



9 November 2022

Mr. Jeremy Bath  
Chief Executive Officer  
City of Newcastle  
PO Box 489  
Newcastle NSW 2300

Dear Jeremy,

**RE: Letter of Commitment - Newcastle 500 Supercars Event - Commercial in Confidence**

The intention of this agreement is to formalise the relationship between Destination NSW ("DNSW") and Newcastle City Council trading under the business name of City of Newcastle ("NCC") for the Newcastle 500 Supercars Event - 2017-2023 (the "Event").

This is a variation to the agreement signed on 2 December 2020. The terms in this agreement override the terms in the agreement signed on 2 December 2020.

We would be grateful if you could please sign all copies of this agreement and return one copy at your earliest convenience to confirm that you agree to the terms detailed in this agreement.

Please note that this is a binding agreement and the signatory confirms that they are properly authorised to enter into this binding commitment. This agreement comes into effect when signed and returned to DNSW. The contents of this agreement are private and confidential to the parties.

We wish to acknowledge and thank you and your team for your support of this Event. I look forward to your acknowledgement of this agreement.

Yours sincerely



Steve Cox  
Chief Executive Officer



Agreed to by an authorised representative of Newcastle City Council (ABN 25 242 068 129)

By:  \_\_\_\_\_

Name: Jeremy Bath

Position Chief Executive Officer - City of Newcastle

Date: 22 November 2022

Witness:  \_\_\_\_\_

Name: Zoe Moore

Terms and Conditions

DNSW confirms that Newcastle will be the Host Destination and NCC will be the Host Council for the Event subject to the following conditions:

1. Supercars Australia (SA) grants Destination NSW (DNSW) the Host State Destination rights for the Event.
2. DNSW continues to hold the Host State Destination rights granted by SA for the Term.
3. Event 2020 has been cancelled due to COVID-19 and accordingly no payments are required for this Event.
4. Event 2023 is now to be held as the Supercars Series Opener.
5. NCC and SA will enter into an agreement outlining their respective roles and responsibilities in relation to the Event. NCC will not contract directly with SA and will not fund SA directly in respect of the Host State Destination rights and associated cash contributions except as may be specified with regard to the Event operations and other agreed items between NCC and SA.
6. [REDACTED]

a) Representations and Warranties

NCC represents and warrants that:

- It has the power to execute, deliver and perform its obligations under this agreement.
- There is (and will be) no agreement or understanding with any person which would prevent or adversely affect its ability to comply with its obligations under this agreement.
- It has the expertise, experience and resources required to perform its obligations under this agreement.
- All work performed by or on behalf of NCC and the organisation, promotion, marketing and staging of the Event will be performed with due care, safety and skill.
- The NCC Logos and images that are made available to DNSW under this agreement (and any use or reproduction of such material by DNSW as permitted by this agreement) do not and will not infringe the rights, including the intellectual property rights, of any third party and will not defame anyone.
- Except to the extent agreed by DNSW, the Event will be supported by NCC by using its best endeavours, to meet or exceed all statements, representations, claims and assurances in any documents, proposals or presentations made to or provided to DNSW by or on behalf of NCC concerning any aspect of the Event and/or any benefits or consequences generated by the Event.

b) Indemnification

NCC must indemnify DNSW against any loss suffered or incurred by DNSW as a result of any wrongful act or omission by NCC in relation to its agreed involvement in the Event; any wrongful act or omission by NCC which leads to the cancellation or postponement of the Event; any breach of law, and any loss or damage to any property or personal injury or any other claim by a third party in relation to the Event.

c) Confidentiality

DNSW and NCC acknowledge the importance of confidentiality in all aspects of their respective operations surrounding the Event and agree to keep all confidential information in absolute confidence and not disclose any such information to any person without the prior written consent of the other party or if required by law.

d) Termination

(i) Termination for cause

Either party may immediately terminate this agreement by notice in writing if:

