



CUMBERLAND COUNCIL

Council Meeting

*Wednesday, 6 November 2019 at
6:30pm*

Cumberland Council Chambers

Merrylands Service Centre, 16 Memorial Avenue, Merrylands

Councillor Contact Details

Granville Ward

Clr Steve Christou (Mayor)	0419 651 187	Steve.Christou@cumberland.nsw.gov.au
Clr Ola Hamed	0405 070 007	Ola.Hamed@cumberland.nsw.gov.au
Clr Joseph Rahme	0418 995 471	Joseph.Rahme@cumberland.nsw.gov.au

Greystanes Ward

Clr Greg Cummings	0417 612 717	Greg.Cummings@cumberland.nsw.gov.au
Clr Eddy Sarkis (Deputy Mayor)	0418 306 918	Eddy.Sarkis@cumberland.nsw.gov.au
Vacant	-	-

Regents Park Ward

Clr Ned Attie	0419 583 254	Ned.Attie@cumberland.nsw.gov.au
Clr George Campbell	0409 233 315	George.Campbell@cumberland.nsw.gov.au
Clr Kun Huang	0418 911 774	Kun.Huang@cumberland.nsw.gov.au

South Granville Ward

Clr Glenn Elmore	0418 459 527	Glenn.Elmore@cumberland.nsw.gov.au
Clr Paul Garrard	0414 504 504	Paul.Garrard@cumberland.nsw.gov.au
Clr Tom Zreika	0449 008 888	Tom.Zreika@cumberland.nsw.gov.au

Wentworthville Ward

Clr Lisa Lake	0418 669 681	Lisa.Lake@cumberland.nsw.gov.au
Clr Suman Saha	0419 546 950	Suman.Saha@cumberland.nsw.gov.au
Clr Michael Zaiter	0418 432 797	Michael.Zaiter@cumberland.nsw.gov.au

For information on Council services and facilities please visit www.cumberland.nsw.gov.au

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- C11/19-277 Tender Evaluation Report - Large Billboard Advertising

Note: Included in Closed Council in accordance with Section 10A(2)(c), (d)(i) and (d)(ii) of the Local Government Act as the information involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business, commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and information that would, if disclosed, confer a commercial advantage on a competitor of the council.

15 Other / General Matters

16 Close

Item No: C11/19-261

MINUTES OF THE ORDINARY MEETING OF COUNCIL - 16 OCTOBER 2019

Responsible Division:

Finance & Governance


Officer:

Director Finance & Governance

RECOMMENDATION

That Council confirm the minutes of the Ordinary Meeting of Council held on 16 October 2019.

ATTACHMENTS

1. Draft Minutes - 16 October 2019 [↓](#) 

**DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-261**

Attachment 1

Draft Minutes - 16 October 2019

Minutes of the Council Meeting 16 October 2019

Meeting commenced at 6:30pm

Present:

Steve Christou (Mayor)	Councillor
Eddy Sarkis (Deputy Mayor)	Councillor
Ned Attie	Councillor
George Campbell	Councillor
Greg Cummings	Councillor
Glenn Elmore	Councillor
Paul Garrard	Councillor
Ola Hamed	Councillor
Kun Huang	Councillor
Lisa Lake	Councillor
Joseph Rahme	Councillor
Suman Saha	Councillor
Michael Zaiter	Councillor
Tom Zreika	Councillor
Hamish McNulty	General Manager
Melissa Attia	Director People & Performance
Daniel Cavallo	Director Environment & Planning
Brooke Endycott	Director Community Development
Peter Fitzgerald	Director Works & Infrastructure
Richard Sheridan	Director Finance & Governance

Also Present:

Colin McFadzean	Legal Counsel
Charlie Ayoub	Executive Manager Corporate Services
Carol Karaki	Governance Coordinator
Laith Jammal	Governance Officer

Opening Prayer

The opening prayer was read by Assistant Minister Edward Conteh from Auburn Salvation Army.

Acknowledgement of Country

The Mayor, Councillor Christou opened the Meeting with the following Acknowledgement of Country:

"I would like to acknowledge the traditional owners of this land – the Darug People, and pay my respects to their elders past, present and emerging."

National Anthem

At this point in the meeting the Mayor, Councillor Christou asked all of those in attendance to stand for the playing of the Australian National Anthem.

Notice of Live Streaming of Council Meeting

The Mayor, Councillor Christou advised that the Council meeting was being streamed live on Council's website and members of the public must ensure their speech to the Council is respectful and use appropriate language.

Apologies/Leave of Absence

Nil

Declarations of Pecuniary & Non Pecuniary Conflicts of Interest

The Mayor, Councillor Christou declared a significant, non-pecuniary interest in Item C10/19-252 as a resident close to the proposal is well known to him. As such, the Mayor exited the Chamber during the consideration of this item.

Confirmation of Minutes

Min.724 C10/19-237 Minutes of the Ordinary Meeting of Council - 02 October 2019

Resolved (Garrard/Sarkis)

That Council confirm the minutes of the Ordinary Meeting of Council held on 2 October 2019.

Public Forum:

Speakers on Items on the Council Meeting Agenda

Speaker	Item #	Suburb
Mr Terry Tisdale	C10/19-252 Proposed Closure of Benaud Street Laneway, Greystanes - Consultation Report	Greystanes
Mrs Katie Sevingen	C10/19-252 Proposed Closure of Benaud Street Laneway, Greystanes - Consultation Report	Greystanes
Ms Denise Walsh	C10/19-252 Proposed Closure of Benaud Street Laneway, Greystanes - Consultation Report	Greystanes
Mr Rishikesh Akolkar	C10/19-254 Notice of Motion - Fire Safety	Pendle Hill
Mr Kevin Horne	C10/19-255 Notice of Motion - Council Committees	Wentworthville
Mr Roydon Ng	C10/19-255 Notice of Motion - Council Committees	Lidcombe



Mrs Robyn Main	C10/19-255 Notice of Motion - Council Committees	Wentworthville
Dr John Brodie	C10/19-255 Notice of Motion - Council Committees	Guildford
Mrs Margaret Chapman	C10/19-255 Notice of Motion - Council Committees	Wentworthville

Councillor Saha left the Meeting at 6:54pm and returned to the Meeting at 6:57pm during Public Forum.

Councillor Rahme left the Meeting at 6:55pm and returned to the Meeting at 6:59pm during Public Forum.

Councillor Sarkis left the Meeting at 7:10pm and returned to the Meeting at 7:14pm during Public Forum.

Min.725 Suspension of Standing Orders

Resolved (Sarkis/Cummings)

That in accordance with Clause 8.2 of the Code of Meeting Practice, Council suspend standing orders to allow Items C10/19-252, C10/19-254 and C10/19-255 to be brought forward for consideration at this time of the Meeting.

Min.726 C10/19-252 Proposed Closure of Benaud Street Laneway, Greystanes - Consultation Report

Note: The Mayor, Councillor Christou exited the Chamber at 7:22pm during the consideration of this item as he had declared a significant, non-pecuniary interest in this item. The Deputy Mayor, Councillor Sarkis assumed the Chair accordingly.

Resolved (Attie/Elmore)

That Council:

1. Not support the closure of the pedestrian laneway at the eastern end of Benaud Street, Greystanes that connects through to Cumberland Road.
2. Undertake a site assessment of the laneway to determine if any further safety measures are warranted and feasible, including exploring the possibility of time activated gates.
3. Notify affected residents of the outcome.

The Mayor, Councillor Christou assumed the Chair at 7:32pm following the consideration of this item.

Min.727 C10/19-254 Notice of Motion - Fire Safety

Motion (Saha/Lake)

That Council:

1. Prepare a report detailing the Fire Safety Programs developed to mitigate the identified risk to persons residing in and visiting high rise residential buildings in the Cumberland LGA; and
2. Prepare a report detailing the implementation of the Fire Safety Programs.

The Motion moved by Councillor Saha seconded by Councillor Lake on being Put was declared LOST on the casting vote of the Mayor.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Campbell, Cummings, Elmore, Hamed, Huang, Lake and Saha.

Councillor(s) Against the Motion: Attie, Christou, Garrard, Rahme, Sarkis, Zaiter and Zreika.

Min.728 C10/19-255 Notice of Motion - Council Committees

Motion (Attie/Garrard)

That Council:

1. Combine the Access Committee and Community Safety Committee to form the Access and Safety Committee;
2. Abolish the following Committees:
 - a. Arts Advisory Committee;
 - b. Culturally & Linguistically Diverse (CALD) Advisory Committee;
 - c. Library Committee; and
 - d. Companion Animals Advisory Committee.
3. Amend the terms of reference for remaining committees with the exception of Civic Risk Mutual, Civic Risk Metro (Which remain as the Mayor or nominee & General Manager) and Wentworthville Community Garden Committee (Which will become 1 Ward Councillor) to have a maximum of 2 Councillors as representatives.

Motion of Dissent

During the debate on the matter, Councillor Lake raised a Point of Order on the basis that she was of the opinion that the Motion as it reads cannot be enacted as it requires further clarification.

The Motion of Dissent on being put and declared LOST on the casting vote of the Mayor.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Campbell, Cummings, Elmore, Hamed, Huang, Lake and Saha.

Councillor(s) Against the Motion: Attie, Christou, Garrard, Rahme, Sarkis, Zaiter and Zreika.

Motion – Committee of the Whole (Campbell/Hamed)

During the debate on the matter, Councillor Campbell moved a motion that Council move into a Committee of the Whole to consider this item.

The Motion on being put and declared LOST.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Campbell, Elmore, Hamed, Huang, Lake and Saha.

Councillor(s) Against the Motion: Attie, Christou, Cummings, Garrard, Rahme, Sarkis, Zaiter and Zreika.

Debate was then resumed on the Item.

Amendment (Campbell/Saha)

That point one be omitted from the Motion.

The Amendment moved by Councillor Campbell seconded by Councillor Saha on being Put was declared LOST on the casting vote of the Mayor.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Amendment: Campbell, Cummings, Elmore, Hamed, Huang, Lake and Saha.

Councillor(s) Against the Amendment: Attie, Christou, Garrard, Rahme, Sarkis, Zaiter and Zreika.

The Motion moved by Councillor Attie seconded by Councillor Garrard on being Put was declared CARRIED on the casting vote of the Mayor to become the resolution of Council.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Attie, Christou, Garrard, Rahme, Sarkis, Zaiter and Zreika.

Councillor(s) Against the Motion: Campbell, Cummings, Elmore, Hamed, Huang, Lake and Saha.

Min.729 Resumption of Standing Orders

Resolved (Attie/Cummings)

That in accordance with Clause 8.2 of the Code of Meeting Practice, Council resume the normal order of business.

Min.730 Items by Exception

Resolved (Attie/Cummings)

At this time of the meeting, all items on the agenda not called for discussion were moved collectively, as shown:

That item numbers C10/19-238, C10/19-239, C10/19-242, C10/19-245, C10/19-246, C10/19-249, C10/19-258, C10/19-259 and C10/19-260 be moved in bulk.

Councillor Huang left the Meeting at 9:11pm and returned to the Meeting at 9:22pm during the consideration of this item.

Councillor Zaiter left the Meeting at 9:15pm and returned to the Meeting at 9:20pm during the consideration of this item.

Councillor Rahme left the Meeting at 9:15pm and returned to the Meeting at 9:21pm during the consideration of this item.

Min.731 C10/19-238 Legal Report

Resolved (Attie/Cummings)

That Council receive this report.

Min.732 C10/19-239 Proposed Christmas/New Year Operations 2019 - 2020

Resolved (Attie/Cummings)

That Council:

1. Endorse the implementation of the operational arrangements outlined in this report for the 2019/20 Christmas/New Year period and that these details be published to the community; and

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2. In accordance with Section 377 of the Local Government Act 1993, delegate authority to the Mayor and General Manager or in their absence, to the persons acting in these roles, during the period of Council recess to jointly exercise the powers, authorities, duties and functions of Council which cannot reasonably be deferred to the first ordinary Council meeting following the Council recess. This period:
- a) Commencing at midnight on the day of the Council meeting held immediately before the recess period as approved by Council (18 December 2019); and
 - b) Concluding at the time of commencement of the first Council meeting held immediately after the end of the recess period (5 February 2020); and noting that any such decisions are to be unanimous and circulated to Councillors for their information, and will be reported to the first Ordinary Council meeting following the recess period.

Min.733 C10/19-242 Investment Report - September 2019

Resolved (Attie/Cummings)

That Council receive the September 2019 Investment Report.

Min.734 C10/19-245 Cumberland Council Community Grants Program Round One 2019/2020

Resolved (Attie/Cummings)

That Council:

1. Adopt the 37 applications recommended for funding in Attachment 1 and allocate \$275,838 from the Cumberland Community Grants Program budget 2019/2020.
2. Advise all applicants under Round One of the Community Grants Program 2019/2020 of funding allocations and provide feedback and support to applicants that were unsuccessful.
3. Rollover unallocated funds from Round One (\$97,241) to Round Two of the Cumberland Community Grants Program 2019/20.
4. Withdraw funding allocations for projects recommended for funding in Round One of the Community Grants Program 2019/2020 if the organisation has not provided compulsory information to Council by 30 November 2019 and rollover any unallocated funds to Round Two of the 2019/2020 Cumberland Community Grants Program.

Min.735 C10/19-246 Adoption of Community Development Policies - Post Exhibition**Resolved (Attie/Cummings)**

That Council adopt the *Draft Access and Equity Policy*, *Draft Art and Cultural Collection Policy*, *Draft Seniors' Units for Independent Living Policy*, and *Draft Volunteers Policy* as outlined in Attachments 1 to 4 of this report.

Min.736 C10/19-249 Compliance and Enforcement Policy and Guideline**Resolved (Attie/Cummings)**

That Council place the Compliance and Enforcement Policy and Compliance and Enforcement Guideline on public exhibition for a period of 28 days, with a report to be provided back to Council following the conclusion of the exhibition period.

Min.737 C10/19-258 Request from Fire & Rescue NSW for a Fire Safety Audit on Identified Building**Resolved (Attie/Cummings)**

That appropriately delegated Council officers conduct a fire safety audit as requested by Fire & Rescue NSW [Ref: BFS19/1258 (7139)] and take appropriate regulatory action to ensure all essential fire safety measures are in accordance with the National Construction Code Volume One 2019 Building Code of Australia.

Min.738 C10/19-259 Tender Evaluation Report - 615A Great Western Highway Pemulwuy - Site Remediation**Resolved (Attie/Cummings)**

That Council:

1. Accept the Tender Evaluation Panel's recommendation to award the contract to RMA Contracting Pty Ltd (ABN 28 092 116 704) in accordance with clause 178(1)(a) of the *Local Government (General) Regulations 2005*, for \$546,338 excluding GST.
2. Delegate to the General Manager the authority to execute the contract and any associated documents.

Min.739 C10/19-260 Supply of Electricity through Local Government Procurement**Resolved (Attie/Cummings)**

That Council:

1. In accordance with the tender process run by Local Government Procurement for electricity contracts, award the Tender for supply of electricity per the rates outlined in the Council report to:
 - Origin Energy for Large Sites (ABN 33 071 052 287) and;
 - ERM Power for Unmetered Public Lighting (ABN 87 126 175 460) and;
 - AGL Energy for Small (SME) Sites (ABN 74 115 061 375)
2. Delegate authority to the General Manager to execute the contracts.

