

Between

Parties

Name	Newcastle City Council
ABN	25 242 068 129
Address	12 Stewart Avenue, Newcastle NSW 2300
Short form name	CN
Nominated representative	Ashlee Abbott

and

Name	Mayfield Business Association Inc
ABN/ACN	55 634 039 506
Address	c/o 5 Marina Avenue, New Lambton NSW 2305
Short form name	Service Provider
Nominated Representative	Warren Pullbrook

BACKGROUND

- A. City of Newcastle (CN) levies special rates pursuant to section 495 of the Act.
- B. CN must spend special rates for the purpose of beautifying, promoting and developing the area in which those funds were raised.
- C. The Service Provider is a not for profit organisation registered under the Associations Incorporation Act 2009 (NSW) to represent the interests of the businesses in the Special Rate (SR) Area.
- D. CN wishes to engage the Service Provider to provide the Service on behalf of CN.
- E. It is acknowledged that the Service Provider is a registered incorporated association and must comply with all legislative requirements separate to this agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

Acquittal Report means the annual report submitted to CN by the Service Provider.

Act means the Local Government Act 1993 (NSW).

Agreed Personnel means the Service Provider and its authorised representatives.

Agreement means this written agreement between CN and the Service Provider, together with any documents referred to herein.

Deliverables Plan Template (DPT) means the template provided at Appendix 1 that is to be used by the Service Provider when proposing a Deliverables Plan in accordance with this Agreement.

Deliverables Plan means the plan approved by CN's nominated representative in writing containing the details of what the Service Provider intends to do to deliver the Service, including how and when the Service Fee will be spent, an operational plan and a marketing and communication plan for delivering the Service. The Deliverables Plan derived from sections 3, 4 and 5 of the DPT once approved in accordance with this Agreement.

Ideas Exchange is an event hosted by CN that provides an opportunity for cross collaboration, networking and for other Service Providers to learn from each other about ways Service Providers can best benefit the SR Area.

Intellectual Property includes all proprietary rights in relation to information including copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as defined in *Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967*.

Laws means any laws, statutes, rules, regulations, proclamations, ordinances, standards or local laws of any authority, present or future, and whether State, Federal or otherwise.

Service Fee means the total amount approved by CN's nominated representative under section 4 (Financial Plan) of the DPT for delivery of the operational plan approved through the DPT pursuant to the Agreement.

Service means the approved operational plan (section 3 DPT), communications strategy (section 5 DPT) and any other obligations of the Service Provider under the Agreement and the approved DPT.

SR Area means the area represented by the Service Provider from which CN levies a special rate pursuant to section 495 of the Act. The area is defined in item 2 of Schedule 1.

SR Funds means the funds raised by CN through levying a special rate on businesses in the relevant area as defined in item 2 of Schedule 1.

Start Date means the date set out in item 1 of Schedule 1.

Support Officer means the person or company provided by CN in accordance with clause 5.1 (e) to assist the Service Provider in meeting its obligations under this agreement.

Unless the contrary intention appears, a reference in this Agreement to:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes an individual, a firm, a body corporate, a sponsorship, joint venture, an unincorporated body or association, any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity;
- (d) a particular person includes a reference to the person's executors, administrators, successors, successors in title, substitutes (including persons taking by novation) and assigns.

2 PROVISION OF AND LOCATION OF SERVICE

- 2.1 The Service Provider agrees to provide the Service in the Deliverables Plan to the benefit of the businesses within the area set out in item 2 of Schedule 1. The area may be changed from time to time as is necessary to reflect changes in rating or zoning with 28 days written notice from CN.

3 SERVICE PROVIDER'S OBLIGATIONS

3.1 General obligations

The Service Provider agrees to:

- (a) Operate under a constitution that complies with the Associations Incorporation Act 2009 (NSW);
- (b) Provide the Service subject to the provisions of this agreement and consistent with requirements of the Act;
- (c) Submit a proposed draft Deliverables Plan using the Deliverables Plan Template to CN within one month of the Start Date of this Agreement;
- (d) Only use the Service Fee for the purpose of beautifying, promoting and developing the area as specifically agreed to in the Deliverables Plan approved by CN. For clarity, SR Funds must not be used for administration costs, employee costs or used for any other costs related to the operation of the Service Provider unless approved in writing by CN;
- (e) Secure and maintain any consent, authority, permit, licence or certificate required to meet its obligations under this Agreement. For clarity, approval of a Deliverables Plan does not imply that CN has given any other consent. The Service Provider should note that many activities require approvals and consents from CN, and other government agencies and that they are wholly responsible for obtaining such approvals. Failure to obtain approvals will void the Agreement and may result in funding being revoked even when works have been completed;
- (f) Provide CN with a copy of the agenda of all committee meetings not less than 14 days prior to that committee meeting;
- (g) Provide CN with a copy of the minutes of all committee meetings within 14 days of the minutes being adopted;
- (h) Provide the Support Officer with, for publication on CN's website, the minutes of all meetings, agenda items and reports relating to the expenditure of the Service Fee within 14 days;

- (i) Provide a standing invitation to CN's nominated representative to be present at all committee meetings for agenda items involving discussion of the expenditure of the Service Fee;
- (j) Provide a standing invitation to all CN councillors representing the ward relevant to the Newcastle City / Darby Street special rate area to be present at all Committee meetings for agenda items involving discussion of the expenditure of the Service Fee;
- (k) Provide CN with any records or files (financial or otherwise) relating to the performance of its obligations under this agreement within 7 days of the request. Inspection of records or files may be sufficient to satisfy this obligation at the discretion of CN;
- (l) In the instance of a Performance Review under clause 4.1, to fully co-operate with CN or CN's contractors conducting the review. This includes, providing without limitation, access to the Service Provider's premises, employees, records, documents and papers that relate directly or indirectly to the performance of the Service Provider's obligations under this agreement;
- (m) Fully co-operate with CN's auditors nominated under clause 4.2;
- (n) Ensure that where any of its obligations under this Agreement are performed under a subcontract, any subcontract contains equivalent clauses permitting CN and CN's nominated auditors to have access to the employees, premises and accounts, records, documents and papers of the subcontractor to the extent provided for in clauses 3 and 4 in relation to the expenditure of SR Funds;
- (o) Publicly acknowledge CN's support including, for example, the inclusion of CN's restricted logo on advertising and collateral and through invitations to events and functions for CN representative/s;
- (p) Use CN's restricted logo in accordance with Schedule 2 and must:
 - (i) Not modify the restricted logo in any way without the consent of CN;
 - (ii) Obtain approval from CN prior to publishing, producing, printing or distributing any material containing the restricted logo;
 - (iii) Use the Restricted Logo in accordance with CN's Logo Usage Guidelines at Schedule;
- (q) Attend, at least once per year, an Ideas Exchange hosted by CN. The Service Provider must present to the Ideas Exchange, with the presentation to include:
 - (i) Project outcomes as provided in its Deliverables Plan;

- (ii) An outline of the highlights and challenges of its project experiences.

3.2 Financial Obligations

The Service Provider agrees:

- (a) To open an account with the Commonwealth Bank of Australia for the Service Fee paid under this agreement. The account must have the following criteria:
 - (i) The account name must be in the format of “Newcastle City BIA” on behalf of Newcastle City Council;
 - (ii) A CN officer as a signatory to the account;
 - (iii) CN be provided internet banking access to view and transact within the account;
- (b) To submit an Acquittal Report to CN’s nominated representative by 31 July each year with tax invoices that directly align to the approved Deliverables Plan expenditure for the previous financial year;
- (c) To return any portion of the Service Fee not spent in accordance with the Deliverables Plan to CN by 31 July following the financial year in which it was allocated to be spent, unless:
 - (i) The Service Provider applies to, and is authorised in writing by CN’s nominated representative, to carry over unspent Service Fee from one financial year to the next where the Service Fee is approved to be used for the same purpose as that specified in the Deliverables Plan; or
 - (ii) CN’s nominated representative informs the Service Provider in writing that it will adjust a future payment of Service Fee to take account of the unspent Service Fee from the previous year.
- (d) To abide by CN’s Statement of Business Ethics (Appendix 2) when expending the Service Fee, including that all committee members declare any conflict of interest at committee meetings;
- (e) To either:
 - (i) Develop procurement guidelines that comply with the Statement of Business Ethics and will be submitted for approval by CN as part of the Deliverables Plan Template; or
 - (ii) Comply with the following procurement requirements when expending the Service Fee:

Procurement Thresholds (excluding consultants)

For all goods, works and services the following requirements apply:

- <\$1,000 no quote or tender is required
- between \$1,000 and \$10,000 two (2) informal quotes are required
- between \$10,000 and \$50,000 three (3) informal quotes are required
- between \$50,000 and \$125,000 three (3) formal quotes are required

Procurement of Consultants

For the engagement of any consultant, the following applies:

- <\$10,000 one formal quote is required
- between \$10,000 and \$125,000 three formal quotes are required
- over \$125,000 an open tender process is required.