- The other party commits a material breach of this agreement and the breach is not capable of remedy or the breach is capable of remedy but the defaulting party does not remedy the breach within 10 business days of receipt of a written notice from the non-defaulting party specifying the breach and requiring the breach to be remedied; or
- An Insolvency Event occurs in relation to the other party. An Insolvency Event means in relation to a person (Relevant Entity), any of the following occur or any steps are taken or resolutions passed to lead to the following:
  - The Relevant Entity suspends payment of its debts generally or is unable to pay its debts as and when they fall due or is presumed to be insolvent under the *Corporations Act 2001* (Cth), or enters into any arrangement for the benefit of its creditors (or any class of);
  - An application or order is made for the winding up or dissolution of the Relevant Entity; or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Relevant Entity;
  - A receiver, a receiver and manager, trustee, other controller or similar officer is appointed, over the assets or undertaking of the Relevant Entity, or any steps are taken to appoint, or pass a resolution to appoint, any of those persons to the Relevant Entity;
  - An administrator, liquidator or provisional liquidator is appointed to the Relevant Entity or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Relevant Entity; and
  - The Relevant Entity ceases, or threatens to cease, to carry on business.

(ii) Termination by DNSW

DNSW may terminate this agreement by giving notice in writing to that effect to NCC:

- Immediately, if any act, matter or thing (including any dispute or legal claim whether actual or threatened) associated or connected in any way with the Event occurs (or does not occur) and, in the opinion of DNSW, it may cause harm to or bring into disrepute or otherwise adversely affect the reputation or image of the Event, the State of New South Wales, DNSW, the New South Wales Government or the NSW Premier/Minister for Tourism;
- Immediately, if DNSW no longer holds the Host Destination rights granted by SA for the Term;
- On 30 days' notice if in the reasonable opinion of DNSW there has been, or will be or there is a serious risk that there will be both a material impact and a detrimental impact on the

DNSW benefits and/or outcomes of the Event as a consequence of any change from any proposals, presentations, representations, statements or warranties about the Event made by or on behalf of the Event or NCC and the risk cannot be rectified;

- On 30 days' notice if the level of funding obtained or to be obtained by DNSW through the New South Wales Government budget appropriation process or Government approval process in the year in which the Event occurs is in the reasonable opinion of DNSW insufficient to enable DNSW to make the DNSW investment as per the financial schedule.

(iii) Consequences of termination

- On termination or expiry of this agreement:
- NCC must immediately cease using or otherwise referring to any DNSW Logos or anything confusingly similar to such logos and unless DNSW requests that NCC deliver such materials to DNSW, must destroy any material with DNSW Logos on it.

e) Media

- Subject to the exception below, neither party may make any public announcement (including but not limited to social media and media releases), comment to media or issue any media release relating to this agreement or the Event without the prior written approval of the other party as to the form, content and timing of the announcement or release. Requests for DNSW's approval must be forwarded by NCC to DNSW in sufficient time to include appropriate content including quotes from the DNSW's spokespeople.
- If the announcement or media release is required to be made by Law or at the direction of the NSW Premier, Deputy Premier, Minister for Tourism, the relevant party is only required to consult the other party about the contents of that announcement or release before it is made or issued.
- DNSW must be acknowledged in all media statements.

f) Governing Law

This contract is governed by and in accordance with the laws in the state of New South Wales. Each of agreement submits to the exclusive jurisdiction of the courts in the state of New South Wales and their Courts of Appeal.

g) GST

All figures detailed in this agreement are exclusive of Goods and Services Tax.

h) Assignment and Novation

DNSW may assign any of its rights arising out of or under this agreement to the New South Wales Government or any other New South Wales Government Agency without the prior consent of NCC.

DNSW may at any time require NCC to be a party to a novation of this agreement to any other New South Wales Government Agency and NCC consents to such novation and must execute any document reasonably required by DNSW to give effect to it.

i) Force Majeure

A party ("Affected Party") will not be liable for any failure or delay in the performance of its obligations under this agreement to the extent that such failure or delay is caused, directly or indirectly by a Force Majeure circumstance.

A Force Majeure circumstance means:

- a) fire, flood, earthquake, or acts of God;
- b) strikes or industrial action (but not strikes or industrial action by the employees of DNSW or NCC); and

c) acts of war, pandemic, epidemic, terrorism, riots, civil disorders or rebellions or revolutions in Australia.

The Affected Party must:

- (1) promptly advise the other party of the details of Force Majeure circumstance, and its likely effect on the Affected Party's obligations under this agreement; and
- (2) take all steps reasonably necessary to recommence performance and minimise the delay caused by the Force Majeure circumstance.