Min.740 C10/19-240 Draft Risk Management Policy**Resolved (Lake/Attie)**

That Council place the *Draft Risk Management Policy* on public exhibition for a period of 28 days, with a report to be provided back to Council following the conclusion of the exhibition period subject to a minor amendment to expand on the definition of operational risk.

Councillor Sarkis left the Meeting at 9:19pm during the consideration of this item.

Min.741 C10/19-241 Annual Financial Statements 2018/19**Resolved (Elmore/Attie)**

That Council:

1. Confirms that it is of the opinion that:
 - a) The 2018/2019 general purpose financial statements for Cumberland Council have been prepared in accordance with:
 - the *Local Government Act 1993* (as amended) and the Regulations made thereunder;
 - the Australian Accounting Standards and other pronouncements of the Australian Accounting Standards Board;
 - The Local Government Code of Accounting Practice and Financial Reporting.
 - b) These statements present fairly the Council operating results and financial position for the year.
 - c) These statements accord with Councils accounting and other records.

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- d) Council is not aware of any matters that would render these statements false or misleading in any way.
2. Confirms that it is of the opinion that:
- a) the 2018/2019 special purpose financial statements have been prepared in accordance with:
- the NSW Government Policy Statement 'Application of National Competition Policy to Local Government';
 - The Division of Local Government Guidelines 'Pricing and Costing for Council Business- A Guide to Competitive Neutrality';
 - The Local Government Code of Accounting Practice and Financial Reporting.
- b) These statements present fairly the operating results and financial positions for each of the Council's declared business activities for the year.
- c) The statements accord with the Council accounting and other records.
- d) Council is not aware of any matters that would render the reports false or misleading in any way.
3. Authorise the Mayor, Deputy Mayor, General Manager and the responsible accounting officer to sign the statements by Councillors and Management.
4. Publish a public notice as soon as practicable after Council receives a copy of the auditor's reports.

Councillor Lake left the Meeting at 9:20pm and returned to the Meeting at 9:22pm during the consideration of this item.

C10/19-242 Investment Report - September 2019

This item was dealt with earlier in the meeting.

Min.742 C10/19-243 Quarterly Update on the Implementation of the Stronger Communities Fund

Resolved (Cummings/Garrard)

That Council:

1. Note the progress on the implementation of the Stronger Communities Fund Major Projects Program.
2. Submit a copy of this report to the Office of Local Government to meet reporting requirements under the NSW Government's Stronger Communities Fund Guidelines.
3. Reallocate \$410,000 from the Duck River Playground to the Central Gardens all Abilities Playground to ensure project commitment and acquittal requirements are met.
4. Reallocate \$290,000 from the Prospect Hill and Access Lookout Project to the

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- Granville Centre to ensure project commitment and acquittal requirements are met.
5. Reallocate \$290,000 of general funds from the Granville Centre Project to the Prospect Hill Access and Lookout Project to ensure the continuation of this project.

Councillor Sarkis returned to the Meeting at 9:24pm during the consideration of this item.

Min.743 C10/19-244 Response to Notice of Motion - Cumberland Heritage Precinct (Cumberland Heritage Centre)

Resolved (Garrard/Rahme)

That Council consider funding for the establishment of a Heritage Centre at the existing Granville Library site during the development of the 2020/21 budget.

C10/19-245 Cumberland Council Community Grants Program Round One 2019/2020

This item was dealt with earlier in the meeting.

C10/19-246 Adoption of Community Development Policies - Post Exhibition

This item was dealt with earlier in the meeting.

C10/19-247 Preparation of a New Cumberland Development Control Plan

This item was dealt with later in the meeting.

C10/19-248 Proposed Precinct and Site Specific Planning Controls for Inclusion in the New Cumberland Development Control Plan

This item was dealt with later in the meeting.

C10/19-249 Compliance and Enforcement Policy and Guideline

This item was dealt with earlier in the meeting.

Min.744 C10/19-250 Draft Cumberland Open Space and Recreation Strategy 2019-2029**Resolved (Lake/Huang)**

That Council place the *Draft Open Space and Recreation Strategy 2019-2029* on public exhibition for a period of 28 days subject to the following amendment to Strategic Direction 1:

Deliver new open space and new recreation facilities to meet the needs of our growing population.

C10/19-251 Response to Notice of Motion - Draft Wyatt Park Plan of Management

This item was withdrawn by the General Manager.

C10/19-252 Proposed Closure of Benaud Street Laneway, Greystanes - Consultation Report

This item was dealt with earlier in the meeting.

Min.745 C10/19-253 Quarterly Progress Report on Council Consultative and Advisory Committees**Resolved (Attie/Sarkis)**

That Council:

1. Receive the draft minutes of the Consultative and Advisory Committee meetings held as listed in the report and included in Attachments 1, 2, 3, 4, 6 and 7.
2. Write to the Minister for Transport and local State Members in relation to the inconsistent application of Tactile Ground Surface Indicators on train platforms in the Cumberland LGA.
3. Adopt the Community Committee Members listed in the report for membership on the Access and Safety Committee for the remainder of the committee term and advise all applicants in writing of the outcome of their nomination for membership.

C10/19-254 Notice of Motion - Fire Safety

This item was dealt with earlier in the meeting.

C10/19-255 Notice of Motion - Council Committees

This item was dealt with earlier in the meeting.

C10/19-256 Notice of Motion - Council Members for Sydney Central City Planning Panel

This item was dealt with later in the meeting.

Min.746 C10/19-247 Preparation of a New Cumberland Development Control Plan**Resolved (Attie/Sarkis)**

That Council note the approach and key milestones for the preparation of the new Cumberland Development Control Plan (DCP).

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Attie, Campbell, Christou, Cummings, Garrard, Elmore, Hamed, Huang, Lake, Rahme, Saha, Sarkis, Zaiter and Zreika.

Councillor(s) Against the Motion: Nil

Min.747 C10/19-248 Proposed Precinct and Site Specific Planning Controls for Inclusion in the New Cumberland Development Control Plan**Resolved (Attie/Sarkis)**

That Council:

1. Endorse the carry over of precinct and site specific planning controls covered under existing Development Control Plans for locations in the Cumberland area, as provided in Attachment 1; and
2. Note that the above item will be included in the draft Cumberland Development Control Plan.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Attie, Campbell, Christou, Cummings, Garrard, Elmore, Hamed, Huang, Lake, Rahme, Saha, Sarkis, Zaiter and Zreika.

Councillor(s) Against the Motion: Nil

Min.748 C10/19-256 Notice of Motion - Council Members for Sydney Central City Planning Panel**Motion (Attie/Garrard)**

That Council:

1. Appoint Councillors Attie and Sarkis as the Council Members for the Sydney Central City Planning Panel;
2. Appoint Councillors Garrard and Zaiter as the Alternate Council Members for the Sydney Central City Planning Panel; and
3. Notify the Sydney Central City Planning Panel of Council's decision.

Foreshadowed Motion (Lake/Elmore)

That in relation to Council nominees for the Sydney Central City Planning Panel:

1. A Business paper be brought to the next Council meeting which recommends Council staff preferred candidates for the appointment of an expert council nominee and alternate expert council nominee.
2. Any Councillor interested in being appointed to the role of the other Council nominee advise the General Manager in 7 days and the name(s) be brought to the next Council meeting for consideration for nomination for Council nominee or alternate council nominee.

The Motion moved by Councillor Attie seconded by Councillor Garrard on being Put was declared CARRIED on the casting vote of the Mayor to become the resolution of Council.

A division was called, the result of the division required in accordance with Council's Code of Meeting Practice is as follows:

Councillor(s) For the Motion: Attie, Christou, Garrard, Rahme, Sarkis, Zaiter and Zreika.

Councillor(s) Against the Motion: Campbell, Cummings, Elmore, Hamed, Huang, Lake and Saha.

C10/19-257 Notice of Motion - Amendment to Code of Meeting Practice

This item was withdrawn.

C10/19-258 Request from Fire & Rescue NSW for a Fire Safety Audit on Identified Building

This item was dealt with earlier in the meeting.

C10/19-259 Tender Evaluation Report - 615A Great Western Highway Pemulwuy - Site Remediation

This item was dealt with earlier in the meeting.



**C10/19-260 Supply of Electricity through Local Government
Procurement**

This item was dealt with earlier in the meeting.

The Mayor, Councillor Christou closed the meeting at 9:54pm.

Chairperson_____ General Manager_____

Item No: MM11/19-12

MAYORAL MINUTE - KEEP AUSTRALIA BEAUTIFUL NSW AWARDS 2019

Author: Mayor Steve Christou
File Number: SC486

SUMMARY

On Thursday 17 October 2019 I attended the Keep Australia Beautiful NSW 2019 Sustainable Cities Awards held at Leichhardt Oval, Lilyfield along with Council staff.

These important Awards recognise the accomplishments of council and community projects that actively work towards making Sydney a prime model for sustainable practices and inclusion across all sectors of the community and industry.

Council was announced as the winner across two individual award categories, including:

- The Habitat and Wildlife Conservation Award for the *'Keepin a Hive' Native Bee Program*; and
- The Community Spirit and Inclusion Award for *the Refugee Camp in My Neighbourhood*.

Council also received a 'highly commended' award under the Waste Less, Recycle More Waste Award category for the *Reducing Contamination, Increasing Recycling in Multi-Unit Dwellings (MUDS) Initiative*.

It is with great pleasure that I also advise, Cumberland Council was announced as the winner of the *Overall 2019 Sustainable Cities Award*. This Award is bestowed upon councils that have successfully undertaken projects and actions in a number of areas of environmental sustainability and social inclusion.

Written award submissions put forward by Council were only part of the judging process, with an assessor also undertaking site tours across Cumberland to experience activities firsthand, like the Refugee Camp in My Neighbourhood tour and visits to local beehive sites.

The judges noted, "Cumberland Council truly shone and have shown they are clear leaders with a diverse range of programs and activities focused on the environment, community inclusion, integration and connection."

These awards are a testament to the hard work and dedication of Council staff and volunteers from within the community who worked side by side to drive these important initiatives in Cumberland. I am extremely proud of their efforts, and extremely proud that Council has been recognised as a leader in this area.

RECOMMENDATION

That Council congratulate and thank all staff and volunteers that contributed to the Keep Australia Beautiful NSW 2019 Sustainable Cities Awards received.

ATTACHMENTS

Nil

Item No: MM11/19-13

MAYORAL MINUTE - NSW TENNIS AWARDS

Author: Mayor Steve Christou
File Number: SC486

SUMMARY

On Thursday 24 October 2019 I attended the NSW Tennis Awards held at the Royal Randwick Racecourse along with Council staff.

I am pleased to announce that Cumberland Council won the Supporting Tennis (Government) Award. This Award recognises the Local Government Authority (LGA) who is judged to be the most engaged with, and supportive of, tennis in their community in NSW.

Cumberland Council is committed to providing reliable and easy access to our venues and was the first council in NSW to implement the Book-a-Court system across all tennis venues. Implemented in October 2018, the Book-a-Court online system increased participation in Council's tennis venues by over 71% within the first 6 months.

The Award also recognised Council's provision of accessible programs to the community to drive participation in tennis, including free school holiday clinics for local children and young people, and that Council has also invested in upgrading its tennis facilities across Cumberland.

I am extremely proud that Council has been recognised at these prestigious awards, and again has been recognised as a leader in NSW.

RECOMMENDATION

That Council congratulate and thank all staff that contributed to the receipt of this award.

ATTACHMENTS

Nil

Item No: MM11/19-14

MAYORAL MINUTE - DIWALI STREET FESTIVAL 2019

Author: Mayor Steve Christou
File Number: SC486

SUMMARY

Cumberland is one of the most multicultural Local Government Areas in NSW, if not Australia. We celebrate this diversity through our vibrant events program.

On Saturday 26 October 2019, along with my fellow Councillors, I had the great pleasure of celebrating Diwali with thousands of local residents along Station Street, Wentworthville.

Last year around 9,000 visitors came to our inaugural Diwali Street Festival and I am delighted that the Festival continued to attract even larger crowds this year with an estimated 15,000 attendees.

The event was an extravaganza of live entertainment, performances and street stalls. Many community members arrived dressed in traditional attire, contributing to the atmosphere of community celebration and inclusion. Council was also able to deliver fireworks as part of the event for the very first time, and I can't think of a better way to end a festival of lights celebration.

Cumberland Council is a young Council, which is committed to cultural diversity and Council's Diwali Street Festival is a living example of this.

I would like to thank the staff at Council who worked tirelessly to deliver the Festival. I would also like to thank our sponsors, Wenty Leagues and Ria Money Transfer as well as the many community organisations and volunteers who worked with Council to make the event such a success.

RECOMMENDATION

That Council acknowledge and thank Council staff, event sponsors, community organisations and volunteers who worked together to deliver a highly successful Diwali Street Festival in 2019.

ATTACHMENTS

Nil

Item No: C11/19-262

ROAD CLOSURE OF MILTON STREET BETWEEN RAILWAY PARADE AND CLARENCE STREET, LIDCOMBE

Responsible Division: Finance & Governance
Officer: Director Finance & Governance
File Number: L-02-09
Community Strategic Plan Goal: *A safe accessible community*

SUMMARY

This report recommends the proposed road closure of Milton Street between Railway Parade and Clarence Street, in Lidcombe. The purpose of this road closure is to expand the open space (park) area for the community for recreational purposes.

RECOMMENDATION

That Council:

- 1. Approve the permanent closure of Milton Street between Railway Parade and Clarence Street, Lidcombe to expand the open space (park) area for the community for recreational purposes;**
- 2. Advertise in the local newspaper, for a period of 28 days, the proposal to permanently close the section of Milton Street;**
- 3. Authorise the General Manager to process and resolve any submissions received with respect to the proposal;**
- 4. Prepare the necessary documentation to complete the road closure under the provisions of the *Roads Act 1993*; and**
- 5. Notify the affected residents in Clarence Street of Council's action accordingly.**

REPORT

The former Auburn City Council acquired the properties at numbers 1 and 3 Clarence Street Lidcombe, with the intention to incorporate them with the existing reserve area located at the corner of Milton Street and Railway Parade, Lidcombe.

To achieve the aim of creating a new and larger park, it is necessary to close a section of Milton Street between Railway Parade and Clarence Street.

The following marked up aerial photo shows the properties at 1 and 3 Clarence Street, the existing park/reserve and the proposed section of Milton Street to be closed, which will form the new larger park area:



Under the former Auburn City Council, officers previously undertook traffic counts in Milton Street to assess the impact of diverted traffic and the impact at the time was considered negligible. As a result of the traffic counts undertaken, it was determined there would be no impact on emergency vehicles and pedestrian movements due to the proposed road closure.

As per the Roads and Maritime Services (RMS) requirements, a traffic management plan (TMP) was submitted to the RMS for approval of the road closure. The TMP was prepared in accordance with the RMS 'Procedure for use in the preparation of a traffic management plan' template. The RMS has granted approval of the TMP for the closure of Milton Street between Railway Parade and Clarence Street, Lidcombe.

