritise the needs of pedestrians and cyclists and reduce traffic speeds. Approval of the traffic control measures is not delegated to CN officers and must be referred to Council for determination.

RISK ASSESSMENT AND MITIGATION

- 10 The proposed works are intended to reduce risk and increase safety for pedestrians and cyclists. The proposal will provide improved pedestrian and cyclist accessibility, amenity and safety. The work will be undertaken in accordance with the relevant Austroads and Roads and Maritime Services (RMS) guidelines.

RELATED PREVIOUS DECISIONS

- 11 Council adopted the Study at its meeting of 5 June 2012. The Study recommended upgrade of the children's crossing in Vista Parade. Further investigation has indicated the need for a road hump.

CONSULTATION

- 12 Extensive community consultation was carried out with the residents of Kotara and Adamstown Heights during the preparation of the Study.

BACKGROUND

- 13 NCTC provided in-principle support for the proposed upgrade of the pedestrian facility and the road hump on 19 November 2018.

OPTIONS

Option 1

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

Option 2

- 15 Do not approve the proposed upgrade of the children's crossing and road hump near Princeton Avenue. This is not the recommended option.

REFERENCES

ATTACHMENTS

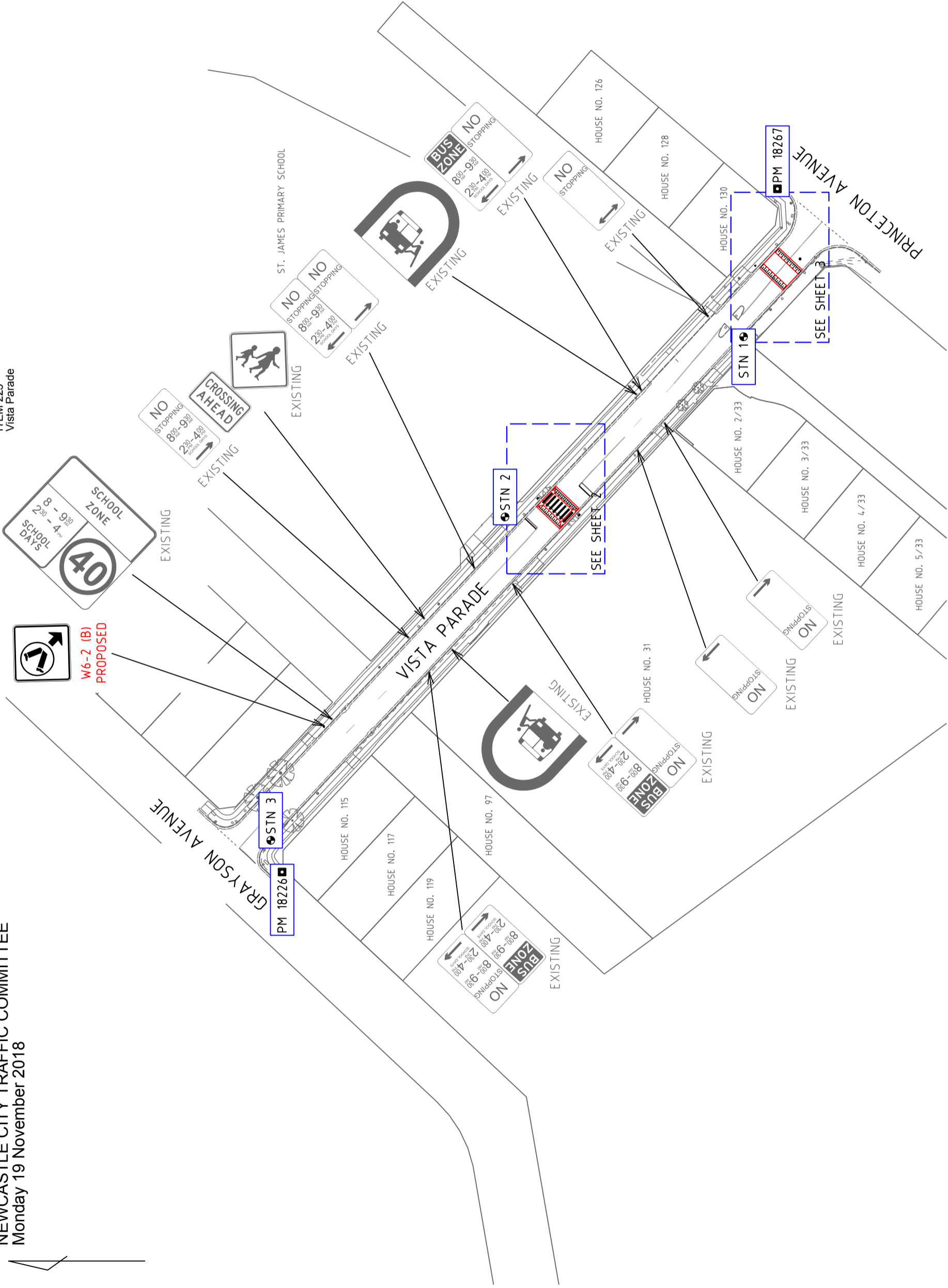
- Attachment A:** Signposting and linemarking plan
Attachment B: Location Plan