4 PERFORMANCE REVIEW

4.1 Performance Review

To ensure the Service Provider is meeting its obligations under this Agreement CN may conduct a Performance Review of any aspect of the performance of the Service Provider's obligations under this Agreement and where appropriate will seek to involve the Service Provider in that review.

4.2 Nomination of auditors

CN may nominate auditors to conduct, at CN's cost, financial and compliance audits of the Service Provider in respect of the obligations under this Agreement.

4.3 Prior notice

In carrying out CN's powers under this clause 4, CN will give the Service Provider at least 14 days notice.

5 CN'S OBLIGATIONS

5.1 General obligations

CN agrees:

- (a) That CN's nominated representative will provide written approval/rejection of the Service Provider's proposed Deliverable Plan and Acquittal Report in accordance with section 6;
- (b) To co-operate with the Service Provider as the Service Provider reasonably requires;
- (c) Provide the information and documentation that the Service Provider reasonably requires to fulfil its obligations under this Agreement;

- (d) To provide, free of charge (if requested by the Service Provider), an appropriate CN space during business hours for the Service Provider to hold meetings each month or as required by the Deliverables Plan and the Service Provider's constitution;
- (e) Provide access to a Support Officer to assist the Service Provider with meeting their obligations under the Deliverables Plan;
- (f) Use reasonable endeavours to keep the Service Provider informed of decisions of CN which are relevant to the Service Provider's obligations under this agreement;
- (g) To grant the Service Provider a non-exclusive, royalty free, non-transferable license to use CN's restricted logo in its advertising materials solely for the purpose of promoting CN's association with the Service Provider and initiatives of the Deliverables Plan.

6 PROCESS FOR APPROVAL/REJECTION OF DELIVERABLES PLAN AND PAYMENT OF SERVICE FEE

6.1 Process for payment of service fee

- (a) The Service Provider submits a proposed Deliverables Plan using the DPT within 30 days of the Start Date.
- (b) CN's nominated representative provides written approval/rejection within 30 days of submission of the proposed Deliverables Plan.
- (c) If the proposed Deliverables Plan is approved by CN it becomes the Deliverables Plan for the upcoming 12 months and the Service Provider submits an invoice for the Service Fee agreed in the approved Deliverables Plan.
- (d) CN pays the Service Fee within 21 days of the invoice to the account opened in accordance with clause 3.2(a).
- (e) If the proposed Deliverables Plan is rejected by CN, the reasons why will be provided to the Service Provider who will amend the plan within 14 days and re-submit to CN for approval. CN's nominated representative must provide written approval/rejection within 14 days of submission of the revised Deliverables Plan.
- (f) The Service Provider provides CN with a financial Acquittal Report by 31 July each year in accordance with Acquittal Report requirements of the Agreement.
- (g) CN's nominated representative must approve/reject the Acquittal Report within 30 days of it being submitted. If the Service Fee has not been expended in accordance with this Agreement and the Deliverables Plan

to the satisfaction of CN, CN's nominated representative will advise the Service Provider in writing and CN may terminate this Agreement and the Service Provider must repay the unspent portion of the Service Fee within 30 days.

- (h) The Deliverables Plan may be amended at any time by written agreement between CN's nominated representative and the Service Provider. The written agreement containing amendments becomes an appendix to the Deliverables Plan, replacing the relevant sections.

6.2 Nothing in this agreement stops or restricts the Service Provider from applying for additional special rates as part of any competitive process undertaken by CN.

7 INTELLECTUAL PROPERTY

7.1 The ownership of the Intellectual Property in anything created under this Agreement as part of the Service will vest with CN. The Service Provider must assign ownership of all Intellectual Property rights to CN and will ensure that its employees, subcontractors and agents execute all documents necessary to assign such rights to CN.

8 INDEMNITY

8.1 The Service Provider indemnifies CN, its servants and agents from and against all actions, claims, losses, damages, penalties, demands or costs whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of the performance by the Service Provider of the Agreement including:

- (a) any negligence, wrongful act or omission of the Service Provider or of any other persons for whose acts or omissions the Service Provider is liable; and/or
- (b) death or injury to any person or loss of or damage to any property; and/or
- (c) any breach of a third party's Intellectual Property Rights; and/or
- (d) any breach of the Agreement by the Service Provider; and/or
- (e) any action, claim or demand from liability brought against CN in connection with a breach by the Service Provider of the WH&S Act and associated legislation (so far as it is permissible at law).

8.2 The Service Provider's liability to indemnify CN is reduced proportionally to the extent that an action or omission of CN or employees or agents (other than the Service Provider) of CN may have contributed to the injury, damage or loss.

9 INSURANCE

9.1 For every year other than the first year after the Agreement commences, the Service Provider must, as part of its Deliverables Plan, affect and maintain the following insurances:

- (a) Workers Compensation insurance (if required) in accordance with the NSW Workers Compensation Act 1987);
- (b) Public Liability insurance (of no less than \$20,000,000 coverage for any claim);
- (c) Professional Indemnity insurance (of at least \$10,000,000 coverage).

9.2 The Service Provider must provide Certificates of Currency for the required insurance policies to the CN at least one week prior to the Start Date.

9.3 The Certificates of Currency must not be cancelled or amended without written notice being given to CN, and must be made available for inspection at any time during the term of the Agreement.

10 ALTERATIONS AND MUTUAL TERMINATION

10.1 This Agreement may be altered or terminated by agreement only in writing signed by CN's nominated representative and the Service Provider.

11 SURVIVAL

11.1 Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

12 SEVERABILITY

12.1 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

13 RELATIONSHIP

- 13.1 This Agreement does not create a relationship of employment, trust, agency or partnership between the parties. As such, the Service Provider is not entitled to the benefits of an employee.
- 13.2 The Service Provider must not act outside the scope of authority conferred on them by this Agreement.
- 13.3 The Service Provider must take upon themselves the whole risk of performing their obligations under this Agreement and must also comply with every, and all, reasonable and lawful direction of the CN's nominated representative.

14 GOVERNING LAW AND JURISDICTION

- 14.1 The Agreement is subject to and construed in accordance with the Laws, Acts and other prescribed rules applying in the State of New South Wales.

15 FORCE MAJEURE

- 15.1 Neither Party will have any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

16 PRIVACY AND GIPA

- 16.1 The Service Provider agrees to comply with the provisions of the Privacy & Personal Information Protection Act 1998, as if it were included in the definition of 'public sector agency' under that Act, the Privacy Code of Practice for Local Government and CN's Privacy Management Plan.
- 16.2 The Service Provider acknowledges CN is a 'public sector agency' for the purposes of the Government Information (Public Access) Act 2009 (GIPA Act) and any documents related to the spending of the Service Fee, including Deliverables Plans and Acquittal Reports, will be considered CN's for the purposes of the GIPA Act.

17 CODE OF CONDUCT

17.1 The Service Provider must act in a manner consistent with the requirements of CN's Code of Conduct (available on CN's website or by request) for the term of this Agreement.

18 PAYMENT

18.1 Payment is to be made within 21 days of the receipt of an approved invoice consistent with the approved Deliverables Plan in the form of a valid tax invoice under GST law in respect of the Service delivered and accepted. The Service Provider must quote the purchase order number supplied by CN (to be supplied after the execution of this agreement) on any tax invoice or claim for payment.