The closure was reported to the Auburn Traffic Committee on 26 March 2014 and the Committee recommended that:

1. The section of Milton Street between Railway Parade and Clarence Street in Lidcombe be closed.
2. The affected residents in Clarence Street be notified of Council's action accordingly.

By NSW Government Gazette of 12 February 2016, and in pursuance of section 16 of the *Roads Act 1993*, the subject section of Milton Street was dedicated as a Public Road.

This report now recommends that Council proceed to notify the public of its intention to close the road.

COMMUNITY ENGAGEMENT

The former Auburn City Council undertook a formal consultation process with the all stakeholders including affected residents, bus companies and the Taxi Council. As part of the consultation process, Council distributed over 100 letters to affected residents for comment. No objections were received for the proposed closure of Milton Street at the time.

Council will again provide public notice of the proposed closure of the section of Milton Street as required by the road closure process, and accordingly will undertake a public consultation process with the community again to seek their input.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

As identified in this report, there are currently a park and an area of open space that Council has acquired to deliver amenity to the community. These areas are supported by Milton Street. The risk associated with Council not supporting the road closure is that Council will not capitalise on a significant opportunity to consolidate the two open space areas to activate the community.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report. There are financial implications associated with the re-vegetation over the road once closed, and the establishment of a local park.

CONCLUSION

In order to deliver better amenity to the community, Council previously acquired 1 and 3 Clarence St, Lidcombe with a view of providing expanded open space to the community. It is now recommended that the proposal to close part of Milton Street, Lidcombe be approved by Council to be notified and consulted with the community.

ATTACHMENTS

Nil

Item No: C11/19-263

UPDATE ON NSW LOCAL GOVERNMENT GRANTS COMMISSION'S REVIEW OF FINANCIAL ASSISTANCE GRANTS

Responsible Division: Finance & Governance
Officer: Director Finance & Governance
File Number: HC-12-11-10/07
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

The purpose of this report is to provide Council with an update on the NSW Local Government Grants Commission's review of Cumberland's Financial Assistance Grant allocation.

RECOMMENDATION

That Council receive the information and note the attached letter.

REPORT

At the Ordinary Meeting of Council held on 6 March 2019, Council considered Item No: C03/19-21 'Federal Assistance Grants Cumberland - Status Of Correspondence Sent to Federal Members' and subsequently resolved (Min. 440) as follows:

"That Council communicate to the respective Members of Parliament who neglected to make representations on Council's behalf, its extreme disappointment in their lack of endeavour in representing Council, and request assurances that they have made representation on Council's behalf."

The following table summarises the correspondence:

Recipients	Member	Action	Status
Ms Michelle Rowland MP	Federal Member for Greenway	Letter sent 21 March 2019	Council and Ms Rowland exchanged two letters each. In summary, Ms Rowland made representations to the Minister of Local Government and contributed to the NSW Local Government Grants Commission attending Council.

Recipients	Member	Action	Status
Hon Tony Burke MP	Federal Member for Watson	Letter sent 21 March 2019	No response
Hon Jason Clare MP	Federal Member for Blaxland	Letter sent 21 March 2019	No response
Hon Craig Laundy	Federal Member for Reid (now Former Member)	Letter sent 21 March 2019	No response

Further to this, Council had the opportunity to meet the NSW Local Government Grants Commission ('Commission') in June 2019. At this meeting, Council requested an increase in the Financial Assistance Grant allocation following the boundary change in 2016, which resulted in a lower grant per capita in comparison to other similar metropolitan councils. In addition to the inequity, Council requested certain information in relation to the detailed calculation of the grant as it had not been provided on previous requests.

Following the June 2019 meeting, the Commission wrote to Council in September 2019 (see attached). The outcome of the letter is as follows:

- The factors that have created the disadvantage are not factors that the Commission can consider or act upon. Therefore they are unable to assist Council and have formally rejected Council's additional funding request.
- The detailed calculation for the amalgamated entity of Parramatta and Cumberland is now attached. One of the challenges in the distribution is recognising the population shifted from Auburn were a highly advantaged population that were transferred to Parramatta, whilst the more disadvantaged population transferred to Cumberland. It would be difficult to assign a total value to this under the rules available to the Commission. Council estimates \$1m based on the pro rata basis of population.

The relative reduction in grants has become a financial disadvantage for Cumberland. Rates income cannot be increased to offset losses in grants income due to the current *Local Government Act 1993* provisions. The only option available to Council is to now make an application to IPART for an increase in the rate cap to offset losses in income and to ensure financial sustainability can be achieved.

There was a discussion at the June 2019 meeting in relation to special consideration for a Council that has been disadvantaged by the new calculation of the grant but this was not addressed in the Commission's response. The factors affecting Cumberland were not considered when the amalgamation was approved in 2016, and Council will work with ratepayers to formulate a solution to remain financially sustainable.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

Following the advice received from the NSW Local Government Grants Commission, Council's grant is unable to be increased despite a loss of income over 3 years of between \$3m to \$4.5m as at 30 June 2019.

CONCLUSION

Following a long period of consultation with the NSW Local Government Grants Commission, it would appear that the grant is unable to be amended and Council can consider making an application to increase the rate cap for the loss of income and to restore financial sustainability.

ATTACHMENTS

1. Correspondence from NSW Local Government Grants Commission [↓](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-263

Attachment 1

Correspondence from NSW Local
Government Grants Commission



NSW Local Government Grants Commission
5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

OUR REFERENCE:: A670324
CONTACT: Helen Pearce
(02) 4428 4131
helen.pearce@olg.nsw.gov.au

Clr Greg Cummings
Mayor
Cumberland Council
PO Box 42
MERRYLANDS NSW 2160

Email: council@cumberland.nsw.gov.au

Dear Clr Cummings

I refer to the Commission's recent visit to Council in June 2019. As the Commission Chairperson and Executive Officer were unable to attend Council's presentation I have been asked to respond to Council on behalf of the Commission.

Firstly, may I express again the Commission's appreciation for the hospitality afforded the Commissioners at this visit. While it is part of the Commission's remit to visit councils, the Commission is always encouraged in its work when it is received warmly by a council. This is especially the case where the council is endeavouring to work through issues affecting it with the Commission, as is the case with Cumberland Council.

Turning to that matter, the Commission indicated at the June visit that it would formally respond to the Council's presentation to address concerns the Council has raised about the 'starting point' following the creation of the council in May 2016. The purpose of this letter is to address those matters.

The Commission notes that Council believes that the Commission's starting point for Financial Assistance Grant (FAG) allocations post amalgamation should be revisited. On Council's calculations, it should receive an additional amount of FAG which is \$1.3 million higher than the adjusted 2018 figure (Council presentation p. 9).

Amalgamation Proclamation

Council was created by the *Local Government (City of Parramatta and Cumberland) Proclamation 2016* made in May 2016. Clause 4 is the relevant provision. It is set out below.

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4 Amalgamations and boundary alterations

(1) The areas specified in the Table to this subclause are amalgamated, and the boundaries of the other areas specified in this Table are altered, to constitute new areas when this Proclamation commences with: (a) the names specified in the Table, and (b) the boundaries shown for each new area on the maps kept in the register of public surveys on the amalgamation day and having the identifier numbers specified beside the new areas in the Table.

Table

Column 1	Column 2	Column 3	Column 4
Areas amalgamated	Areas altered	New areas	Map identifier numbers
City of Auburn, City of Holroyd, City of Parramatta	The Hills Shire, Hornsby	City of Parramatta Cumberland	PP5002 PP5003

Amalgamation Calculations

As the Councils were created from merged parts, rather than complete amalgamations, Mr Bruce Wright, the then Commission's Executive Officer (EO), established the 'starting point' for Cumberland in 2016. Operating on the established allocation system, he applied the same methodology to that used by the Commission in 2004 when parts of South Sydney were transferred to Sydney City Council.

In regards to Cumberland's amalgamation, the former Council's entity data was used by the EO as this was the only data available. The grant calculations were then apportioned based on population. The attached excel spreadsheet has the relevant calculations. Council will note that the two components of the grants, General Purpose (GPC) and Local Roads (LRC), were combined to identify the starting point.

The Commission acknowledges that Council would prefer that the apportionment occur not on a population basis, but rather on a 'relative disadvantage' basis (presentation p. 9). In noting that, the Commission also notes that Council accepts that on a per capita basis the apportionment undertaken has resulted in a net increase in rate income in favour of the Council in the order of \$661,999 (see points d. and f. below).

As the Commission understands Council's position, it propounds that the Commission should apportion the FAGs on a relative disadvantage basis because:

- Cumberland acquired a net additional 28,350 residents largely from Granville, South Granville and Guildford in former Holroyd while giving up some residents in Newington and Wentworth Point to new Parramatta
- Former Auburn 'levied 53% rates from the business sector due to a large imbalance between capacity to pay and service requirements.'
- Former Auburn levied residential rates at \$12,975,149

- d. Cumberland levies residential rates at \$17,657,813 (increase of \$4,682,664)
- e. Former Auburn levied business rates at \$14,111,784
- f. Cumberland levies business rates at \$10,091,120 (decrease \$4,020,665)
- g. Former Auburn had a ratio of residential to business of 95:5 which has been 'distorted' by the amalgamation such that its expenditure has increased by \$3.5 mil p/a increasing total expenditure by \$7.7 mil.

The Commission notes that former Auburn made a policy decision when setting its rates structure so as to derive a greater relative income from business rates. As Council is aware, the effort neutral National Principle precludes the Commission taking into account that policy decision. The Commission further notes the embedded implication that if Council's submission were to be implemented then the Parramatta's 'starting point' ought to be correspondingly revisited and reduced. Recognising that in any given year the Commission must allocate the entire Grant funding 'bucket,' such an approach is not possible.

National Principles

The relevant National Principle in the Federal Legislation that is applicable to the Council's situation is Principle 6 dealing with amalgamations:

6. Council Amalgamation

Where two or more local governing bodies are amalgamated into a single body, the general purpose grant provided to the new body for each of the four years following amalgamation should be the total of the amounts that would have been provided to the former bodies in each of those years if they had remained separate entities.

In applying Principle 6 the Commission is called upon to ensure that what is paid in grants equates to *the total of the amounts that would have been provided to the former bodies in each of those years if they had remained separate entities*. Strictly, Principle 6 cannot be directly applied here. This is because what occurred in 2016 was not that *two or more local governing bodies [were] amalgamated into a single body*. Rather, under the Proclamation there was a combination of amalgamation and boundary alterations such that three areas were reconstituted as two new areas (Proclamation cl 4).

Council appears to acknowledge that due to the nature of the amalgamation/alterations some form of apportionment under Principle 6 is required because of the give and take of population. The Commission notes further that Council seeks an apportionment differentiated on the basis of SEIFA outcomes. However, such an approach is not consistent with Principle 6. The Principle doesn't refer to SEIFA. It should also be noted that the Commission doesn't apply SEIFA as a determinate in the allocation of FAGs.

As is apparent from the attached spreadsheet, the total of the amounts that would have been provided to the former entities (Auburn, Holroyd and Parramatta Councils) in each of those years if they had remained separate entities can be ascertained in the

aggregate. It is this aggregate that has to be apportioned as between Cumberland and new Parramatta. Principle 6 does not direct the outcome sought by Council in the circumstances of this amalgamation.

The Commission has followed the established Principle of apportioning by population according to where the population fell under the new boundaries. This is consistent with the National Principles. The Commission has also made due allowance for the population discrepancy identified by the reallocation of population by the revised ABS data. Due to the later ABS population revision, Cumberland has been notified (vide Commission's letter 1 August 2018) that its 'starting point' has been revised upwards via a one-off statistical adjustment with an amount of \$562,382 to be added to its 2018-19 allocation. This adjustment is recognised in Council's presentation (at p. 7).

Ultimately, Council's shortfall argument is constructed on a preferred policy position that FAGs should be allocated upon the basis of SEIFA (Council's presentation pp 9-10). The Commission acknowledges that some councils seek such a change to the Commission's allocation methodology. The Commission intends to continue to examine the use of SEIFA and other data as possible indicators of relative disadvantage that could be incorporated in the current allocation tool, but in the context of setting Cumberland Council's starting point post amalgamation in 2016 the Commission, having considered the matter carefully, is of the view that no further adjustment should be made to Council's starting point.

I trust that this detailed reply assists Council to understand the decisions that the Commission has made in relation to Council's FAG allocation. Should Council have further queries please contact the Commission's Executive Officer Helen Pearce.

Yours sincerely



Grant Gleeson
Deputy Chair

2016-17 Preliminary FAGs

		ERPs Share 2115(p)	GP Share	LR Share	Total Share	1/2 ADVANCE
Hills (S)	\$ 20.01	192,230 100%	3,847,133 100%	1,953,428 100%	5,800,561 100%	2,900,281
Hills (S) (bc)		160,881 84%	3,219,740 84%	1,708,323 87%	4,928,063 85%	2,464,032
Parramatta (part)		31,349 16%	627,393 16%	245,105 13%	872,498 15%	436,249
Hornsby (S)	\$ 20.01	170,563 100%	3,413,507 100%	1,481,620 100%	4,895,127 100%	2,447,564
Hornsby (S) (bc)		149,252 88%	2,987,006 88%	1,316,952 89%	4,303,958 88%	2,151,979
Parramatta (part)		21,311 12%	426,501 12%	164,668 11%	591,169 12%	295,585
Auburn (C)	\$ 29.70	88,059 100%	2,615,042 100%	600,730 100%	3,215,772 100%	1,607,886
Cumberland (part)		74,549 85%	2,213,843 85%	366,721 61%	2,580,564 80%	1,290,282
Parramatta (part)		13,510 15%	401,199 15%	234,009 39%	635,208 20%	317,604
Holroyd (C)	\$ 27.84	113,294 100%	3,154,530 100%	894,020 100%	4,048,550 100%	2,024,275
Cumberland (part)		108,979 96%	3,034,384 96%	863,268 97%	3,897,652 96%	1,948,826
Parramatta (part)		4,315 4%	120,146 4%	30,752 3%	150,898 4%	75,449
Parramatta (old)	\$ 37.71	194,448 100%	7,332,355 100%	1,532,597 100%	8,864,952 100%	4,432,476
Cumberland (part)		41,111 21%	1,550,237 21%	324,505 21%	1,874,742 21%	937,371
Parramatta (part)		153,337 79%	5,782,118 79%	1,208,092 79%	6,990,210 79%	3,495,105
Cumberland		224,639	6,798,464	1,554,494	8,352,958	4,176,479
Parramatta (C) (new)		223,822	7,357,357	1,882,626	9,239,983	4,619,992

T 02 4428 4131 F 02 4428 4199 TTY 02 4428 4209
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Item No: C11/19-264

DRAFT OUTDOOR DINING POLICY

Responsible Division: Finance & Governance
Officer: Director Finance & Governance
File Number: HC-23-01-15
Community Strategic Plan Goal: *A strong local economy*

SUMMARY

The *Draft Outdoor Dining Policy* has been developed to provide the community and business owner's clarity and guidance around the standards applicable when undertaking outdoor dining activity within the Cumberland Local Government Area.