ATTACHMENT A - SIGNPOSTING AND LINEMARKING PLAN

ANNEXURE A
Page 1 of 3

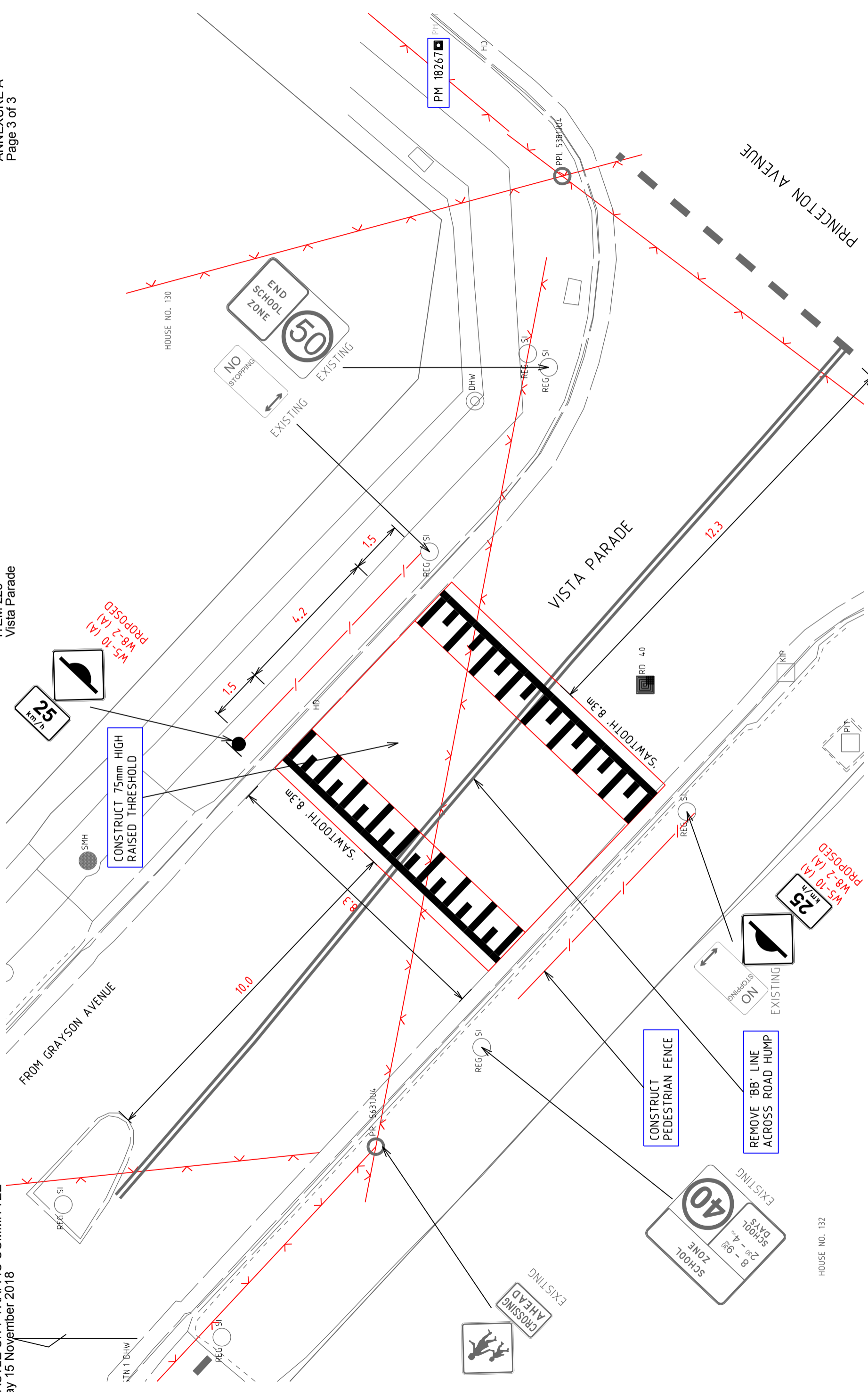
ITEM 225
Vista Parade

NEWCASTLE CITY TRAFFIC COMMITTEE
Monday 19 November 2018



PLAN
SCALE 1:1000

CITY OF NEWCASTLE		SUR: N IRONFIELD		MICROSTATION FILE: R7800_02.dwg		SHEET No. 1 OF 3 SHEETS	
VISTA PARADE KOTARA BTW GRAYSON AND PRINCETON AVE RAISED PEDESTRIAN CROSSING		F.B.: 537		12d PROJECT FILE: C:\171_DESIGN\project		CN PLAN No. R7800	
SIGNPOSTING AND LINEMARKING SHEET 1		L.B.:		CIVIL PROJECT No. 2018-19-009/21386		AMENDMENT No. 1	
DESIGNED: M STEVENSON		REVIEWED: C GARNER		INFRAStructure AND ASSETS AND PROJECTS CIVIL SERVICES TEAM			
SCALE		SCALE 1:1000		COORDINATE SYSTEM: MGA ZONE 56		HEIGHT DATUM: AHD	
1		ISSUED FOR NCTC APPROVAL AMENDMENT DETAILS		07-11-18		CN	
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PLAN
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<p>ISSUED FOR NCTC APPROVAL AMENDMENT DETAILS</p> <p>No. 1 DATE 07-11-18 CN</p>		<p>SCALE</p> <p>0 1 2 3 4 5 SCALE 1:100</p>		<p>INFRAStructure AND PROPERTY ASSETS AND PROJECTS</p> <p>CIVIL SERVICES TEAM</p> <p>DESIGNED M STEVENSON REVIEWED C GARNER</p>		<p>MICROSTATION FILE: R7800_05.dgn 12d PROJECT FILE: C:\171_DESIGN\project CIVIL PROJECT No.: 2018-19/009/21386</p>		<p>SUR: N IRONFIELD F.B.: 537 L.B.: -</p>		<p>CITY OF NEWCASTLE</p> <p>VISTA PARADE KOTARA BTW GRAYSON AND PRINCETON AVE RAISED PEDESTRIAN CROSSING</p>		<p>CN PLAN No. R7800 AMENDMENT No. 1</p>		<p>SHEET No. 3 OF 3 SHEETS</p>	
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Attachment B

LOCALITY SKETCH
VISTA PARADE, KOTARA TRAFFIC CALMING DEVICES



ITEM-12 CCL 26/02/19 - PUBLIC EXHIBITION OF THE DRAFT LIBRARY STRATEGY

REPORT BY: CITY WIDE SERVICES
CONTACT: DIRECTOR CITY WIDE SERVICES / MANAGER LIBRARIES AND LEARNING