19 TERMS AND CONDITIONS

19.1 This Agreement is subject to the Hunter Councils' Terms of Engagement (current edition) as at appendix 3.

19.2 In the event of any conflict or inconsistency, the order of precedence shall be in the order of the documents as listed below.

- (a) This Agreement including approved Deliverables Plan, Acquittal Reports and amending correspondence
- (b) Amending correspondence
- (c) Hunter Council's Terms of Engagement

The documents listed above form part of the Agreement.

20 TERMINATION

20.1 Without prejudice to any other right CN may have, CN may terminate this Agreement without notice if the Service Provider:

- (a) fails to perform its obligations under the Agreement at all, or within any time period specified by CN;
- (b) fails to carry out a reasonable direction of CN in respect to its obligations under the Agreement;
- (c) fails to submit a Deliverables Plan or Acquittal Report by the required date; or

- (d) fails to fulfil any of the Service Provider's obligations under section 4.
- 20.2 CN may terminate this Agreement by giving 14 days written notice to the Service Provider if:
- (a) if it ceases to levy the Special Rate;
 - (b) if the Service Provider makes any arrangement(s) with its creditors or is wound up under the Associations Incorporation Act 2009.
 - (c) at any time for any reason. If termination occurs under this sub-clause, the Service Provider is entitled to retain the Service Fee if it intends to spend it in accordance with the Deliverables Plan.
- 20.3 The Service Provider may terminate this agreement by giving 14 days written notice to CN if:
- (a) CN fails to meet its obligations under this Agreement, and:
 - (i) the failure is unable to be corrected, and
 - (ii) that failure means the Service Provider cannot meet its obligations under the Agreement.
 - (b) The Service Provider believes it can no longer meet its obligations under the Agreement.

If this occurs, any of the Service Fee not spent in accordance with the Deliverables Plan is to be returned to CN.

21 DISPUTE RESOLUTION

- 21.1 In the event of any dispute arising between CN and the Service Provider that cannot be resolved by negotiation, CN shall nominate a formal dispute resolution process to be followed by the parties.
- 21.2 The Service Provider must continue to perform its obligations under the Agreement notwithstanding the existence of a dispute.

Agreement

Signed on behalf of the **NEWCASTLE CITY COUNCIL** ABN: **25 242 068 129** by its Authorised officer:


Ashlee Abbott (Oct 6, 2021 12:49 GMT+11)

Authorised officer

Ashlee Abbott

Name of Authorised officer

06-Oct-2021

Date

Signed on behalf of the **MAYFIELD BUSINESS ASSOCIATION INC** ABN: 55 634 0398 506 by its Authorised officer:


WARREN PULLBROOK (Oct 15, 2021 13:46 GMT+11)

Authorised officer

Warren Pullbrook

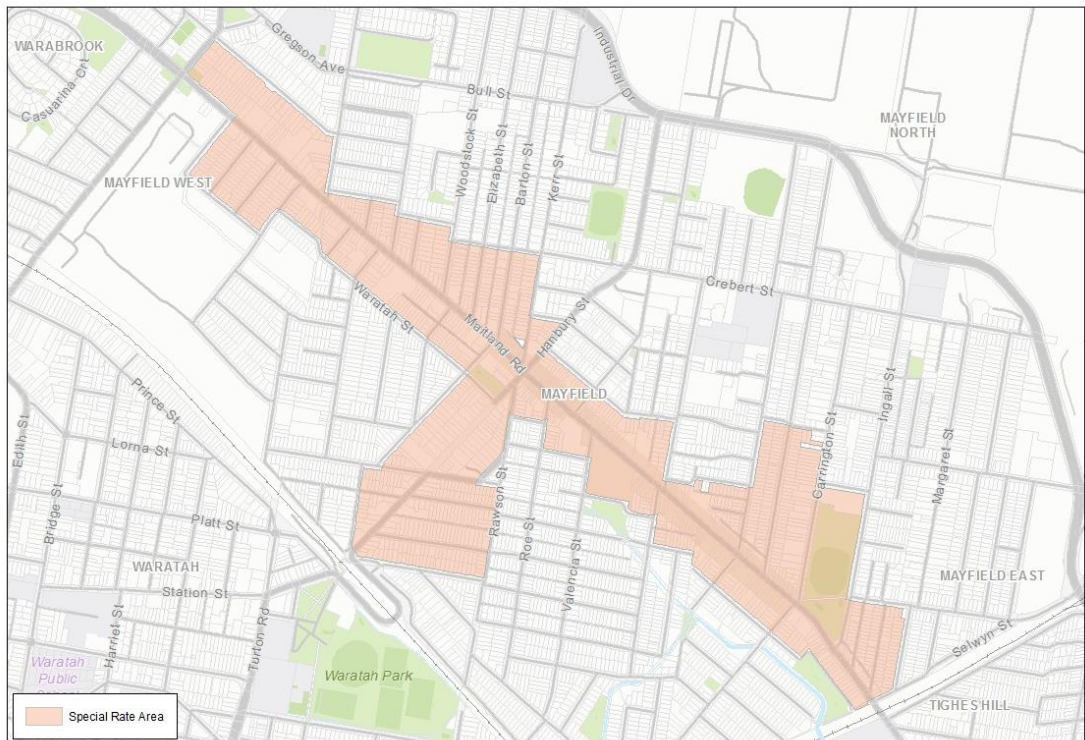
Name of Authorised officer

15-Oct-2021

Date

Schedule 1 – Details

1. Start date: 11 October 2021
2. SBR Area: Mayfield



Schedule 2 – CN’s Logo Use Guidelines

The horizontal logo and the stacked logo are equally strong and can be used interchangeably depending on the space available, and at the discretion of the designer.

The two versions must not appear together in any single piece of collateral, where one logo is selected, it must be used consistently throughout.

The preferred background options are navy and white, though a black background is permissible for existing applications.

The logo should only be placed in the top or bottom right corners when it appears as a standalone logo.

The logo has a clear space rule to ensure it always appears uncluttered, clear and open. The clear space is the height of the CN of the logo type at the logo’s four widest points as shown. No item, text, image or other logo should interfere on this space. The minimum size the logo can be is 35 mm

22 Correct Use



City of
Newcastle



City of
Newcastle

23 Incorrect Use



Do not distort the logo



Do not delete any part of the logo



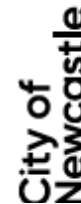
Do not change the typeface. Please use the official supplied logo files



Do not use the colour logo on a photo or colour other than specified



Do not recolour any part of the logo



Do not



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Appendix 1 – Deliverables Plan

Appendix 2 – CN Statement of Business Ethics

Appendix 3 – Terms of Engagement Consultants



Inc ID Number: 1901583 | ABN: 55 634 039 506

STRATEGIC DELIVERABLES 2021 TO 2022

OVERVIEW



Introduction

Mayfield BIA was established as an independent business association in December 2019 to represent the interests of businesses within the Mayfield precinct.

The new association was established to provide the precinct with an association that could work with City of Newcastle and key stakeholders including other similar organisations and Business Improvement Associations with the wider city to effectively disseminate funds that are collected by the Council through a Special Business Rate Levy, for the purpose of promotion, beautification and economic development of the precinct.

It is the vision of Mayfield BIA to add value to the precinct's unique qualities as a business hub by working as part of a larger network of stakeholders that can advance its competitiveness and position.

As Mayfield BIA was finalising this plan, the Covid19 pandemic continued to create unpredictable disruptions to our economy and lives.

The Association, therefore, presents this plan with the view that deliverables such as public events and activations are not seen as immediate priorities.

Given the current landscape, this plan is submitted as a 12 month plan only.