This report recommends that the *Draft Outdoor Dining Policy* be placed on public exhibition for consultation with the community.

RECOMMENDATION

That Council place the *Draft Outdoor Dining Policy* on public exhibition for a period of 28 days, with a report to be provided back to Council following the conclusion of the exhibition period.

REPORT

Council actively encourages outdoor dining across the local area, with the aim of making streets more vibrant and active places. Outdoor dining assists the community in enjoying their local area whilst boosting the economy, and also encourages locals to engage with their neighbours and friends.

Outdoor dining establishments that are highly accessible for all people are likely to be more pleasant and enjoyable, as well as safer. Council aims to enhance urban life by promoting more outdoor dining.

The *Draft Outdoor Dining Policy* has been prepared to ensure that the outdoor dining program is implemented in a consistent manner across the Local Government area. A key element of the Draft Policy is ensuring that pedestrian and driver safety and accessibility considerations have been adequately addressed. A number of controls have been drafted around minimum clearances/setbacks to account for both pedestrian safety and driver visibility. The Draft Policy also outlines the requirements for Development Consent from Council for any awnings/covered structures, the requirements for the form of furniture and materials, as well as the process for applying for and obtaining an agreement from Council.

The Draft Policy was discussed with Council at a Councillor workshop held on the 9th October 2019. Supporting the Draft Policy are the *Draft Outdoor Dining Guidelines*, which are also attached to this report as attachment 2.

Further, the Draft Policy also retains transitional provisions for any outdoor dining agreements already in place. This Policy will provide a uniform approach and standards for outdoor dining across the Cumberland Local Government Area.

It is now recommended that the Draft Policy proceed to a public exhibition process for consultation with the community.

COMMUNITY ENGAGEMENT

The *Draft Outdoor Dining Policy* will be placed on public exhibition for a period of 28 days both in local newspapers and on Council's 'have your say' community engagement website, to enable the community to have an opportunity for input.

POLICY IMPLICATIONS

Given the previous Outdoor Dining Policies for the former Councils were rescinded by the Administrator, this is a new policy for Council. Transitional provisions are provided for under the Draft Policy for any businesses already under an existing agreement.

RISK IMPLICATIONS

By having an outdoor dining policy position in place, it will provide clear information and standards for any business owner within the local government area to adhere to. Having a policy in place will improve the operations of outdoor dining as well as improve compliance outcomes.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The *Draft Outdoor Dining Policy* has been developed to provide the local community and businesses guidance around the standards applicable when undertaking outdoor dining activity within the Cumberland Local Government Area. It is now recommended that this Draft Policy proceed to public exhibition.

ATTACHMENTS

1. Draft Outdoor Dining Policy  
2. Draft Outdoor Dining Guidelines  

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-264

Attachment 1
Draft Outdoor Dining Policy



CUMBERLAND
COUNCIL

Outdoor Dining Policy

AUTHORISATION & VERSION CONTROL

Policy Number	
Policy Owner	<i>Director Finance and Governance</i>
Date Adopted	
Version No	<i>0.1</i>
TRIM Number	
Review Date	

INTRODUCTION

Council actively supports the creation of a vibrant café atmosphere within its commercial centres. In doing so, it is imperative that a balance between footpath space for outdoor dining and space for public use by all community members (including play spaces and public seating) is provided in each of Cumberland's commercial centres. The implementation of this policy is detailed in Council's *Outdoor Dining Guidelines*.

In determining the appropriateness of whether a location is suitable for outdoor dining, Council will assess each application against this Policy, and the criteria and requirements detailed in Council's *Outdoor Dining Guidelines*.

PURPOSE

The purpose of this policy is to guide and regulate the establishment, design and safe operation of outdoor dining areas. The Policy provides a consistent approach for outdoor dining across the Cumberland Local Government area, and provides transitional provisions for approvals granted before implementation of this policy.

SCOPE

The Draft policy applies to all land within the Cumberland LGA affected by the Roads Act 1993 and/or is managed by Council. This includes public footpaths, plazas, public squares, and blisters which are within the public domain and are normally used for pedestrian circulation, and which are generally located immediately adjacent to restaurants and cafes.

DEFINITIONS

Activity Approval - an approval issued under Section 68 of the Local Government Act 1993 (NSW)

Council - Cumberland Council

Footway Approval - an approval issued under Section 125 of the Roads Act 1993 (NSW)

Outdoor Dining Area - premises that are the subject of an Activity Approval or Footway Approval or both

LGA - the Local Government Area of Cumberland Council

Policy –this document, and any schedules or annexures to it

POLICY STATEMENT

Council will apply this policy to ensure the appropriate establishment of outdoor dining areas in Cumberland's commercial centres, which comply with the relevant legislation, and make a positive contribution to these centres.

PRINCIPLES

- Outdoor dining areas are only permitted in association with an approved food business, and the applicant is the owner/proprietor of that food business;

- Outdoor dining areas are only permitted in locations where sufficient space is available and where they will not obstruct the safe movement of pedestrians;
- Council's approach is to achieve a balance between areas for privately leased outdoor dining associated with a restaurant/café, and areas of public domain which provide public outdoor seating whilst providing a high level of urban amenity in the Cumberland Council centre's; and
- Outdoor dining areas should not interfere with the safe and reasonable movement of pedestrians, nor should they obstruct line of sight to or from passing vehicles.

REQUIREMENTS

- Location requirements:

Street/Centre	Outdoor dining locational requirements
Auburn Town Centre Auburn Road, Civic Road	Away from shopfront, adjacent to kerb. The Auburn Town centre Public Domain Plan 2009 identifies areas of widened footpath within the town centre core where outdoor dining activities may occur subject to consent. These areas are clearly defined and separated from areas of public open space, to ensure a balance of activities along the street (refer to map at Annexure 1 of the Cumberland Outdoor Dining Policy)
Granville Town Centre	Away from shopfront, adjacent to kerb
Guildford Village Centre Guildford Road	Away from shopfront, adjacent to kerb
Merrylands Centre Merrylands Road, McFarlane Street, Pitt Street	Away from shopfront, adjacent to kerb
Pendle Hill Town Centre Pendle Way, Joyce Street	Away from shopfront, adjacent to kerb
Toongabbie Town Centre Aurelia Street	Away from shopfront, adjacent to kerb
Wentworthville Town Centre Dunmore Street, Station Street	Away from shopfront, adjacent to kerb
All other locations (within B1, B2 and B4 zones)	Subject to approval, outdoor dining areas must be located adjacent to the shopfront. Where footpath width is insufficient to allow outdoor dining and sufficient pedestrian circulation space, outdoor dining will not be permitted.

- Outdoor dining will generally only be considered on footpaths that have a **minimum** width of 3.6m, with a minimum practical depth of 1.0m (1 table and 2 chairs). Where the footpath is less than 3.6m, consideration will be given on a case to case basis.

- A minimum unobstructed pedestrian corridor of 2.0m must be maintained to allow for a continuous accessible path of travel at all times. Where outdoor dining is permitted away from the shopfront and adjacent to the kerb, a minimum of 600mm setback from the kerb must be provided.
- Outdoor dining areas are not permitted directly on corner locations at street intersections. An application may be refused on safety concerns where an outdoor dining area obstructs the clear view line of pedestrians/motorists. Outdoor dining areas are limited to the extent of the shopfront of the food business.
- The footpath dining area used with the approval of Council under this policy is not included as "floor space" for the purposes of car parking or floor space calculations. The surface area of the footpath must be sufficiently level to support a functional and accessible outdoor dining area, and the safe use of furniture and associated structures.
- All outdoor dining furniture:
 - Is to be kept wholly in the approved boundaries at all times
 - Must comply with relevant Australian Standards
 - Must be made from high quality commercial materials
 - Must be capable of accommodating a wheelchair
 - Must not mis-match
 - All tables and chairs must be removed from the outdoor dining area and stored within the premise, outside business operation hours.
- Advertising of a single company or business must not cover more 30% of structures, and no liquor or tobacco advertising is permitted within an outdoor dining area. Hanging advertisements from shade structures is not permissible, and no private restaurant/café advertising is permitted on any Cumberland Council street furniture, including planter boxes.
- No shelter for weather protection may be erected or installed in or around an outdoor dining area without Council's prior written consent.
- All heating devices must comply with the laws and requirements relating to them, including but not limited to AS 4565-2004 Radiant Gas Heaters. Access to gas mains and use of electrical extension cords are not permitted.
- All fees and appropriate bonds will be charged in accordance with Council's adopted fees and charges.
- All approved outdoor dining establishments shall be operated in accordance with all relevant legislation, including but not limited to the *Smoke Free Environment Act 2000*. Non-compliance with legislation may lead to enforcement action by Council which may include fines and/or termination of outdoor dining approvals.

RELATED LEGISLATION

- Local Government Act 1993(NSW)
- Work Health and Safety Act 2011 Food Act 2003 (NSW)
- Smoke Free Environment Act 2000 (NSW)
- Auburn Local Environmental Plan 2010
- Holroyd Local Environmental Plan 2013
- Parramatta Local Environmental Plan 2011
- Environmental Planning & Assessment Act 1979 (NSW)
- Roads Act 1993 (NSW)

RELATED DOCUMENTS AND COUNCIL POLICY

- Outdoor Dining Guidelines
- Auburn Development Control Plan 2010
- Holroyd Development Control Plan 2013
- Parramatta Development Control Plan 2011

AUTHORISATION & VERSION CONTROL

Policy Owner	<i>Director Finance and Governance</i>
Date Adopted / By Whom	
Version No / Date last Reviewed	<i>0.2</i>
TRIM Number	
Next Review Date	

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-264

Attachment 2
Draft Outdoor Dining Guidelines

CUMBERLAND
COUNCIL

Outdoor Dining Guidelines

AUTHORISATION & VERSION CONTROL

Policy Number	
Policy Owner	<i>Director Finance and Governance</i>
Date Adopted	
Version No	<i>0.1</i>
TRIM Number	
Review Date	

BACKGROUND

Council actively supports the creation of a vibrant café atmosphere within its commercial centres. In doing so, it is imperative that an adequate footpath width is maintained at all times for the safe movement of pedestrians and other street activities. It is also imperative that a balance between footpath space for outdoor dining and footpath space for public use by all community members (including play spaces and public seating) be provided in each of Cumberland's commercial centres.

In determining the appropriateness of whether a location is suitable for outdoor dining, Council will assess each application against the criteria and requirements detailed in these guidelines.

These guidelines support the implementation of the *Outdoor Dining Policy*.

PURPOSE

The purpose of these guidelines are to:

- set out the principles, requirements, and approvals process for outdoor dining applications;
- promote the reasonable use of Council owned and managed land for outdoor dining associated with adjoining approved businesses;
- manage the competing needs and interests of pedestrians and business owners by allowing outdoor dining in a manner that improves the usage, quality and image of Council;
- support local business activity and vitality in Cumberland's commercial areas; and
- ensure outdoor cafés do not obstruct the safe and reasonable movement of pedestrians and vehicular traffic, and other street activities.

DEFINITIONS

- **Activity Approval** - an approval issued under Section 68 of the Local Government Act 1993 (NSW)
- **Footway Approval** - an approval issued under Section 125 of the Roads Act 1993 (NSW)
- **Outdoor Dining Area** - premises that are the subject of an Activity Approval or a Footway Approval or both
- **LGA** - the Local Government Area of Cumberland Council
- **Policy** – refers to this document, and any schedules or annexures to it

SCOPE

These Guidelines apply to all land which is affected by the *Roads Act 1993* and/or is owned by Cumberland Council. This includes public footpaths, blisters, plazas and public squares that are within the public domain and would ordinarily be used by the public for pedestrian movement or recreation. These areas are generally located immediately adjacent to restaurants and cafes in the commercial business centres of Cumberland.

GUIDELINES

Outdoor dining areas are only permitted in association with an approved food business and the applicant is the owner/proprietor of that food business, and only in locations that do not cause an impediment to other users of footpaths.

1. LOCATION REQUIREMENTS

Generally, the preferred location of an outdoor dining area is directly adjacent to the indoor location of the parent food business, rather than being separated by a pedestrian thoroughfare. However, location of outdoor dining areas needs to be balanced with other locational factors.

To ensure pedestrian circulation is maintained on busy retail streets, streets with widened footpaths, or streets that extend beyond 100m in length, all outdoor dining areas must be located away from the shop front. In all other locations, the outdoor dining area must abut the shop front, subject to tables and chairs not impeding the flow of pedestrians, particularly those who may have a disability or be vision impaired (Table 1).

Table 1: Locational Requirements

Street/Centre	Outdoor dining locational requirements
Auburn Town Centre Auburn Road, Civic Road	Away from shopfront, adjacent to kerb. The Auburn Town centre Public Domain Plan 2009 identifies areas of widened footpath within the town centre core where outdoor dining activities may occur subject to consent. These areas are clearly defined and separated from areas of public open space, to ensure a balance of activities along the street (refer to map at Annexure 1 of the Cumberland Outdoor Dining Policy)
Granville Town Centre	Away from shopfront, adjacent to kerb
Guildford Village Centre Guildford Road	Away from shopfront, adjacent to kerb
Merrylands Centre Merrylands Road, McFarlane Street, Pitt Street	Away from shopfront, adjacent to kerb
Pendle Hill Town Centre Pendle Way, Joyce Street	Away from shopfront, adjacent to kerb
Toongabbie Town Centre Aurelia Street	Away from shopfront, adjacent to kerb
Wentworthville Town Centre Dunmore Street, Station Street	Away from shopfront, adjacent to kerb
All other locations (within B1, B2 and B4 zones)	Subject to approval, outdoor dining areas must be located adjacent to the shopfront. Where footpath width is insufficient to allow outdoor dining and sufficient pedestrian circulation space, outdoor dining will not be permitted.

1.1 Minimum Footpath Width

Outdoor dining will generally only be considered on footpaths that have a minimum width of 3.6m. In situations where the footpath is less than 3.6m, consideration will be given on a case by case basis.

A minimum unobstructed pedestrian corridor of 2.0m must be maintained within the 3.6m corridor to allow for continuous accessible paths of travel at all times. Council may increase this minimum clearance where circumstances, such as pedestrian traffic, warrant it.

In situations where parking is permitted adjacent to the footpath dining area, a distance of at least 600mm from the kerbside must be kept clear to allow car doors to open (Figure 1). If the food business is located adjacent to a Disabled Parking Space, a clearance of 1.3m from the kerb must be maintained to allow access for wheelchairs.