PURPOSE

This report seeks Council's endorsement to place the draft Library Strategy on public exhibition.

RECOMMENDATION

- 1 Council approves the draft Library Strategy (**Attachment A**) on public exhibition for 28 days with a report back to Council following exhibition.

KEY ISSUES

- 2 The draft Library Strategy 2019–2023 outlines a vision for a world class library service in Newcastle – anywhere, anytime, open and accessible 24/7.
- 3 The draft Library Strategy has been informed by International and National research on library infrastructure and service trends. The Strategy aligns to Newcastle Community Strategic Plan 2030 and our vision to be a smart, liveable and sustainable global City. It takes into consideration community input from a range of consultation process, including a large community survey.
- 4 The draft Library Strategy aims to:
 - i) Increase the Libraries reach into the community and increase participation and membership through diverse engagement and partnerships.
 - ii) Integrate a range of Council services alongside library services.
 - iii) Provide engaging programs to enrich and encourage lifelong learning.
 - iv) Provide easy access to our heritage collections.
 - v) Provide relevant information services and bridge the digital divide through technology.
- 5 Adoption of the draft Library Strategy enables the development of the Library Infrastructure Plan. The Library Infrastructure Plan will guide Council in making evidence-based decisions for future library service delivery.
- 6 The draft Library Strategy identifies four strategic priorities. These are:
 - i) Digital Inclusion – creating a smart city.
 - ii) Contemporary Libraries – creating contemporary, connected library facilities and services.