As this plan is presented to City of Newcastle for consideration, the Association has:

- Opened a bank account with the Commonwealth Bank: 062-815 | 10595159
- Successfully obtained
 - Inc ID Number: 1901583
 - ABN: 55 634 039 506
 - TFN: 636 238 442
- Secured insurances that are inline with the proposed Service Agreement with the City of Newcastle (current cover notes have been provided to CN).
- Appointed directors and executive committee:

Name	Position on board	Business represented
Warren Pullbrook	Chair	Pullbrook Motors
Chris Arnold	Vice Chair	Arnold Property
Mark Dowling	Public Officer	MDRE Real Estate
Ashlea Dowden	Treasurer	Mayfield Floral Co
Kath Teagle	Ordinary member	Mayfield Medical Connection

Executive Summary

According to the most recent Census (2016), the Mayfield community represents:

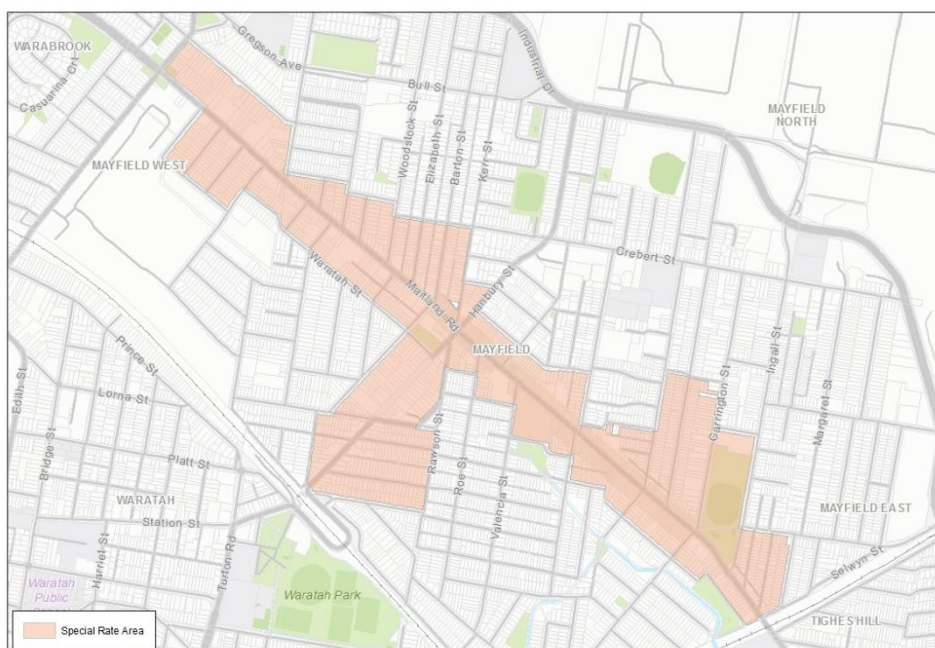
- a population of 9,904 people
- an median age of 35
- 21% of the population are couples with children
- 25% of housing is medium to high density
- 40% households are renting

In terms of employment by industry sector, the suburb has about 17% of the identified workforce who work in health care and social assistance, 10% in education and training and about 9% in accommodation and food services. Emerging areas of employment and vocation at the time of the Census were in professional services, construction, education and health care.

Anecdotally, the suburb has over the past four years been successful in attracting a range of new and exciting micro and small businesses that have displayed new levels of collaboration, creativity and participation. It is important also to note that Coles is developing a new retail precinct on Maitland Road which will assist in terms of diversity of commercial options and connectivity along a 'lengthy' main street precinct.

According to City of Newcastle data there is 168 commercial premises that pay a Special Business Rate levy as part of their annual rates. The BIA understands that these premises are owned by large retailers such as Woolworths, Coles and Aldi through to micro and small business operators. It is a key objective of the new BIA to comprehensively engage with all businesses within the precinct to best understand their needs and provide opportunity for informed discussion moving forward.

Mayfield Precinct Map:



Our community

The Association sees itself as part of the Mayfield community. The following is not a complete list of stakeholders but highlights the key audience segments that it sees most important in the next 12 months.

Stakeholders	Experience	Strengths	Their limitations	Opportunities
Members	Keen for appropriate BIA activity	Diversifying and proactivity within newly established business	No engagement for more than two years Large and small	Engagement
Former board	Not engaged in new model	Lessons learned	Ability to move forward	Lessons learned
CN	Funding and collaboration for positive outcomes	Funding Resources	Limited funds Bureaucracy	Realistic outcomes Collaboration
Former program coordinator	Positive and collaborative	Willingness to participate and inform Readymade audience (social media) Connectivity Creative	unknown	New and creative outcomes Ability to attract additional funding for new projects
Elected representatives (all levels)	Political outcome driven Supportive Engaged	Passionate advocates for suburb	Politics	Collaboration for outcomes that benefit business
BIAs (Citywide)	New networks	City wide approach Ability to collaborate	Experience	Greenfield City wide projects Enhanced communication
NTIG	Nil	Tourism and visitor strategy and data	Unknown at this point	Collaboration on projects
Hunter Business Chamber	Nil	Business leadership	Unknown	Collaboration
The Business Centre	Nil	Proven track record in delivery of business support	Need customers	Resources for members (customers)
Advisors (Individuals and groups) This also includes Police	Specialist experience and knowledge	Perspective and engagement	History	Create need Improved safety Improve cleanliness
Community	Convenience Experience	Recognised as a place for eating and entertainment	Perception about ageing precinct and unsavoury night-time issues	Enhance offerings to a broader audience as a clean and safe place to live, work and play
Media	Mixed	Receptive to news in precinct	History	Activities that show resilience and progress

Vision

It is the vision of Mayfield BIA to add value to the precinct's unique qualities as a business hub by working as part of a larger network of stakeholders that can advance its competitiveness and position.

Mission

In accordance with the Association's constitution and its service agreements with the City of Newcastle, Mayfield BIA will work as a cohesive and progressive group of professional people who will collaborate, inform and progress the best interests of business in the Mayfield precinct.

It will do this by:

- Acting responsibly and compliantly and with the best interests of its members and stakeholders as key priorities.
- Using funds to progress the economic development, promotion and beautification of the Mayfield precinct.
- Working in unity with like-minded organisations including the BIAs of the City of Newcastle to progress city wide initiatives that add value to local business and particularly businesses in the Mayfield precinct.
- Working collaboratively with City of Newcastle and other key facilities and infrastructure providers to progress projects that enhance Mayfield's position as a business hub.

Business Goals

- Work closely with City of Newcastle to identify opportunity and challenges and to develop solutions for these.
- Engage businesses within the precinct to help inform planning and activation
- Be advised and informed by people and organisations that can add value to solutions and opportunities
- Be discerning with its budget and use it in a way that provides the best possible results over the full funding period

Plan overview 2021 to 2022

The following table outlines key operational actions designed to achieve the BIA's objectives.

Each project will have a detailed business plan that will work with CN to develop ways to effectively measure each project recognising that some metrics may be available through CN resources.

Budget overview has been recorded in the three key areas of BIA expenditure:

- Promotion
- Beautification
- Economic Development

Importantly, the Association will work with CN to develop ways to effectively measure each project recognising that some metrics may be available through CN resources. The KPIs listed below, are therefore included as overarching metrics that will need to be addressed as part of project business plans.

The Mayfield BIA understands it will be provided \$100,000 for the 12-month period.

PROJECT	TIMING	BUDGET	DETAILS	KPI's
Governance and compliance				
Insurances	Annually	\$4,000	<ul style="list-style-type: none"> ▪ Maintain Appropriate Insurances as per CN requirements ▪ \$20 Million Public Liability ▪ Association Liability Insurance 	<ul style="list-style-type: none"> • Hold no less than 10 meetings annually • Invite Council representatives to meetings where appropriate • Engage with elected Councillors Report as per CN Service Agreement Requirements

			<ul style="list-style-type: none"> Voluntary Workers Insurance 	
Association Fees	Annually	\$100	<ul style="list-style-type: none"> A12 Tier 2: Small association financial summary annual lodgement fee 	<ul style="list-style-type: none"> Comply with all aspects of ACT Comply with all ATO requirements Maintain insurances.
				TOTAL: \$4,100
Projects				
Business Beat	Twice a year	nil	<ul style="list-style-type: none"> Regular meet and greet with Local Area Command and walk through precinct Launched in Wallsend 1 October 2020 with support of MP Sonia Hornery. HBA then launched their Business Beat on 1 December 2020, attracting favourable media coverage from local media outlets. The association has continued to work with officers from the Newcastle City Police District to improve communication with local law enforcement and business owners. 	<ul style="list-style-type: none"> Nominated board member to meet with Rep from Newcastle City Police District Quarterly Conduct two 'Business Beat' meets a year.