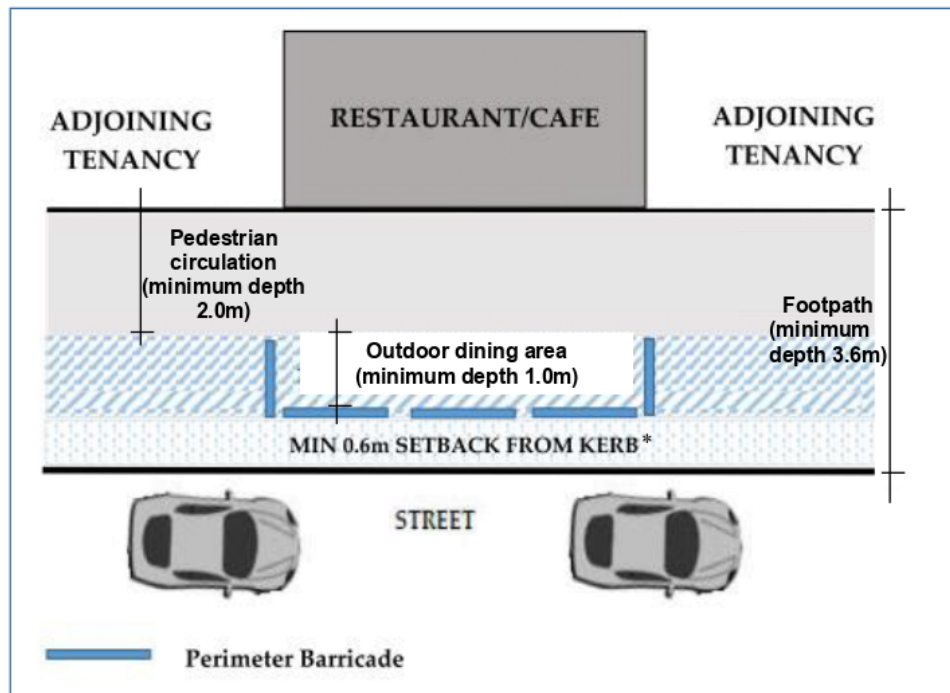


Figure 1: Minimum dimensions for outdoor dining on primary retail streets adjoining car parking

Where parking is not permitted adjacent to the footpath dining area, a perimeter barricade (see section 3.1) may be positioned adjacent to the kerb (Figure 2).

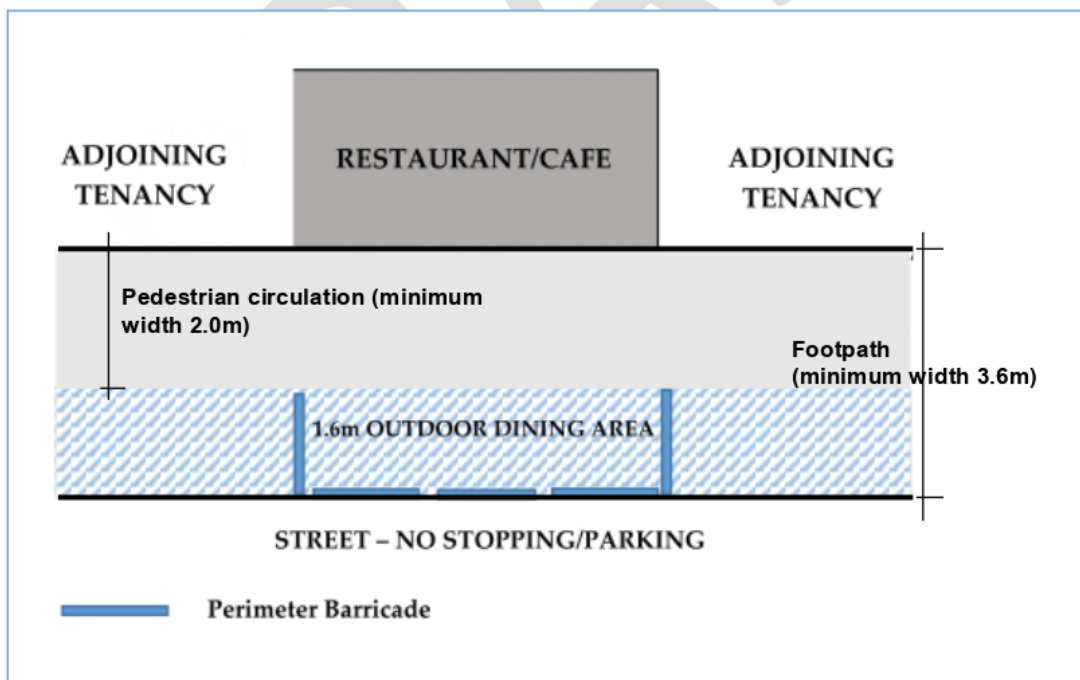


Figure 2: Minimum dimensions for outdoor dining on primary retail streets not adjoining car parking.

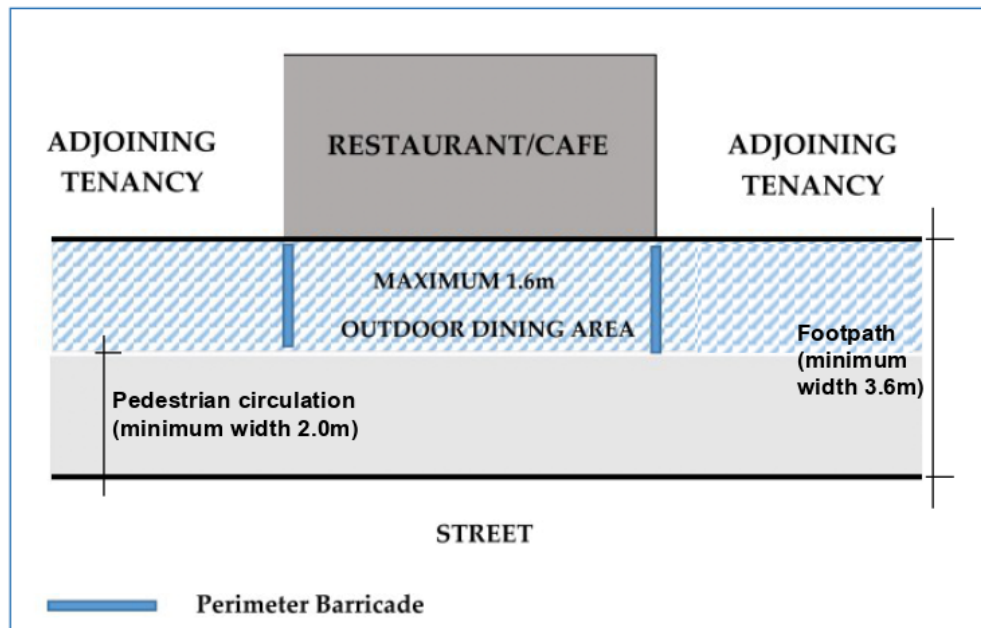


Figure 3: Dimensions for outdoor dining for all other locations with or without parking adjoining

1.2 Corner Locations

Outdoor dining areas are not permitted on corner locations at street intersections. In locations where the business premises are located next to an intersection a clear unobstructed line of sight must be maintained for turning vehicles.

The minimum setback area from the outdoor dining area will be determined by a line of sight from the corner, which is set at a 45° angle from the corner of the building. In situations where the corner building has a splayed frontage, the 45° angle can be interpreted from the splayed building line.

An application may be refused based on safety concerns where an outdoor dining area obstructs the clear view line of pedestrians and/or motorists (Figure 4).

Parameters as per figures 1 & 2

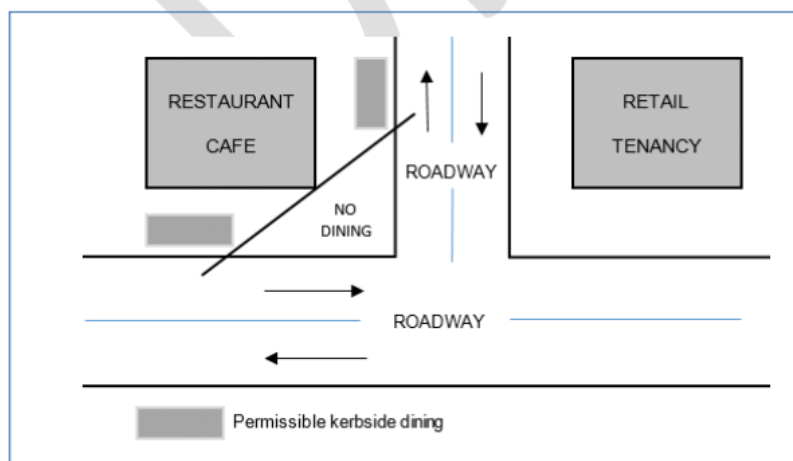


Figure 4: Minimum dimensions for corner locations.

2. SITE CONDITIONS AND ASSOCIATED WORKS

The surface area of the footpath must be sufficiently level to support a functional and accessible outdoor dining area, and the safe use of furniture and associated structures.

In the event that a business operator wishes to undertake associated streetscape works to accommodate an outdoor dining area, all works must be undertaken or approved by Council prior to works commencing and paid for by the approval holder.

3. DEFINING THE OUTDOOR DINING AREA

The minimum practical depth for outdoor dining is 1.0 metre which allows for 2 chairs and one table. All boundaries of the approved seating area must be appropriately identified by markers; typically by the use of metal studs/discs that are flush with the paved surface. These will be installed by Council at the applicant's expense.

The markers must remain in place throughout the duration of the approval and must not be removed or their position altered without Council approval. All furniture, including umbrellas and plants must be kept strictly within the boundaries of the approved seating area at all times.

3.1 Perimeter Barricades

Low height screens with a maximum height of 600mm (e.g. framed fabric) are to be used to delineate the outdoor dining area. Advertising covering not more than 30% of the area of each screen may be permitted. Bollards with chains will not be permitted as this does not provide an adequate safety barrier between restaurant patrons and passing pedestrian traffic.

The proposed perimeter barricade will be assessed on merit and considered in the context of the surrounding streetscape, flooding/overland flow path areas and Council's Public Domain policies. Council staff are available to assist in providing advice as to what form of barrier would be appropriate.

If it is determined that additional safety protection is required following a risk assessment, Council may require energy absorbing bollards (EABs) to be installed to shield patrons from potential dangers of out-of-control vehicles. This will be determined with the assessment of the application.

3.2 Use of footpath area outside an adjoining property

The use of a footpath is limited to the area located directly in front of the approved restaurant/café that is the subject of the outdoor dining activity.

4. CONSTRUCTION ZONES

An approved outdoor dining area is not permitted to operate in areas that immediately adjoin or surround a construction/work zone. A minimum setback of 3m from construction zones must be provided at all times to protect patrons from any potential dangers.

Council reserves the right to temporarily suspend or cancel an agreement to ensure public safety during major construction projects. A period of 14 days' notice will be given to the approval holder in these circumstances.

Where an agreement is suspended or cancelled, Council will not be liable for any compensation to the approval holder under any circumstances.

5. FURNITURE

The type of furniture and permanent shade structures (requiring prior approval) that is used in an outdoor dining area can often influence the atmosphere and general feeling of the space.

It is Council's aim to ensure that all furniture is of a high standard in appearance and style and is

respecting of the disabled and vision impaired. Subsequently, approval holders must give consideration to providing a minimum of 1:10 chairs with armrests.

5.1 Outdoor dining furniture requirements

Outdoor dining furniture:

- Satisfy relevant Australian Standards;
- must be strong, durable and robust that withstands the wear and tear of outdoor commercial usage;
- must be made from high quality commercial materials to enhance the character of the street; *[Note: domestic quality furniture will not be permitted];*
- must be of non-lightweight construction so as not to be easily blown around in strong winds;
- must be capable of being removed or retracted without difficulty from the outdoor space on a daily basis;
- should be of a colour and style that provides consistency with the associated restaurant/café;
- the use of mismatched tables and chairs is not permitted;
- the surface of table tops must be non-reflective;
- must not have any sharp edges or moving parts that could present as a potential safety hazard to patrons;
- is to be flood compatible if located within an identified flooding/overland flow path area;
- is to be capable of accommodating a wheelchair;
- accessories such as amplification equipment, dumbwaiters or cash registers are not permitted in outdoor dining areas; and
- the colour scheme of the proposed furniture will be assessed on merit and considered in the context of the surrounding streetscape.

5.2 Furniture Layout

Furniture placement should be commensurate with the size and shape of the available space. The width of the footpath will determine the depth of the outdoor dining area.

The location of all furniture and barriers must not extend beyond the boundaries of the approved seating area. The approval holder is responsible to ensure patrons maintain furniture within the boundaries of the approved seating area at all times.

Furniture layout is to be capable of accommodating a wheelchair.

6. SHADE STRUCTURES, AWNINGS AND BLINDS

All shade structures and awnings must comply with any condition of approvals and the following requirements:

- no shelter for weather protection may be erected or installed in or about an outdoor dining area without Council's prior written approval;
- must not be attached to or above the awning;
- be of a single colour and style to provide consistency and identity and must be compatible with the surrounding streetscape;
- not cause significant overshadowing of the footpath or reduce the amenity of the public domain by creating a large enclosed space;
- blinds/plastic sheeting must be well maintained, including regular cleaning;
- if blinds/plastic sheeting are damaged or become discoloured, they must be removed and replaced, as determined by Council;
- must not obstruct views to neighbouring premises and those opposite;
- where footpath awnings do not exist over the area proposed for outdoor dining, removable or temporary shade structures such as outdoor umbrellas are permissible, subject to approval by Council;

- umbrellas must be fixed at a minimum height of 2.1 metres so as to not interfere with passing footpath or vehicular traffic or pedestrian view lines;
- umbrellas must be of a commercial quality;
- whilst clear, transparent, and colourless plastic blinds are permitted, they may only be used where it can be demonstrated that the amenity of the surrounding streetscape and pedestrian safety will not be compromised, and will not have an impact on flooding/overland flow within an identified area;
- opaque or coloured blinds are not permitted;
- plastic blinds must be raised or removed during fine weather;
- plastic blinds are permitted on a maximum of 3 sides of the outdoor dining area; and
- all structures and furnishings in an Outdoor dining area must be able to be moved to allow Council staff and Utilities staff (e.g. gas, water, telecommunications etc.) access to public infrastructure. Council will not be liable for any costs, expenses or losses resulting from the public infrastructure being accessed.

7. HEATING DEVICES

- Where the use of a heating device is proposed, details of the type, location and design must be included with the application;
- All heating devices must comply with the laws and requirements relating to them (including without limitation, AS 4565-2004 Radiant Gas Heaters);
- To prevent injury and ensure the safety of patrons, the device must be capable of being turned off automatically if overturned; and
- Access to the gas mains and use of electrical extension cords are not permitted.

8. STORAGE FACILITIES

Adequate storage facilities must be provided in the associated restaurant/café or in the building containing the restaurant/café for tables, chairs, umbrellas, heating devices, etc., when not in use.

It is necessary that those with outdoor dining licenses are responsive to extreme weather warnings, and secure or take in unsecured outdoor dining furniture during severe weather occurrences.

Storage of LPG devices are to be compliant with *Australian Standard AS/NZS 1596:2008* requirements in regards to safe storage of flammable gases and comply with the *Food Act 2003*.

SafeWork NSW require portable LPG devices not to be permitted to be stored in commercial kitchens and must be stored in a well ventilated area.

9. TOILET FACILITIES

An outdoor dining area may result in an increase in the seating capacity of an associated restaurant/café. Subsequently this leads to the need to increase toilet facilities for customers and staff.