- iii) Living Learning Communities - developing resilient communities with every person ready to learn.
 - iv) Newcastle Stories – creating a sense of place and celebrating Newcastle’s identity.
- 7 The draft Strategy identifies that service delivery options are diversifying. Customers want to have multiple choices for interaction with library services – ‘Anywhere, Anytime’. This is best addressed via the development of online “virtual” library services that are supported by professional staff. Library service points and should be considered in the context of opportunities for co-location with other council services or community partners. Library facilities should optimise space and be flexible to adapt to multiple uses. For example, individual and group spaces, collaborative and co-working spaces, shared community spaces, and 24/7 access spaces. Libraries in the future will ideally be a mix of owned and leased spaces located to service population clusters, have good access to transport corridors and embed technology access and connectivity to enable smart city optimisation.
- 8 If Council adopts the draft Library Strategy, a phased approach to implementation will be developed in consultation with Council and the community.

FINANCIAL IMPACT

- 9 Funds are allocated in the 2018/19 Operational Plan to develop the Library Infrastructure Plan.
- 10 There are no immediate financial costs associated with adopting the draft Library Strategy though future infrastructure planning will require budget allocation through the forward capital works program.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 11 The adoption of the Library Strategic Plan aligns with the following directions of Newcastle 2030 Community Strategic Plan.

Vibrant, Safe and Active Public Places

- 3.2a Celebrate Newcastle’s cultural heritage and diversity.
- 3.2b Celebrate Newcastle’s identity by sharing local stories, both historical and contemporary through arts and culture programs.

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.
- 4.2b Improve access to formal and informal lifelong learning opportunities, facilities and services.

Smart and Innovative

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

- 12 The draft Library Strategy achieves objectives of key strategies including Newcastle Smart City Strategy (2017-2021), Cultural Strategy (2016-2019), Social Strategy (2016-2019), Reconciliation Action Plan (2016-2018) and the Disability Inclusion Action Plan (2016-2019).
- 13 The library service, through the national and international industry associations, actively supports the Sustainable Development Goals (SDG) adopted by Council in September 2015.

IMPLEMENTATION PLAN/IMPLICATIONS

- 14 Draft Library Strategy activities will be funded through the annual operational budget process.
- 15 A copy of the Strategy will be made available to the public on City of Newcastle's website as well as in our libraries.

RISK ASSESSMENT AND MITIGATION

- 16 Following public exhibition, it will be reported back to Council with a summary of submissions received, any recommended changes and a Plan for final adoption.

RELATED PREVIOUS DECISIONS

- 17 The Library Service Delivery Model (LSDM) was adopted by Council in 2002 which resulted in the construction of Wallsend Library in 2006.

CONSULTATION

- 18 The process of developing the strategy included consultation with community organisations and library partners, wider public, members/users and non-members/non-users and staff.
- 19 The consultation included four Councillor Workshops including the Councillor Strategic Workshop on 1 February 2019.
- 20 Over 1300 people engaged in the surveys and community conversations that considered the value of the library service individually and to the community.
- 21 Findings indicate that the library service is highly valued by those who use it and those who consider libraries good for the community.
- 22 There is a small proportion of the population who do not use the libraries or understand the breadth of services already offered. A repeated comment highlighted is the inadequate size of most buildings.

BACKGROUND

23 An internal Library Strategic Review was conducted in 2012 by the State Library of New South Wales. Key recommendations have been considered in this document.

24 Below is a list of when libraries were built:

- i) Newcastle (City) 1957
- ii) Adamstown 1961
- iii) Beresfield 1962
- iv) Hamilton 1964
- v) Lambton (established) 1950
- vi) Mayfield 1983
- vii) New Lambton 1973
- viii) Stockton 1968
- ix) Wallsend 2006

25 Since the establishment of the majority of Newcastle libraries, the population demographics have significantly changed.

26 A key priority of the draft Library Strategy is an Infrastructure Plan for Buildings and Information Technology.

OPTIONS

Option 1

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

Option 2

28 The draft Library Strategy not be publicly exhibited. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Draft Library Strategy

Distributed under separate cover

ITEM-13 CCL 26/02/19 - STEVENSON PARK MASTERPLAN

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

PURPOSE

The draft Stevenson Park Masterplan has been publicly exhibited for 30 days. This report is to seek Council's adoption of the Stevenson Park Masterplan.

RECOMMENDATION

- 1 The draft Stevenson Park Masterplan (**Attachment A**) be adopted.