Live spots	2020 onward Suited to objective: Promotion	\$5, 000	<p>This project is developed by the Hamilton Business Association as a city-wide project that seeks to:</p> <ul style="list-style-type: none"> ▪ Work in collaboration with the BIAs of Newcastle City, Wallsend and Mayfield to create live performance spaces in the four precincts as a tool of community engagement, promotion, activation and placemaking ▪ Provide spaces for local musical artists by working with the music industry, to perform (and therefore providing exposure and income generation opportunities) ▪ Establish opportunity to collaborate further with local artists to create at least four 'live spots' in the four precincts in the first 12 months – with a view to creating additional spaces in the future. Ultimately there will be a series of permanent visual places that can be co-branded as an initiative of the BIAs of the City of Newcastle. ▪ Build a database of quality performers who will be 'accredited' to book a space in any 'live spot' across the city – that can also be utilised by local business 	<ul style="list-style-type: none"> • Create a database of quality performers. This is envisaged to be no less than 40 within 12 months that would circulate across the precinct and city live spots • Editorial and social media content x 20 plus per year.
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			(members) to access and book for events and venue appearance.	
				TOTAL: \$5,000
Economic Development				
Community Activations	2021-2022 Suited to objective: Economic Development, Promotion	\$10,900	<p>The Association develops a strategy to a number of activations and events that are targeted to key target demographics that add value to the precinct businesses and attract visitation.</p> <p>The association will put out expressions of interest for an event coordinator to facilitate a series of small activation throughout Mayfield.</p> <p>The activations will promote the precinct as well as increase foot traffic and business with the precinct.</p>	<ul style="list-style-type: none"> • Send out EOI by end of October 2021 • Engage with local businesses to help improve activations • Gauge feedback from businesses within precinct • Improve turnover and engagement of precinct businesses • Improve visitation across the entire year
				TOTAL: \$10,900
Promotion				

Promotion (Advertising, Social Media, etc.)	2021-2022 Suited to objective: Promotion, economic development	\$10,000	<p>Continue to grow the public's awareness and improve perceptions of Mayfield through promotional campaigns.</p> <p>A range of local media outlets offer organisations "Advertorial" packages, which are paid editorial articles. The association endeavour to work with a range of outlets to promote Mayfield and the businesses that reside within the precinct.</p> <p>Improve Mayfield BIA's Facebook page, with consistent posts and boosting posts when needed.</p>	<ul style="list-style-type: none"> • Run three different campaigns over the 2021/2022 financial year • Measure impact of campaigns from businesses • Reach 1000 followers on Facebook by July 2022 • Report growth of pages at each Board meeting
TOTAL: \$10,000				
Beautification				
Lighting	2021-Onwards Suited to objective: Beautification, economic development,	\$50,000	<p>The Association will begin working with City of Newcastle and a third party lighting company to improve the lighting within the Mayfield Precinct.</p> <p>This project is also about working with a third-party provider to create culturally rich lighting installations. This project is about creating beautiful places that are safe and attract target demographics.</p>	<ul style="list-style-type: none"> • Add value to precinct as a place to live, work and play • Visual enhancement of precinct • Visitation and use – increased use by families • Safety – create spaces that discourage antisocial behaviour

Street Art	2021-2022 Suited to objective: Beautification, promotion	\$15,000	The Association have begun sourcing quotes from local artists to design and paint various artwork in the Mayfield precinct. This project will start with painting various exchange boxes and Telstra Pods within the precinct. The Association believes that it is important for the project to be completed as it not only provides beautification opportunities but also engages and integrates history and culture of the precinct	<ul style="list-style-type: none"> • Complete 5 different poles/boxes by December 2021. • Progress posts on social media • Engagement with key stakeholders (local business) to inform project
Clean Streets	2021 -2022 Suited to objective: Beautification, economic development,	\$5,000	Mayfield BIA aim to engage a company to begin cleaning (pressure hose, removal of graffiti) the Mayfield precinct. The association see this project to be a long-term project to ensure that it is done correctly and that the entire precinct is cleaned.	<ul style="list-style-type: none"> • Begin project by end of 2021 • Engage with local businesses to collect community feedback • To be completed over 3-5 years
				TOTAL: \$70,000
TOTAL		\$100,000		

Project Plans

The following Project Plans are included as DRAFT and background to inform the overarching strategy and key cost allocations as listed in the previous pages

As of 28 June 2021, the following plans are included:

- Live Spots – Business loves live music
- Business Beat – a cross city BIA initiative
- Hapzly Project – 2021 Strategy

Live Spots - Business loves live music

A city wide collaboration to enhance live music



Soft Launch of Live Spots in August 2020

Objective:

Live Spots is the first collaborative initiative of the Business Improvement Associations of the City of Newcastle.

The project is developed by the Hamilton Business Association as a city-wide initiative that seeks to:

- Work in collaboration with the BIAs of Newcastle City, Wallsend and Mayfield to create live performance spaces in the four precincts as a tool of community engagement, promotion, activation and placemaking.
- Provide spaces for local musical artists by working with the music industry, to perform (and therefore providing exposure and income generation opportunities).
- Establish opportunity to collaborate further with local artists to create at least four 'live spots' in the four precincts in the first 12 months – with a view to creating additional spaces in the future. Ultimately there will be a series of permanent visual places that can be co-branded as an initiative of the BIAs of the City of Newcastle.
- Build a database of quality performers who will be 'accredited' to book a space in any 'live spot' across the city – that can also be utilised by local business (members) to access and book for events and venue appearance.

Importantly, the Live Spots initiative is developed by the BIAs to facilitate collaboration, promotion and economic development of the precincts and the wider city landscape, by bringing talented local musicians to local hotspots to increase artist exposure and increase foot traffic to benefit local businesses. This project is about developing a platform for collaboration now and for the future. Several stakeholders have been engaged to help facilitate this project, including Belle Taylor (founder of Fuzion Management) as the project coordinator.

Progress:

Overview - Deliverables Plan 2021 to 2022 – Mayfield BIA

- The Live Spots project was launched on 27 August 2020 in James Street Plaza, Hamilton. The launch had members from each of the key stakeholders including; City of Newcastle, the BIA's, Purser Corporate Communication, Fuzion Management, ATWEA College, Tim Crakanthorp MP - State Member for Newcastle and local media outlets.
- A representative from each BIA has been nominated to be the Live Spots delegate
 - Hamilton: Kellie Mann
 - Mayfield: Ashlea Dowden
 - Newcastle City: Michael Chapman
 - Wallsend: Wayne Rogers
- Belle Taylor from Fuzion Management has been engaged as the talent manager and is currently on a 12 month contract which commenced in
- Regular Live Spots have begun in Hamilton and Wallsend, whilst Newcastle City and Mayfield endeavour to have their Live Spots begin by the end of August.
- A Live Spots website and Facebook page has been set up.
 - [Facebook](#)
 - [Live Spots Website](#)

The Future

It is envisaged that this project will provide:

- A data base of quality performers that can hire the live spots to perform
- A resource for 'members' of BIAs and other stakeholders to engage
- An opportunity to unearth and showcase local talent
- Collaboration opportunities – business, CN, performers, talent agencies, education and music industry

KPIs

- Visitation – this will be dependant on social distancing restrictions in 2021 and beyond, but we anticipate:
 - Weekly live spots – up to 200 people in each precinct (passing)
 - Add value to Newcastle visitor economy as scheduled events
 - Add value to overarching City of Newcastle event strategy (Kate Britton)
- Editorial and social media opportunities x 12 per year
 - Monthly sessions
 - Ongoing live spots
- Collaboration and audience growth – cross promotion and social media expansion
 - Educators – UoN, Atwea, TAFE, YPT and others
 - City of Newcastle
 - Members of BIAs
 - NTIG, HBC and others
 - Music Industry
- Promotion – cross promotion and social media engagement
 - Opportunity to benchmark initiative
 - Award submissions for precinct and city
 - Tourism

Business Beat – An initiative of the BIA's

A city wide collaboration to connect local business and local law enforcement



The launch of Business Beat in Wallsend in October 2020



Mayfield's launch of Business Beat in November 2020

The Business Improvement Associations (BIAs) of Hamilton, Newcastle City, Wallsend and Mayfield launched a collaborative initiative with Police Local Area Command in September 2020 that delivers a series of visits by police officers into business precincts.