Toilet facilities must be available for patrons when the combined seating capacity of both internal and external dining area is greater than 20 places either on the premises or within 80m walking distance of the outdoor dining area.

Members of the public are not permitted to access toilet facilities via any food handling and/or food preparation area within the premises.

10. SIGNAGE/ADVERTISING

All signage and advertising associated with an outdoor dining area must be in keeping with the surrounding streetscape and pedestrian environment and comply with the following requirements:

- *Advertising and Signage Controls* of Auburn Development Control Plan 2010, Holroyd

- Development Control Plan 2013, and Parramatta Development Control Plan 2011;
- Advertising of a single company or business is permissible on outdoor furniture, such as outdoor umbrellas, as long as the advertising is not dominant on the structure and covers no more than 30% of any surface;
- Hanging advertisements from shade structure is not permissible;
- No private restaurant/café advertising is permitted on any Cumberland Council street furniture;
- No liquor or tobacco advertising is permitted on any item within the outdoor dining area, nor is advertising permitted on planter boxes; and
- Details of all signage and advertising, including menu boards, must be submitted for approval as part of the application.

11. LIGHTING

To ensure the safety and amenity for patrons and pedestrians, adequate lighting must be provided where outdoor dining occurs outside daylight hours. Freestanding lighting will not be permitted. Full details must be included with the application and be in accordance with the Australian Standard AS/NZS 1158 3.1:1999 Pedestrian Area (Category P) Lighting.

12. DRAINAGE

Depending on the size and location of the proposed outdoor dining area, additional drainage works may be required. This will be determined by Council's engineers at time of assessment. If additional works are required, these will be carried out by Council at the applicant's expense.

13. NO SMOKING POLICY

In accordance with Section 6A of the *Smoke Free Environment Act 2000*, smoking is prohibited in all outdoor dining areas.

14. OPERATIONAL MATTERS

14.1 Conduct of Business

It is the business operators' responsibility to:

- Ensure the outdoor dining area does not intrude or impact on the amenity of neighbouring shops or surrounding street activities;
- Monitor and manage the behaviour of patrons;
- Ensure that staff practise responsible service of alcohol;
- Monitor noise and disturbances to adjoining premises;
- Minimise the potential for personal injury;
- Ensure patrons keep furniture within the boundaries of the approved seating area and the designated pedestrian zone is clear of all obstacles at all times;
- All food and drink is prepared within the approved restaurant/café and not in the area agreed for outdoor dining;
- Ensure that the sale and serving of alcoholic beverages within the outdoor dining area fully complies with prior Council approval and the appropriate liquor license obtained from the *Liquor and Gaming Legislation Amendment Act 2018* (NSW liquor laws);
- Maintain that the hours of operation are consistent with the associated restaurant/café; *[Note: the hours of operation for the outdoor dining areas may be limited if it is considered that the amenity of the surrounding area or the safety of pedestrians or footpath diners could adversely be affected];*
- Remove all tables and chairs and other features (heating devices, menu boards, etc.) from the footpath and ensure they are stored within the building outside business operation hours;
- Ensure that any amplified music within the outdoor dining area is recorded music and

- played at not more than 5dba above background noise level; and
- Ensure that the outdoor dining area remains smoke free at all times in accordance with the Smoke Free Environment Act 2000.

14.2 Agreement and Rental Cost

Once Council approves an application, written notification will be issued to the approval holder stipulating the conditions of approval. Upon receipt of the approval, the approval holder is then required to produce a copy of their public liability insurance and payment of appropriate fees and bond to Council. An outdoor dining agreement will then be issued to use and occupy the footpath in accordance with conditions of approval.

The agreement, which must be signed by the approval holder, will detail the provision for an annual rental fee based on a square metre basis.

All fees are set by Council each year as part of its fees and charges. Council's fees and charges document is available on the website (www.cumberland.nsw.gov.au). Approval holders may also inquire at Council's Customer Service Desk as to current fees applicable.

14.3 Public Display of Agreement

Prior to the opening of the outdoor dining area, a laminated copy of the agreement must be prominently displayed in the front window of the restaurant/café, together with an A4 copy of the approved layout showing the number of tables and chairs.

14.4 Transfer of Approval

Council may at its discretion, consent to transfer an approval and agreement to another party upon receiving written request. If agreed, the transfer will be conditional upon the transferee entering into an identical agreement for the residue of the term of the approval and proof of their public liability insurance policy.

14.5 Public Liability

The business operator is required to maintain a valid public liability insurance policy for a minimum of twenty million dollars (\$20,000,000).

The policy must:

- Indemnify Cumberland Council against any public liability claims within the area between the front property boundary of the shop and the kerb line for the full frontage of the shop;
- Be in force at all times that goods are displayed. Upon annual renewal, the business operator must send a copy of the renewal to Council. Proof of currency must be kept on the premises and produced on demand by any authorised Council officer; and
- The policy should be on an "occurrence based" wording to ensure that actions arising through the course of an insurance period are covered if the claims arise in future years.

14.6 Maintenance and Cleaning

The approval holder is responsible for cleaning the approved outdoor dining area and ensuring that the area is clean and well-maintained in strict compliance with the conditions of the approval.

All furniture must at all times be maintained in a physically sound and aesthetically acceptable condition to Council's satisfaction.

14.7 Waste Disposal

Street rubbish bins are not to be used for the disposal of waste and the approval holder must have suitable arrangement for commercial waste collection services. A copy of the approval must be attached with application.

15. APPROVAL PROCESS

Council approval is required prior to establishing an outdoor dining area and the erection of any shade structures / heating on the footpath pursuant to:

- i) Local Government Act 1993; and
- ii) Roads Act 1993.

Any business that applies for approval to establish an outdoor dining area must have current development consent to occupy the associated shop. If approval has not been granted, the application will not be considered.

All requests for outdoor dining must be made on the appropriate application form, copies of which are available from Council's website www.Cumberland.nsw.gov.au or at Council's Customer Service Centre, 16 Memorial Avenue, Merrylands. All applications must be accompanied by payment of the prescribed application fee (as per Council's adopted Fees and Charges Policy) and all relevant documentation.

15.1 Council Owned Land

The written authority of the General Manager or delegate will be required to be obtained to formally lodge an application to occupy Council owned footpaths. The application form contains provision for the General Manager's or delegate's signature. If the application is complete, it will be referred to the General Manager or delegate for signature. Incomplete applications will be returned to the applicant.

Once the General Manager's signature has been obtained the applicant will be contacted to pay the appropriate fees upon which the application can be lodged and formal assessment will commence. The signature of the General Manager does not infer that approval will be granted.

15.2 How to Apply

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 has provisions for outdoor dining to be undertaken as exempt development, subject to the outdoor dining area being associated with a lawful food and drink premises and the following criteria being satisfied:

That the development must:

- a) not be associated with a pub or a small bar;
- b) be carried out in accordance with an approval granted under section 125 of the Roads Act 1993, including in accordance with any hours of operation to which the approval is subject; and
- c) be carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.

The food and drink premises is required to be subject to a current and valid development consent. If this is not the case, development consent for the food and drink premises is required to be obtained prior to the lodgment of any outdoor dining application.

Awnings and fixed structures are required to seek consent through either a Complying Development Certificate (CDC) or a Development Application (DA)/Construction Certificate (CC). Note that a DA will apply in the instance that the development is unable to satisfy the criteria for complying development.

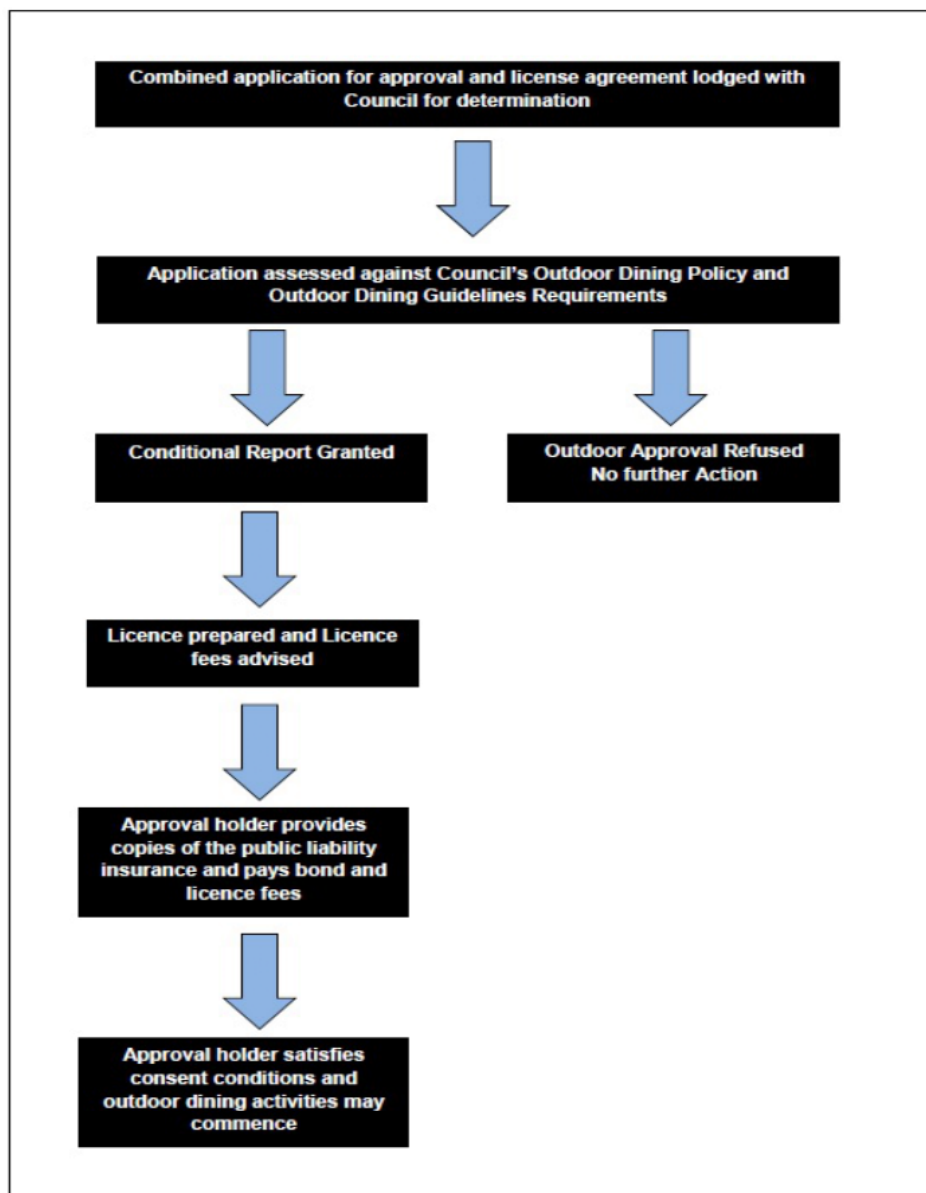


Figure 5: Outdoor Dining Approval Process

15.3 Information to be lodged with an Application

This application must be accompanied by the prescribed fee and the following information:

- Written authority of the land owner to lodge the application;
- A copy of the Development Consent pertaining to the associated restaurant/café;
- Colour photographs of the site and surrounding areas, including the paved footpath area – (*Note: where the existing paved area will be disturbed as part of new construction works, details are to be provided of new paving*);
- Four (4) copies of a site plan/footpath area drawn to a professional standard at a scale of 1:100 detailing:
 1. Street name and north point;

2. Property boundary and entry points, boundaries of the proposed seating area and of adjoining tenancies;
3. Kerb line of the street;
4. Width of the footpath from outside face of kerb to building line, and the length of the building frontage associated with the cafe;
5. Building line of the shop and adjacent shops either side;
6. Location of all existing features and permanent features of the streetscape such as existing awnings, bus stops, taxi zones, traffic signs, poles, waste bins, pedestrian lights, bollards, planter boxes, trees, light poles, pits, fire hydrants and car parking;
7. Proposed location and configuration of all tables, chairs, umbrellas, shade structures, planter boxes, including all setback dimensions;
8. Any adjoining outdoor dining area;
9. Full dimensional details and photographs of proposed umbrellas or shade structures;
10. Cross section through the site indicating heights of shade structures, barriers etc. in relation to shop front and awnings;
11. Proposed shop names or logos which are to be included on any furniture in the approved area or as part of the umbrella design;
12. Details of any proposed external lighting showing the type of fixtures and their proposed placement; and
13. Details of any proposed heating devices including the type, capacity, design and location – to ensure the safety of patrons and prevent injury, the device must be capable of been turned off automatically if overturned.
14. Full details of the number of tables and chairs including manufacturer's brochures, specifications and photographs, and any other furniture that may be proposed. Council must be satisfied that the designated area is capable of accommodating the maximum number of tables and chairs that are proposed. Whilst Council recognises that the actual number of tables and chairs and their configuration may vary according to demand, it is the business operator's responsibility to ensure that a 2.0m pedestrian corridor is maintained at all times. This will be strictly enforced;
15. A written statement detailing the proposed hours of operation; storage of furniture; cleaning of the footpath and furniture; lighting and music;
16. Fees in accordance with Council's Schedule of Fees and Charges; and
17. Liquor License.

The application will be notified to neighbouring property owners and business proprietors in accordance with Council's Notification Policy.

The submission of an application **does not** imply automatic approval.

16. FEES

All fees and the appropriate bond will be charged in accordance with Council's adopted fees and charges. Fees are calculated on a square metre basis and vary depending upon the commercial zoning of the subject location.

The three zones are *B1 Neighbourhood Centre*; *B2 Local Centre* and *B4 Mixed Use*. The minimum practical depth for outdoor dining is 1.0 metre which allows for 2 chairs per table.

Where any charge, fee, supply of products or services under this policy is subject to a goods and services tax (GST), an amount equal to the GST paid or payable in respect of the charge, fee, supply of products or services, shall be included in the amount of consideration paid or payable under this policy.

17. PERMIT RENEWAL AND CANCELLATION

An Outdoor Dining approval is valid for 3 years upon approval and may be cancelled or amended if:

- The operator fails to comply with the permit conditions; or
- There are changed conditions affecting the outdoor dining area in its particular location, e.g. an increased risk to health or safety.

Other valid reasons that may necessitate an approval being cancelled include matters as streetscape upgrades and/or refurbishment. Council will only renew an approval after a review of health and safety conditions are undertaken to ensure compliance with policy guidelines and a history check of past operations.

18. HOURS OF OPERATION

Outdoor dining shall only operate during the normal hours of operation of the approved parent business. Trading beyond these hours may result in an immediate cancellation of the approval.

19. LEGAL AND OTHER COSTS

The approval holder is required to pay all legal and other costs incurred by Council in the preparation and execution of the licence. Any additional costs incurred by Council will also be payable by the approval holder.