KEY ISSUES

- 2 Stevenson Park is a key sporting and recreation reserve within the city. The reserve contains a significant number of sporting facilities, servicing both the wider Newcastle region as well as the local community.
- 3 The existing play space is nearing the end of useful life. The Masterplan identifies a significant play space improvement project. Stage 1 of this project will be implemented in 2019.
- 4 Following an extensive co-design process with the local community and key park stakeholders, the draft masterplan was placed on public exhibition for final review from Friday 24 October closing on Thursday 22 November 2018.
- 5 Ten submissions were received during the exhibition period. A summary of the submissions received is contained at **Attachment B**.
- 6 Overall the majority of responses indicated general support for the plan, with some issues being raised. In summary these included:
 - i) Support for improved baseball facilities, specifically the canteen, toilets and screen.
 - ii) Request for inclusion of cricket infrastructure (including wicket) into the masterplan.
 - iii) Concern that the playground would negatively affect residents living nearby with issues related to noise and increased traffic. Particular concern was raised in relation to the basketball and skate elements.
 - iv) Traffic safety relating to the location of the proposed playground, specifically referring to the entrance area. The detailed design process will

identify and respond to any potential safety concerns and will seek advice from our Traffic and Transport section.

- v) Concern that the proposed dog park would reduce the size of the current football field. This concern was clarified and it was confirmed that the proposed dog park space would not impact on any current sporting fields.
- 7 The above issues raised have been addressed by officers or will be taken into consideration at the project implementation stage. The Masterplan identifies a phased approach so that changes to supporting infrastructure can be addressed through the development of future plans such as the Strategic Sports Plan and by taking advantage of potential partnership opportunities.

FINANCIAL IMPACT

- 8 If adopted, actions within the Stevenson Park Masterplan will require allocation of funding through future capital works programs.
- 9 The 2018/19 Operational Plan has \$150,000 allocated towards playground improvements at Stevenson Park. There is funding of (\$300,000) within the Newcastle City Council Section 94A Development Contributions Plan 2009 for development of recreation facilities at Stevenson Park. It is intended to utilise these funds for implementation of the inclusive play space and associated picnic facilities identified in the Masterplan. Funding to further implement the Masterplan will be requested through the appropriate budget processes and potential grant funding where available. Council has applied for \$150,000 through the NSW Department of Planning and Environment "Everyone Can Play" grants program and is awaiting announcement of those grants in February. Partnerships will be explored with local businesses, community groups and the local parks Committee for funding opportunities.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 10 The draft Stevenson Park 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

- 11 The actions contained within the draft City of Newcastle Stevenson Park Masterplan provide a body of work for Council to develop additional community facilities in a staged approach. The first stage includes the development of an inclusive playground opportunity.

RISK ASSESSMENT AND MITIGATION

- 12 There is no foreseen risk in adopting the Stevenson Park Masterplan. Development of the draft Plan has involved extensive community and stakeholder engagement.

RELATED PREVIOUS DECISIONS

- 13 At the ordinary meeting of 24 October 2017 Council considered a Notice of Motion and resolved to update the Masterplan for Stevenson Park, in consultation with the local community.
- 14 At the ordinary meeting of 23 October 2018, Council resolved to place the draft masterplan on public exhibition for a period of 21 days.

CONSULTATION

- 15 A participatory approach to engagement was designed to ensure diverse input from users of the park.
- 16 The draft Stevenson Park Masterplan was exhibited for an extended period of 30 days. During this time ten submissions were received. These submissions were reviewed, and the Plan modified as required. A submission report is attached (**Attachment B**).
- 17 The draft Stevenson Park Masterplan was promoted on City of Newcastle's website and social media sites to encourage broader community feedback.

BACKGROUND

- 18 The existing Stevenson Park Masterplan was prepared in 2000.
- 19 In 2017 the recently formed Friends of Stevenson Park advocated, on behalf of the local community, for a review of the Masterplan and requested upgrades to facilities in Stevenson Park Mayfield West, including the playground.

20 Council resolved in 2017 to progress revision of the existing 2000 Masterplan and committed funding in the 2018/19 budget for playground improvements.

21 A draft Masterplan was prepared and exhibited.

OPTIONS

Option 1

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

Option 2

23 The draft Masterplan not be adopted. Failure to adopt the Masterplan will delay delivery of the play space upgrade in 2019. This is not the recommended option.

ATTACHMENTS

Attachment A: Draft Stevenson Park Masterplan

Attachment B: Stevenson Park Masterplan Public Exhibition Report December 2018

Distributed under separate cover