For a number of years, Police have met with business associations and chambers in larger groups as a way for business owners and operators to be informed and share information about policing. The challenges of COVID-19 provided an opportunity for BIAs to develop a new approach.

Business Beat will see District Area Commander Wayne Humphrey and Police Officers visit each of the four precincts and meet one-on-one with business operators.

This initiative will give local police officers the opportunity to talk about local policing issues to ensure that local businesses are not only informed but they also have the chance to connect with their local officers.

The 'Business Beat' initiative will aim to show support of local police by local businesses and will give Police the opportunity to talk about local policing issues (inform, educate, connect, visibility). This initiative will also connect local police officers with business owners to develop relationships and make our community safer.

To date all BIAs have held a Business Beat initiative and was widely received by local businesses, community and media. (See Appendix 2.9, 2.10, 2.14)

- Wallsend Town Business Association held their Business Beat on 1 October 2020
- Mayfield BIA held their Business Beat on 11 November 2020
- Hamilton BIA held their Business Beat on 1 December 2020
- Newcastle City BIA held their Business Beat on 3 February 2021

The Future:

The Hamilton Business Association has continued its relationship with the Newcastle City Policing district and endeavour to conduct a Business Beat bi-annually.

- The next Business Beat in Hamilton will be held on 7 July 2021.

Hapzly Initiative – Phase 1

Creating Connected Communities | Beautification + Economic Development + Promotion |

1. The Happy Business Initiative Pilot

Phase One

Focused on a) improving businesses and how they interact with 4 key stakeholders: employees, environment, community, customers; and b) connecting businesses with more customers and more job candidates, and Mayfield with more visitors by using happiness to boost brand trust and value.

Hapzly will;	Outcomes / Objectives
a. Refine business focused survey i.e happy business 21 questions (incl. 1 Cool Thing + Community Subjective Wellbeing Assessment)	Measure and better understand happiness scores across employees, environment, community, customers
b. Connect with businesses and build out email list	Create connection and open communication channels between business and BIA
c. Manage data + refine and create new surveys if/when required + identify improvements	Gather new insights and identify areas to drive change
d. Refine design and print a first run of stickers + delivery/check-in at Happy Businesses	Easily promote status as happy business to customers and visitors
e. Craft and manage social media posts and write articles about happiness in Mayfield and happy businesses	Increase in initiative awareness and exposure
f. Create, manage and update a highlighted/featured happy businesses and one cool thing page on Hapzly website + promote via social	Businesses gain extra promotion, boost brand trust, and reach more customers + inspire other businesses to do more
g. Review + recommendations	Highlight what worked and what needs to change for phase 2

2. Happiness Events

Phase One

Focused around connected, holistic, health. Helping build greater community engagement, trust, and connection between business owners, BIA, and residents. Opportunity to kickstart 'connecting happiness' and creating a community of care and support by introducing the initiative and giving businesses the chance to ask for help.

1 x lunch/evening event: 60-90 minutes:

Happy Mayfield Series: HAPPY PEOPLE; bring local business owners together and boost connection; Introduce the happy business initiative (early education about the *what* and *why* is paramount) with short talk on happiness and associated practice(s); Live music with a local musician; healthy food supplied by a local business; Guided Meditation and/or Yoga Class; Open Discussion and informal chat. A smaller event to educate and engage business (+ more time to launch the initiative) will help make the larger weekend event more effective.

Hapzly will;	Outcomes / Objectives
a. Craft event scope; present happy business and happiness talk; facilitate event	Build community awareness, trust, and belonging and build more intimate connections between business owners, local government, residents, shoppers and visitors.
b. Design + Print D/L flyers for local businesses + Event marketing & promotion	Promote awareness to customers and locals and drive exposure
c. Arrange Speakers, Facilitators (meditation or yoga) + Musician	Business owners learn new ideas for improving themselves and their business, while building support networks and trust

3. Connecting Happiness

Focused on creating opportunities for people in the area and building a community of care and support. Matching "like interests" with businesses that need help but cannot afford to hire; Residents wanting jobs and experience, but no one is hiring; Residents with time on their hands wanting to help their community but not knowing how. Creating regular catch ups for both the volunteers to get together to share their experiences creating a community of caring AND catch ups for business asking for the help.

Action (Work Plan)	Outcomes
a. Craft work plan for locals to drive the Happiness Project in Mayfield, set goals and set time for a weekly catch up to review business feedback and engagement	Promote increased Connection + Cooperation + Community + individual Empowerment. Upskilling and creating work opportunities for individuals.
b. Create + Manage Happiness Ambassadors	Happier locals, spreading it further throughout the community.
c. Connect businesses that asked for help with candidates that showcase like interests.	Created trust and ensured greater alignment between business + residents.

End Phase One, Review All 3 initiatives and prepare for phase 2.

- Level of awareness amongst businesses
- Email list + surveys undertaken
- Event attendance + connecting happiness response
- Social media / community engagement
- Media engagement
- Compile results and recommendations

NCC313; Rev. 2

This Statement is a means of providing guidance for suppliers, service providers, contractors and individuals to adopt standards of ethical behaviour that meet Council's requirements.

Council's business dealings are geared to achieve the best possible outcome in the interests of Council and its ratepayers for the supply of goods and services. In doing this, all business undertakings are conducted with complete fairness and are open to public scrutiny (subject to commercial confidentiality).

Council will ensure that all policies, procedures and practices related to tendering, contracting and the purchase of goods and services are consistent with best practice and the highest standards of ethical conduct. All procurement activities and decisions will be fully and clearly documented to provide an effective audit trail and allow for effective review.

Business Principles

Council has four key principles which guide its dealings on procurement/business matters.

Fairness: Council treats all parties involved in an even-handed manner. Potential suppliers or contractors will be given equal access to information and opportunities to submit bids. Tenders will not be called unless there is the intention to award a contract, subject to a satisfactory offer.

Prevention of Corruption: Council is committed to high ethical standards and it is the responsibility of Councillors and staff, as well as Council suppliers and contractors, to not only act honestly but also report any instances of possible corruption, maladministration or illegal activities.

Value-for-Money: Council considers all factors which are relevant to a particular procurement of goods or services. These include initial and ongoing costs; quality and reliability; customer service; OH&S; technical expertise; environmental sustainability and other legislative compliance. Value for money does not necessarily mean 'lowest price'. However, the lowest price might represent best value for money if it satisfies the other criteria.

Objectivity: Council establishes procurement criteria and objectively assesses all tenders and quotes against these nominated criteria. All procurement decisions are based on merit, and take into account all relevant information and circumstances that apply to a given procurement requirement.

Doing Business with Council

Suppliers and contractors shall be aware of the following requirements when dealing with Council.

Conflict of Interest: Conflicts of interest include both pecuniary and non-pecuniary interests. (A pecuniary interest is an interest that a person has in a matter because of the reasonable likelihood or expectation of appreciable financial gain to the person. A non-pecuniary interest may include family relationships, friendships or other interests that do not involve a direct financial gain.) Council staff are required to disclose any potential conflicts of interest. Suppliers and contractors to Council are asked to do the same.

Use of Information: Any confidential Council information should not be revealed to persons other than those with a genuine need and authority. Private, confidential, commercial-in-confidence or proprietary information obtained as result of doing business with Council, should never be given to competing interests or unauthorised persons. Suppliers and contractors handling private and personal information are expected to adhere to Council's Privacy Management Plan.

Gifts and Benefits: Council only permits the acceptance of gifts by Councillors or staff if they are a nominal or token value and do not create a sense of obligation. Suppliers that offer gifts or benefits as a reward for, or perceived as influencing, the purchasing decisions of Council staff will not be tolerated. Failure to comply with this requirement will result in Council ceasing to do business with the supplier.

Use of Council's Resources: Suppliers and contractors may only use Council resources and equipment if it is in accordance with specific conditions of a formal contract.