RELATED LEGISLATION

- Local Government Act 1993 (NSW)
- Work Health and Safety Act 2011
- Food Act 2003 (NSW)
- Smoke Free Environment Act 2000 (NSW)
- Auburn Local Environmental Plan 2010
- Holroyd Local Environmental Plan 2013
- Parramatta Local Environmental Plan 2011
- Environmental Planning & Assessment Act 1979 (NSW)
- Roads Act 1993 (NSW)
- Liquor and Gaming Legislation Amendment Act 2018

RELATED DOCUMENTS AND COUNCIL POLICY

Draft Cumberland Council Outdoor Dining Policy

Item No: C11/19-265

REVIEW OF GOVERNANCE POLICIES

Responsible Division: Finance & Governance
Officer: Director Finance & Governance
File Number: HC-01-03-2
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

This report recommends a number of Council's governance policies be re-adopted or rescinded following a policy review process undertaken.

RECOMMENDATION

That Council:

1. Re-adopt the *Councillor and Staff Interaction Policy, Statement of Business Ethics and Privacy Management Plan*;
2. Exhibit for 28 days the revised *Public Interest Disclosures Policy*, with a report to be returned to Council at the conclusion of the public exhibition period.
3. Rescind the *General Managers Expenses Policy*.

REPORT

The following Governance related policies have been reviewed following their policy review dates specified when last adopted by Council. A summary is provided below:

Councillor and Staff Interaction Policy

This Policy has been reviewed and is recommended for immediate re-adoption. The document was considered better practice when initially adopted. No changes are proposed.

Statement of Business Ethics

This document has been reviewed and is recommended for immediate re-adoption. The document has been effective when Council officers are liaising with potential tenderers and organisations providing quotes to Council and advising them of probity considerations and obligations. No changes are proposed.

Privacy Management Plan

Council's *Privacy Management Plan* is based on the model document provided by the Information Privacy Commissioner. This document has been reviewed and is recommended for immediate re-adoption. No changes are proposed.

Public Interest Disclosures Policy

Upon the review date of this document, Council's senior management met with the Internal Ombudsman and Assistant Internal Ombudsman to further improve the Policy. A number of suggestions were agreed upon, with the key change including the expansion of the number of disclosures officers from 2 to 30. As this Policy has had a number of changes drafted, it is recommended the Policy be placed on public exhibition for 28 days for consultation with the community.

General Managers Expenses and Facilities Policy

The creation of this policy was at the request of the Administrator. Upon the review of the operation of this Policy, it is noted that there is no requirement under the *Local Government Act 1993* for Council to have an adopted policy position to deal with the expenses and facilities provisions to the General Manager. It is noted that the General Manager adheres to the requirements of this Policy, as the requirements reflect the General Manager's obligations to adhere to the Code of Conduct. In light of this, it is recommended that the Policy be rescinded.

COMMUNITY ENGAGEMENT

Given the *Councillor and Staff Interaction Policy*, *Statement of Business Ethics* and *Privacy Management Plan* are proposed to remain unchanged, it is recommended that these Policies be re-adopted by Council for a further period. The draft *Public Interest Disclosures Policy* has been updated to reflect a better practice approach and has had input from the Internal Ombudsman Shared Service. It is recommended that this Policy be placed on public exhibition with the community to consider any feedback.

POLICY IMPLICATIONS

All policies which are re-adopted will be updated in Council's Policy Register, and will rescind and supersede the existing versions of these policies. Adoption of the report recommendation ensures that Council is continually reviewing policies as they fall due for review. Any rescinded policies will be removed from Council's website and will cease to operate in Council's Policy Register.

RISK IMPLICATIONS

This report has been prepared to address the minor or low risk of having operative policies in place after the anticipated review date. This report ensures that an appropriate review of these policies has taken place to ensure currency and relevance of information.






FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The *Councillor and Staff Interaction Policy*, *Statement of Business Ethics*, *Privacy Management Plan*, *Public Interest Disclosures Policy* and *General Manager Expenses and Facilities Policy* have been reviewed in accordance with their stated policy review date. One Policy is recommended to be rescinded, and the rest either recommended for re-adoption or to proceed to a public exhibition process.

ATTACHMENTS

1. Councillor and Staff Interaction Policy [↓](#) 
2. Statement of Business Ethics [↓](#) 
3. Privacy Management Plan [↓](#) 
4. Draft Public Interest Disclosure Policy [↓](#) 
5. General Manager Expenses & Facilities Policy (Proposed to be rescinded) [↓](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-265

Attachment 1
Councillor and Staff Interaction
Policy



Councillor and Staff Interaction Policy

AUTHORISATION & VERSION CONTROL

Policy Number	<i>POL-004</i>
Policy Owner	<i>Director Finance & Governance</i>
Date Adopted	
Version No	<i>2</i>
TRIM Number	<i>ED17/51381</i>
Review Date	

PURPOSE

Under the Local Government Act, the role of the governing body is focused on civic leadership, financial sustainability, integrated planning and reporting, as well as consultation with the community and strategy. Council staff are to assist Council in achieving this.

The Councillor and Staff Interaction Policy provides a framework for Councillors in conducting their civic duties by providing clear parameters around the ability to interact and receive information from authorised Council staff, ensuring appropriate governance controls are in place.

In accordance with Council's Code of Conduct, Councillors and staff are expected to conduct their interactions with each other with respect, professionalism, honesty and to a high standard of ethical behaviour.

SCOPE

This Policy applies to Councillors and Council employees, including external contract or casual employees engaged by Council.

DEFINITIONS

Authorised staff

Staff designated by the General Manager within this policy who may interact with Councillors or provide advice to Councillors. (Attachment A)

POLICY STATEMENT

Good governance and effective service delivery are dependent on a good relationship between the elected members and staff of the organisation, and an understanding of the roles and responsibilities of both groups to assist in exercising their civic leadership and undertaking transparent decision making.

PRINCIPLES

The principles this policy is based on include:

1. Transparency – in all interactions, discussions, provision of information and communication.

2. Professionalism – all interactions will be courteous, respectful and accurate information will be provided in a timely manner.
3. Good governance – to ensure there are no perceived conflicts of interest or undue influence. Decision making is based on information provided in good faith.

REQUIREMENTS

Access to Council staff by Councillors

The General Manager is to authorise all interactions between Council staff and Councillors. Only those staff nominated by the General Manager can provide advice to Councillors as outlined in Attachment A.

Councillors will not have access to staff areas or staff events unless by invitation. Briefings and inspections will be held as required and the Mayor will have access to a weekly meeting with the Executive Team if requested.

Obligations of Councillors

The Councillors are the governing body of the Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Local Government Act.

Councillors must not:

- a. Attempt to direct Council staff in the performance of their duties or request that staff undertake work on their behalf, other than through a Council resolution or by the Mayor exercising their power under section 226 of the Act.
- b. In any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the Council or a delegate of the Council in the exercise of the functions of the member or delegate (Schedule 6A of the Act).
- c. Contact a member of the staff of the Council on Council related business unless in accordance with this policy governing the interaction of Councillors and Council staff.
- d. Contact or issue instructions to any of Council's contractors or tenderers, including Council's legal advisers, unless by the Mayor exercising their power under section 226 of the Act.
- e. Take advantage of their official position to improperly influence other Councillors or members of Council staff in the performance of their civic or professional duties for the purpose of securing private benefit for themselves or for another person.
- f. Offer or provide gifts to staff, as outlined in Council's Gifts and Benefits Policy.

Obligations of Staff

Members of staff of Council must:

- a. Adhere to Council's Code of Conduct and other Council policies and procedures.
- b. Give effect to the lawful decisions, policies, and procedures of the Council, whether or not the staff member agrees with or approves of them.
- c. Ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties. Should staff participate in any political activities, staff must ensure they do not have a conflict with their primary duty to serve Council in a politically neutral manner.
- d. Not take advantage of their official position to improperly influence other Councillors or members of Council staff in the performance of their professional duties for the purpose of securing private benefit for themselves or for another person.
- e. If information is requested by a Councillor to assist in making a Council decision, that information must be forwarded to all Councillors for their information.
- f. If a Councillor request requires significant staff time or resources that are not allocated for this purpose, a Council resolution will be required to undertake this work.

- g. Gifts should not be provided to Councillors, as outlined in the Gifts and Benefits Policy.

In circumstances where staff are unsure whether or not they should provide information to, or respond to a request from a Councillor, they should refer the matter to their Director or the General Manager, or request that the Councillor make the request through the General Manager.

Breaches of this Policy

The protocols governing Councillor Access to Information and Council Resources are incorporated in Council's Code of Conduct. Non-compliance with this Policy may be considered a breach of the Code of Conduct and will be handled in accordance with the Procedures for the Administration of the Code of Conduct or disciplinary policies.

RELATED LEGISLATION

- Local Government Act 1993
- Local Government Amendment (Governance and Planning) Act 2016

RELATED DOCUMENTS AND COUNCIL POLICY

- Code of Conduct
- Gifts and Benefits Policy
- Fraud and Corruption Prevention Policy

Appendix A – Designated Staff Authorised to Interact with Councillors

GENERAL MANAGER
General Counsel
Media Advisor
Executive/Personal Assistants, Office of the Mayor and General Manager
DIRECTOR FINANCE AND GOVERNANCE
Executive Manager Corporate Services
Governance Coordinator
Governance Officer
Chief Information Officer
Manager Technology Services
I.T Service Desk Staff
Manager Property Development
Executive Assistant to Director Finance and Governance
Personal Assistants, Executive Managers Finance and Governance
DIRECTOR COMMUNITY DEVELOPMENT
Executive Manager Community and Place
Manager Communicants and Events
Manager Library Services
Manager Aged & Disability Services
Events Coordinator
Manager Children, Families and Youth
Executive Assistant to Director Community Development
Personal Assistants, Executive Managers Community Development
Place Liaison Team Leader
Place Liaison Officers
DIRECTOR PEOPLE AND PERFORMANCE
Executive Assistant to Director People & Performance
Manager Customer Experience
Manager Human Resources
Manager Corporate Planning
DIRECTOR WORKS AND INFRASTRUCTURE
Executive Assistant to Director Works & Infrastructure
Executive Manager City Services
Executive Manager Regulatory and Technical
Executive Manager Recreation and Facilities
Personal Assistants, Executive Managers Works & Infrastructure
Manager Buildings
Manager Design Technical Services
Manager Open Space
Manager Waste
Manager Construction
Manager Infrastructure Maintenance
Manager, Health and Environmental Protection
Supervisor Environmental Protection
DIRECTOR ENVIRONMENT AND PLANNING
Executive Manager Environment and Precincts
Executive Manager City Strategy
Executive Manager Development and Building

Manager Development Operations
Coordinator Development Advisory Services
Coordinator Planning Panels
Executive Assistant to Director Environment & Planning
Personal Assistants, Executive Managers Environment & Planning
OFFICE OF INTERNAL OMBUDSMAN
ADVISORY COMMITTEE CONVENERS

Notes:

1. The General Manager may amend this list of nominated officers from time to time to reflect changes to positions.
2. Should a Council officer be acting in any of the nominated positions included in this schedule, the person so acting will be a nominated officer unless otherwise determined by the General Manager.

**DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-265**

**Attachment 2
Statement of Business Ethics**



Statement of Business Ethics

AUTHORISATION & VERSION CONTROL

Policy Number	<i>POL-011</i>
Policy Owner	<i>Director Finance & Governance</i>
Date Adopted	
Version No	2
TRIM Number	
Review Date	

INTRODUCTION

This Statement of Business Ethics sets out the standards Council requires of its contractors and business associates. These standards are drawn from the *Cumberland Council Code of Conduct* which applies to all Councillors, employees and other Council officials.

Cumberland Council aims to achieve best value for money in the expenditure of public funds whilst being fair, ethical and transparent. Council conducts a range of business with private, public and non-profit sectors to deliver a range of services for the community, who expect a high ethical standard of behaviour from Council. In return, Council expect high standards of behaviour from all firms and individuals that do business with us. Business may include but is not limited to: the supply of goods and services, use of contractors and consultants, assessment of development applications and other general dealings.

PRINCIPLES

Council is committed to ethical business practices, based on Council's values and the key principles contained within Council's Code of Conduct including: Leadership, Selflessness, Impartiality, Openness and Honesty.

As part of this commitment, Council will ensure:

- Business dealings will be ethical and transparent, and open to public scrutiny whenever possible.
- All Council decisions and considerations will be based on merit and made in a fair and impartial manner.
- Ethically manage potential conflicts of interest.

WHAT IS EXPECTED FROM YOU

Cumberland Council requires all suppliers of goods and services, members of the public, applicants, lobbyists, contractors, suppliers and anyone doing business with Council to observe the following:

- Act ethically, fairly and honestly in all dealings with Council.
- Comply with Council's procurement framework and procedure.
- Declare actual, potential or perceived conflicts of interest as soon as possible.
- Respect the obligations of Councillors and staff to abide by Council's Code of Conduct.
- Be aware and comply with legislation, Council's policies and procedures as they pertain to the business before Council, and the conditions set out in documents supplied by Council.

- Provide accurate and reliable advice and information when required.
- Prevent the disclosure of confidential information.
- Refrain from discussing Council business or information in the media.
- Assist Council to prevent unethical practices in our business relationships.
- Act without discrimination and on the basis of informed cultural understanding.
- Refrain from engaging in any form of collusive practice, or offering Council officials inducements or incentives including gifts and benefits, designed to improperly influence the conduct of their business.
- Respect the environment, comply with environmental laws and have sustainable practices in the use of resources and waste management.
- Refrain from any action or contact that may be considered an attempt to influence a decision of Councillors or staff.
- Maintain records of all dealings with Council.
- Provide Council with quality work, product or service on time that delivers value for money.

WHAT YOU CAN EXPECT FROM US

Councillors, staff and delegates are bound by Council's Code of Conduct and supporting policies within Council's governance framework. There is an expectation that Council staff will be courteous and act with transparency and integrity in all its interactions with members of the public.

When doing business with the private, public and not-for-profit sectors, staff and delegates are accountable for their actions and are expected to:

- Utilise Council resources efficiently and effectively
- Strive to achieve the best value for money
- Be professional, honest, accessible, open, fair and ethical
- Communicate clearly and respond promptly to questions resolving any issues quickly
- Comply with all relevant legislation, this statement and the policies and procedures that guide our methods of operation
- Provide open competition for business in using the appropriate or optimum procurement methodology
- Resolve any actual, perceived or potential conflicts of interests in the public interest
- Make objective decisions based on merit considering reasonable criteria and only relevant and material facts
- Never seek any gifts, hospitality or other personal benefits
- Protect privacy and confidentiality where necessary
- Observe environmental sustainability considerations
- Comply with Work Health and Safety requirements

Council will ensure that all policies, procedures and practices relating to the procurement of goods and services, use of contractors and consultants, assessment of development applications, and interactions with lobbyists are consistent with good practice and the highest standards of ethical conduct.

All approvals, decisions and procurement activities will be clearly documented to enable transparent and effective governance across the organisation. Council will assess all applications objectively, considering all relevant and material factors in determining a decision on matters that come before the Council.

WHY COMPLY WITH THIS STATEMENT

All stakeholders are required to comply with this Statement. Stakeholders should be aware of the consequences of not complying with Council's ethical requirements when doing business with Council, and may include:

- Immediate termination of contracts / orders
- Loss of future work / opportunities with Council
- Investigation, including referral of matters for criminal investigation to external agencies where appropriate
- Loss or damage to reputation
- Criminal prosecution

Council officials who do not comply with this Statement will be considered in breach of Council's Code of Conduct and subject to disciplinary action under the Code.