Employment of Council Staff: All suppliers and contractors who deal with Council are not permitted to offer Council staff outside employment or business proposals of any kind. Council staff have a duty to maintain public trust and confidence, and not use commercially sensitive information to facilitate future employment opportunities in the private sector.

Public Comments: Suppliers and contractors must not make any public comments or statements that would lead anyone to believe that are representing Council, or expressing its views or policies.

Canvassing Support: During a tender process, any prospective supplier or contractor shall not directly or indirectly discuss their tender bid with a Councillor, or canvass support from an employee of Council, at any time. Any supplier or contractor involved in such activity will result in their tender being rejected.

Complying with this Statement

By complying with the principles and standards of behaviour outlined in this Statement, all parties will be able to advance their objectives and interests in a fair and ethical manner. Failure to comply with this Statement may be deemed as a breach of contract. Council may terminate its contract or take other actions considered appropriate.

Reporting

To report any unethical behaviour in doing business with Council, please lodge a submission in writing to:

General Manager
City of Newcastle
PO Box 489
Newcastle NSW 2300



Terms of Engagement for Consultants

(Edition 5a; January 2012) ©

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The Contracts Panel of the Hunter Region Organisation of Councils
in association with Gosford City Council

HUNTER COUNCILS TERMS OF ENGAGEMENT FOR CONSULTANTS

1. INTERPRETATION

1.1 In these Terms of Engagement for Consultants (**Conditions**) unless the context otherwise requires:

"Agreement" (or **"Contract"**) means the written agreement between the Principal and the Service Provider, dated, together with the documents referred there to in;

"Contract Sum" (or **"Service Fee"**) means the lump sum in Australian Dollars set out or calculated in accordance with service rates or expenses stated in the Contract Schedule - *'Schedule – Tender Price'*;

"Contract Term" means the initial term of the Agreement and any period for which the operation of the Agreement is extended;

"Day" means business day, that is not Saturday or Sunday or public holiday for the Principal's employees;

"Information" means all information, including documents or data however held, stored or recorded, drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, or photographic recordings, audio or audio visual recordings;

"Intellectual Property" includes all proprietary rights in relation to Information including copyright and neighbouring rights and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as defined in *Article 2* of the *Convention Establishing the World Intellectual Property Organisation of July 1967*.

"Moral Rights" means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, in the Agreement.

"Principal" means the Council;

"Principal's Representative" means the person appointed by the Principal for the management of the Agreement;

"Service" means the obligations to be performed by the Service Provider in accordance with the Agreement and includes, but is not limited to, the provision of professional services, the supply of any materials related to these services and all other things required to be carried out by the Agreement;

"Service Provider" (or **"Consultant"**) means the person bound to carry out and complete the Service and includes his executors, administrators, successors and permitted assigns of that party;

1.2 In these Conditions and any Agreement, unless a contrary intention appears, a reference to:

- (a) a person includes an individual, a corporation, partnership, joint venture, governments, local government authorities and agencies;
- (b) a Special Condition of Contract, Schedule or Annexure is a reference to a Special Condition of Contract, Schedule or Annexure to the Contract and each of them forms part of the Agreement;

(c) a party to the Agreement includes the executors, administrators, successors and permitted assigns of that party.

1.3 In these Conditions clause headings are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.

1.4 If a party to the Agreement consists of more than one person, those persons shall be bound jointly and severally.

1.5 Except as provided at law or elsewhere in the Agreement, none of the terms of the Agreement shall be varied, waived, discharged or released except with the prior written consent of the Principal.

2. GOVERNING LAW

The Agreement shall be subject to and construed in accordance with the laws, Acts and other prescribed rules applying in the State of New South Wales.

3. STATUTORY & OTHER REQUIREMENTS

The Service Provider must comply with the requirements of all legislation of the Parliament of New South Wales and the Parliament of the Commonwealth of Australia, all relevant Australian Standards and with the lawful requirements of public and other authorities in any way affecting or applicable to the performance of its obligations.

4. PRINCIPAL'S OBLIGATIONS

The Principal, through the Principal's Representative must give to the Service Provider timely directions, instructions, decisions and information including any approvals the Principal is required to obtain. These directions, instructions, decision and information must be confirmed in writing.

5. RELATIONSHIP WITH PRINCIPAL

The Service Provider must not act outside the scope of the authority conferred on it by this Agreement.

The Service Provider must take upon itself the whole risk of performing its obligations under the Agreement. The Service Provider must also comply with every and all reasonable and lawful direction of the Principal's Representative.

The Service Provider must use all reasonable efforts to inform itself of the requirements of the Principal and must regularly liaise with the Principal's Representative on progress and outcomes during the term of the Agreement.

The Service Provider, shall have the status of an independent contractor and is not an employee of the Principal. The Service Provider shall not be entitled to any benefits that might apply to an employee of the Principal and shall be responsible for any legal entitlements relating to worker's compensation, payroll tax and superannuation.

6. DIRECTIONS & VARIATIONS

Unless otherwise provided, any notice to be given may be given by hand, facsimile, e-mail, or by pre-paid post addressed to the Principal or Service Provider at its stated address.

The Principal may, by written notice, direct the Service Provider to vary the Service. Any variation in the fee payable to the Service Provider as a consequence of a direction issued under this Clause shall be agreed between the Principal and the Service Provider.

Unless otherwise agreed, the value of a variation shall be determined using the service rates and expenses which form the basis of the Contract Sum. If the Contract Sum is a lump sum, then reasonable rates and expenses shall apply.

7. DISCREPANCIES IN INFORMATION

The Service Provider must as soon as practicable give written notice to the Principal's Representative if information and particulars made available to it are inadequate or contain errors.

8. SUB-CONTRACTING OR ASSIGNMENT

The Service Provider must not without the prior written approval of the Principal's Representative subcontract or assign any performance of rights or obligations under the Agreement. In giving approval the Principal may impose such terms and conditions as deemed necessary.

9. CONFLICT OF INTEREST

The Service Provider warrants that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract or any family relationship whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and interests under this Agreement.

The Service Provider must inform the Principal of any matter which may give rise to an actual or potential conflict of interest at any time during the term or the duration and any extension beyond the term of the Agreement and the Principal may regard a conflict of interest as a breach of a fundamental term of the Agreement and may elect to terminate the Agreement

10. STANDARD OF CARE

The Service Provider must perform all its obligations required by the Agreement in a diligent manner and to the standard of skill and care expected of a competent Service Provider.

The Principal reserves the right to qualify or not accept any conclusions or recommendations made by the Service Provider under this Agreement.

11. PERSONNEL

The Service Provider warrants that all personnel engaged by it are appropriately qualified, competent and experienced in the provision of the type of activities connected with the Agreement.

The Service Provider shall reasonably ensure that the personnel nominated in '*Schedule – Management & Staff Resources*' are engaged throughout the entire period of the Agreement.

The Principal may direct the Service Provider to immediately and permanently remove from any activity connected with the Agreement any person who in the opinion of the Principal's Representative is incompetent, negligent or otherwise unacceptable.

12. REPORTS & INFORMATION

The Service Provider must provide the Principal's Representative with written reports or information on any aspects of the Agreement when requested.

Any Information that is produced or reproduced in an electronic format, the consultant must deliver it to the Principal in a format approved by the Principal.

13. DELAYS & EXTENSION OF TIME

The Service Provider shall proceed with the work under the Agreement with due expedition and without delay. When it becomes evident to a party that anything, including an act or omission by another party, may delay carrying out the Service, that party shall notify the other party as soon as practical in writing with details of the possible delay and the cause.

If the Service Provider is or will be delayed in carrying out the Service by a cause beyond the reasonable control of the Service Provider, the time for carrying out the Service shall be extended by the extent of the delay.

The Principal may, at any time, by written notice to the Service Provider extend the time for carrying out the Service for any reason.

Nothing in this Clause shall:

- (a) oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Agreement; or
- (b) limit the Principal's liability for damages for breach of the Agreement.

14. PAYMENT

14.1 Costs, Fees and Expenses

The Contract Sum (or Service Fee) is inclusive of all expenses of the Service Provider, including fees, disbursements, provisional sums and taxes, all of which shall be paid by the Service Provider. Unless otherwise provided, no payment will be made for travelling in relation to the Service.

Fees and expenses shall not be subject to price variation (rise & fall) unless otherwise provided in the Agreement.

14.2 Claims for Payment

The Service Provider must provide the Principal's Representative with a payment claim in the form of a valid tax invoice or adjustment note, in respect of the Service performed and accepted.

If the Service Provider fails to provide an ABN on any tax invoice or adjustment note, the Principal may be required to withhold from the payment an amount of tax calculated in accordance with the relevant taxation act or regulation.

14.3 Time for Payment

The Principal shall pay to the Service Provider the invoiced amount within 25 Days of the receipt of a payment claim if the claim is certified by the Principal's Representative as being correct.

14.4 Disputed Claims

If the Principal's Representative disputes the payment claim amount, the amount the Principal's Representative believes is due for payment shall be paid by the Principal and the liability for payment of the balance of the amount shall be determined in accordance with the provisions of the Agreement.

14.5 Payments on Account

Any payment is not evidence of any value or an admission of liability or that the Service is satisfactory but is a payment on account only; nor shall it amount to a waiver of any right or action, which the Principal may have at any time against the Service Provider.

15. TERMINATION

15.1 Termination by the Principal – Default of the Service Provider

Without prejudice to any other rights, the Principal reserves the right to terminate the Agreement

- (a) if the Service Provider commits a substantial breach of the Agreement, including:
 - (i) failure to carry out the Agreement at all, or within the time specified, or at a reasonable quality.
 - (ii) failure to carry out a reasonable direction of the Principal's Representative
- (b) if the Service Provider becomes bankrupt or makes any arrangements with its creditors or being a Company which goes into liquidation or has a receiver or administrator appointed.

The Principal's Representative must in writing specify the breach and ask the Service Provider to give reasons why the Principal should not take further action. The Service Provider must respond within 5 Days of receiving the notice and if it fails to respond, the Principal's Representative may immediately refuse acceptance of the Service, decline to accept any further Service, take over the uncompleted Service, suspend payments due and have the Agreement completed by others; or immediately terminate the Agreement in writing by itself or through the Principal's Representative

Termination by the Principal will not release the Service Provider from liability in respect of any obligation relating to this Agreement. Any shortfall in costs whatsoever shall be a debt due from the Service Provider to the Principal.

15.2 Termination – Frustration, Convenience

The Agreement may be terminated at any time by mutual agreement or if, under the law governing the Agreement, the Agreement is frustrated. Furthermore the Principal may, for its convenience and without the need to give reasons, also terminate the Agreement at any time. In which ever case, the Principal must give a written notice to the Service Provider. The Service Provider must, on receipt of such notice, immediately cease all activities under the Agreement and take all appropriate action to mitigate any loss or prevent further costs being incurred. The Principal must pay the reasonable fees and expenses of the Service Provider for the extent of the Service performed based upon agreed service rates to the earlier of:

- (a) the date of cessation; or
- (b) the date that the Service Provider was required to cease work.

In no circumstances must the Contract Sum payable for the terminated Service include any loss of prospective profits or exceed the Contract Sum that would have been paid had the Agreement been completed.

15.3 Termination by the Service Provider

If the Principal fails to:

- (a) pay the Service Provider in accordance with this Agreement; or
- (b) issue instructions required.

The Service Provider must in writing specify the breach and ask the Principal to give reasons why the Service Provider should not take further action. The Principal must respond within 5 Days of receiving the notice and if it fails to respond the Service Provider may terminate the Agreement.

16. CONFIDENTIALITY & PRIVACY

The Service Provider its employees, agents, directors, partners, shareholders or consultants must not disclose to any third party, any Information including by way of media interviews or releases relating to the Principal or the affairs of others which may have come to its or their knowledge as a result of the Agreement.

The Service Provider shall not issue any Information, publication, document or article for publication concerning any aspect of the Agreement in any media without prior approval of the Principal, which approval shall not be unreasonably withheld. The Service Provider shall refer to the Principal any enquiries concerning any aspect of the Agreement from any media.

The Service Provider agrees to comply with the provisions of the Privacy & Personal Information Protection Act 1998, as if it were included in the definition of 'public sector agency' under that Act, the Privacy Code of Practice for Local Government and the Principal's Privacy Management Plan.

17. INTELLECTUAL PROPERTY

The Service Provider warrants that it is entitled to use any Intellectual Property which may be used by it in connection with this Agreement. The Service Provider indemnifies and must at all times keep the Principal indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the scope of activities under the Agreement.

The Service Provider grants to the Principal a non-exclusive licence to use the Service Provider's Intellectual Property rights in relation to the Service and must execute an agreement giving effect to this sub-clause if requested by the Principal's Representative.

The ownership of all Intellectual Property in all Information created under this Agreement shall vest with the Principal. The Service Provider must assign ownership of all Intellectual Property rights to the Principal and will ensure that its employees, subcontractors and agents execute all documents necessary to assign such rights to the Principal.

To the extent permitted by law, if the Service Provider is the owner of the Moral Rights in the Intellectual Property referred to in this clause, the Service Provider unconditionally and irrevocably:

- (a) Consents to any act or omission that would otherwise infringe its Moral Rights in that Intellectual Property, including any act or omission that may have taken place before this consent,
- (b) Waives all of its Moral Rights in that Intellectual Property,

for the benefit of the Principal, its licensees, successors in title and anyone authorised by any of them to do acts permitted under the terms of this Agreement.

18. INDEMNITY

The Service Provider indemnifies the Principal, its servants and agents from and against all actions, claims, losses, damages, penalties, demands or costs whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of the performance by the Service Provider of the Agreement including:

- (a) any negligence, wrongful act or omission of the Service Provider or of any other persons for whose acts or

omissions the Service Provider is liable; and/or

- (b) death or injury to any person or loss of or damage to any property; and/or
- (c) any breach of a third party's Intellectual Property Rights; and/or
- (d) any breach of the Agreement by the Service Provider; and/or
- (e) any action, claim or demand from liability brought against the Principal in connection with a breach by the Service Provider of the WH&S Act and associated legislation (so far as it is permissible at law).

The Service Provider's liability to indemnify the Principal is reduced proportionally to the extent that an action or omission of the Principal or employees or agents (other than the Service Provider) of the Principal may have contributed to the injury, damage or loss.

19. INSURANCE

Before commencing the Agreement, the Service Provider must effect and maintain the insurance policies nominated in the "*Schedule – Insurances*". The Service Provider must ensure that all sub-consultants are similarly insured. The Principal's Representative may at any time require proof that these insurances have been effected and are being maintained.

The Service Provider must keep current during the contract term, policies of insurances stated in the *Schedule – Insurances*.

- (a) public liability - in respect of any one occurrence, \$10,000,000 but unlimited in the aggregate;
- (b) Accident insurance - Complying with the *Workers Compensation Act 1987*. Alternatively, where the Service Provider has no employees, insurance for personal accident and illness providing:
 - (i) Weekly benefits of at least 75% of weekly income;
 - (ii) Death benefits of at least \$250,000;
 - (iii) Minimum benefit period of 24 months.
- (c) professional indemnity insurance - a limit for any one claim of \$10,000,000 unless otherwise stated by the Principal.

20. SAFETY MANAGEMENT

The Service Provider must comply with the current WH&S legislation and the Principal's Site safety requirements.

If the Service involves any Site work or the use of major equipment, then the Principal's Safety Management requirements shall apply.

21. DISPUTES

In the event of any dispute arising between the Principal and the Service Provider that can not be resolved by negotiation, the Principal shall nominate a formal dispute resolution process to be followed by the parties.

The Service Provider must continue to perform its obligations under the Agreement notwithstanding the existence of a dispute.

22. WAIVER

A waiver by either party in respect of any breach of a condition or provision of this Agreement shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be interpreted as a waiver of such provision.

23. SURVIVING OBLIGATIONS

The obligations of the Service Provider under the Clauses on *Confidentiality & Privacy, Intellectual Property, Indemnity and Insurance* shall be of a continuing nature and shall survive the termination or expiration of this Agreement.