DOING BUSINESS WITH COUNCIL

Gifts and benefits

Gifts must not be given in connection with any prospective business dealings. Council staff are not permitted to seek any reward or incentive from external parties, and are expected to decline such offers of gifts and benefits during the course of their work.

Any offer or acceptance of a gift by Councillors or staff is required to be disclosed and recorded in Council's Gifts and Benefits Register.

Conflicts of interest and disclosure

Councillors and staff are required to disclose any actual, perceived or potential conflicts of interest, as well provide Council with any other related disclosures that may be required. This is also required of any applicants, business partners, contractors and suppliers.

Lobbying

Lobbying is a normal and in some circumstances, an acceptable part of the democratic process. However, lobbying that is not fair and undermines public confidence in impartial decision making falls outside the bounds of appropriate and lawful behaviour.

The lobbying of Councillors and staff in certain situations is not permissible. These situations may include, but are not limited to: tender process, engagement of services, development applications while under assessment, or a matter subject to legal action.

Attempts to Influence Decisions

Any action or contact that may be considered or perceived to be an attempt to influence a decision of Councillors or staff is a breach of this Statement.

Any such attempt during the tender process will immediately disqualify the relevant tenderer or service provider. Council's Request for Tender or Quotation documentation will contain statements prohibiting proponents from approaching Councillors and Council officers not nominated as contact people during a tender process.

Use of Council equipment and resources and information

All Council equipment and resources should only be used for its proper official purpose; equipment remains the property of Council at all times.

Corporate Information

Council maintains information about our business partners, customers and the community. Council has an obligation to protect this information and maintain its integrity in its systems. It is expected that business partners will treat all information appropriately and all information collected must only be used for the purpose it was provided.

Confidentiality

Any confidential information should be treated as such and should not be revealed to persons other than those with a genuine need and authority. Suppliers handling private information on behalf of Council are expected to adhere to Council's Privacy Management Plan.

Communication

All communication between parties should be made in a clear and cordial manner to minimise the risk of perception of inappropriate influence.

Secondary and post separation employment

Staff have a duty to maintain public trust and confidence, and not disclose confidential information obtained during the course of their employment or use this information to facilitate future employment opportunities. Staff are required to obtain written approval from Council to enter into any secondary employment arrangements.

Contractors and sub-contractors

All contracted and sub-contracted employees are expected to comply with this Statement. It is the responsibility of contractors to ensure sub-contractors they engage are aware of this Statement, as they are equally bound by it.

Intellectual property

In business relationships with Council, parties are expected to respect each other's intellectual property rights, and formally negotiate any access, licence or use of intellectual property.

Workplace safety

Workplace safety is of paramount importance to Council. It is expected that all parties who do business with Council comply with legislative and procedural safety requirements.

Political donations

The law requires that persons with a financial interest in, or who have made a submission in relation to, a development application or a planning instrument, disclose certain information about political donations and other gifts that have been made to a Councillor or Council employee within the previous two years of the application or submission.

WHO TO CONTACT

If you have any questions about this statement or wish to provide information about suspected corrupt or unethical conduct, please contact Council's Public Officer.

Public officials reporting corrupt conduct, maladministration or serious waste of public funds are protected under the *Public Interest Disclosures Act 1994*. The Act protects public officials disclosing corruption-related matters from reprisal or detrimental action and ensure disclosures are dealt with.

Reports of unethical or corrupt behaviour can also be made to the following external agencies:

- Independent Commission Against Corruption
- NSW Ombudsman
- Office of Local Government

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-265

Attachment 3
Privacy Management Plan



Cumberland Council Privacy Management Plan

AUTHORISATION & VERSION CONTROL

Policy Owner	Director Finance & Governance
Date Adopted	
Version No	1
TRIM Number	SD17/22922

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PREFACE

The *Privacy and Personal Information Protection Act 1998* (the “PIIPA”) requires all councils to prepare a Privacy Management Plan outlining their policies and practices to ensure compliance with the requirements of that Act and the *Health Records and Information Privacy Act 2002* (the HRIPA).

In particular, the object of this plan is to inform:

- The community about how their personal information will be used, stored and accessed after it is collected by the Council; and
- Council staff of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

PART 1 – INTRODUCTION

The Privacy and Personal Information Protection Act 1998 ("PPIPA") provides for the protection of personal information and for the protection of the privacy of individuals.

Section 33 of the PPIPA requires all councils to prepare a Privacy Management Plan (the "Plan") to deal with:

- the devising of policies and practices to ensure compliance by the Council with the requirements of the PPIPA and the Health Records and Information Privacy Act 2002 ("HRIPA");
- the dissemination of those policies and practices to persons within the Council;
- the procedures that the Council proposes for internal review of privacy complaints;
- such other matters as are considered relevant by the Council in relation to privacy and the protection of personal information held by it.

This Plan has been prepared for the purpose of section 33 of the PPIPA.

PPIPA provides for the protection of personal information by means of 12 Information Protection Principles. Those principles are listed below:

- Principle 1 - Collection of personal information for lawful purposes Principle 2 - Collection of personal information directly from individual Principle 3 - Requirements when collecting personal information
- Principle 4 - Other requirements relating to collection of personal information
- Principle 5 - Retention and security of personal information
- Principle 6 - Information about personal information held by agencies Principle 7 - Access to personal information held by agencies Principle 8 - Alteration of personal information
- Principle 9 - Agency must check accuracy of personal information before use
- Principle 10 - Limits on use of personal information
- Principle 11 - Limits on disclosure of personal information
- Principle 12 - Special restrictions on disclosure of personal information

Those principles are *modified* by the Privacy Code of Practice for Local Government ("the Code") made by the Attorney General. To date there has been no Health Records and Information Privacy Code of Practice made for Local Government.

The Privacy Code has been developed to enable Local Government to fulfill its statutory duties and functions under the *Local Government Act 1993* (the "LGA") in a manner that seeks to comply with the PPIPA.

This Plan outlines how the Council will incorporate the 12 Information Protection Principles into its everyday functions.

This Plan should be read in conjunction with the Code of Practice for Local Government.

Nothing in this Plan is to:

- affect any matter of interpretation of the Codes or the Information Protection Principles and the Health Privacy Principles as they apply to the Council;
- affect any obligation at law cast upon the Council by way of representation or holding out in any manner whatsoever;
- create, extend or lessen any obligation at law which the Council may have.

This Plan is designed to introduce policies and procedures to maximise compliance with the PPIPA and the HRIPA.

Where the Council has the benefit of an exemption, it will nevertheless describe procedures for compliance in this Plan. By doing so, it is not to be bound in a manner other than that prescribed by the Codes.

Council collects, stores and uses a broad range of information. A significant part of that information is personal information. This Plan applies to that part of the Council's information that is personal information.

It may mean in practice that any information that is not personal information will receive treatment of a higher standard; namely treatment accorded to personal information where the information cannot be meaningfully or practicably separated.

1.1 What is “personal information”?

“Personal information” is defined in section 4 of the PPIPA as follows:

Personal information is defined to mean information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form.

1.2 What is not “personal information”

“Personal information” does not include “information about an individual that is contained in a publicly available publication”. Personal information, once it is contained in a publicly available publication, ceases to be covered by the PPIPA.

Section 4A of the PPIPA also specifically excludes “health information”, as defined by section 6 of the HRIPA, from the definition of “personal information”, but includes “health information” in the PPIPA's consideration of public registers (discussed below). “Health information” is considered in Part 4 of this Plan.

Where the Council is requested to provide access or make a disclosure and that information has already been published, then the Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, section 8 of the Government Information (Public Access) Act 2009 (GIPA Act)).

Council considers the following to be publicly available publications:

- An advertisement containing personal information in a local, city or national newspaper;
- Personal information on the Internet;
- Books or magazines that are printed and distributed broadly to the general public;
- Council Business papers or that part that is available to the general public;
- Personal information that may be a part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIPA. Council's decision to publish in this way must be in accordance with PPIPA.

1.3 Policy on Electoral Rolls

The Electoral Roll is a publicly available publication. Council will provide open access to the Electoral Roll in Council's library. Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

1.4 Application of this Plan

The PPIPA, the HRIPA and this Plan apply, wherever practicable, to:

- Councillors;
- Council employees;
- Consultants and contractors of the Council;
- Council owned businesses; and
- Council committees (including community members of those committees which may be established under section 355 of the LGA).

Council will ensure that all such parties are made aware that they must comply with the PPIPA, the HRIPA, any other applicable Privacy Code of Practice and this Plan.

1.5 Personal Information held by Council

The Council holds personal information concerning Councillors, such as:

- personal contact information;
- complaints and disciplinary matters;
- pecuniary interest returns; and
- entitlements to fees, expenses and facilities.

The Council holds personal information concerning its customers, ratepayers and residents, such as:

- rates records; and
- DA applications and objections; and
- various types of health information (see page 37 for detailed examples).

The Council holds personal information concerning its employees, such as:

- recruitment material;
- leave and payroll data;
- personal contact information;
- performance management plans;
- disciplinary matters;
- pecuniary interest returns;
- wage and salary entitlements; and
- health information (such medical certificates and workers compensation claims).

1.6 Applications for suppression in relation to general information (not public registers)

Under section 739 of the Local Government Act 1993 ("LGA") a person can make an application to suppress certain material that is available for public inspection in circumstances where the material discloses or would disclose the person's place of living if the person considers that the disclosure would place the personal safety of the person or their family at risk.

Section 739 of the LGA relates to publicly available material other than public registers. As such, it limits disclosure in those circumstances where an application for suppression is successful. An application for suppression must be verified by statutory declaration and otherwise meet the requirements of section 739. When in doubt, Council will err in favour of suppression.

For more information regarding disclosure of information (other than public registers) see the discussion of IPPs 11 and 12 in Part 3 of this Plan. For information regarding suppression of information on *public registers*, see Part 2 of this Plan.

1.7 Caution as to unsolicited information

Where an individual, a group or committee, not established by Council, gives Council unsolicited personal or health information, then that information should be still treated in accordance with this Plan, the Codes, the HRIPA and the PPIPA for the purposes of IPPs 5-12 and HPPs 5-15 which relate to storage, access, use and disclosure of information.

Note that for the purposes of section 10 of the HRIPA, the Council is not considered to have "collected" health information if the receipt of the information by the Council is unsolicited.

Section 4(5) of the PPIPA also provides that personal information is not "collected" by Council if it is unsolicited.

PART 2 – PUBLIC REGISTERS

A public register is defined in section 3 of the PPIPA:

“...public register means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).”

A distinction needs to be drawn between “public registers” within the meaning of Part 6 of the PPIPA and “non public registers”. A “non public register” is a register but it is not a “public register” for the purposes of the PPIPA. For example, the register might not be publicly available or it may not contain personal information.

Disclosure in relation to public registers must comply with Part 6 of the PPIPA and the Privacy Code. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIPA applies to determine whether access to that information will be given to another person.

Disclosure in relation to all other personal information must comply with the Information Protection Principles as outlined in Part 2 of this Plan and the Privacy Code where it includes personal information that is not published.

The Council holds the following public registers under the LGA:

- Section 53 - Land Register
- Section 113 - Records of Approvals;
- Section 449 -450A - Register of Pecuniary Interests;
- Section 602 - Rates Record.

****Note – this is purely indicative. Council may, by virtue of its own practice, hold other Public Registers, to which the PPIPA applies.*

Council holds the following public registers under the Environmental Planning and Assessment Act:

- Section 100 – Register of consents and approvals
- Section 149G – Record of building certificates

Council holds the following public register under the Protection of the Environment (Operations) Act:

- Section 308 – Public register of licences held

Council holds the following public register under the Impounding Act 1993:

- Section 30 & 31 – Record of impounding

Members of the public may enquire only in accordance with the primary purpose of any of these registers. The primary purpose for each of these public registers is set out in the sections that follow.

2.1 Public registers, the PPIPA and the HRIPA

A public register generally confers specific rights or privileges, a benefit, or status, which would not otherwise exist. It may be required by law to be made publicly available or open to public inspection, or it is simply made publicly available or open to public inspection (whether or not payment is required).

Despite the exclusion of “health information” from the definition of “personal information” under section 4A of the PPIPA, section 56A of the PPIPA *includes* as “personal information”, “health information” on public registers.

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. It provides broadly that where Council is responsible for keeping a public register, it will not disclose any personal information kept in that register unless it is satisfied that the information is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.

Section 57 (2) provides that in order to ensure compliance with section 57(1), a Council may require any person who applies to inspect personal information contained in the public register to give particulars in the form of a statutory declaration as to the proposed use of that information. (Form at Appendix 1 may be used as a guide)

Councils also need to consider the Privacy Code of Practice for Local Government which has the effect of modifying the application of Part 6 of the PPIPA (the “public register” provisions).

If the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access to the information sought will not be given.

Where personal information is contained in a publicly available publication, that information will not be regarded as personal information covered by the PPIPA or as health information for the purposes of part 6 of the PPIPA.

2.2 Effect on section 6 of the GIPA Act

Section 57 of the PPIPA prevails over clause 1(3) of Schedule 1 of the Government Information (Public Access) Regulation 2009 (GIPA Regulation) to the extent of any inconsistency. Therefore:

1. If a register is listed in Schedule 1 of the GIPA Regulation, access must not be given except in accordance with section 57(1) of the PPIPA.
2. If a register is not listed in Schedule 1 of the GIPA Regulation, access must not be given except:
 - (i) if it is allowed under section 57(1) of the PPIPA; **and**
 - (ii) there is no overriding public interest against disclosure of the information under section 6 of the GIPA Act.

Note: Both 1 and 2 are amended with regard to specific public registers in the Privacy Code of Practice for Local Government.

2.3 Where some information in the public register has been published

That part of a public register that is not published in a publicly available publication will be treated as a “public register” and the following procedure for disclosure will apply.

For example, the Register of Consents and Approvals held by Council under section 100 of the Environmental Planning and Assessment Act requires Council to advertise or publish applications for development consent.

When Council publishes the address of the property, it may identify the owner. The personal information that has not been published and any applications not advertised or that have been rejected or withdrawn (and hence also not published) will be treated as a public register under PPIPA.

Council may hold a register under the Contaminated Land Management Act on behalf of the Environment Protection Authority. This is not to be considered a public register of the Council as the statute does not place any obligations on the Council to make this register publicly available as a register of contaminated land. Furthermore, the legislation foreshadows that the Environment Protection Authority may indeed post this list or register on the internet. This may constitute a publication of the information and therefore the PPIPA will not apply.

Registers should not be published on the internet.

2.4 Disclosure of personal information contained in the public registers

A person seeking a disclosure concerning someone else’s personal information from a public register must satisfy Council that the intended use of the information is for a purpose relating to the purpose of the register or the Act under which the register is kept.

In the following section, by way of guidance only, what might be called the “primary” purpose (or “the purpose of the register”) has been specified for each identified register. In some cases a “secondary purpose” has also been specified, by way of guidance as to what might constitute “a purpose *relating to the purpose of the register*”.

2.5 Purposes of public registers

Purposes of public registers under the Local Government Act

Section 53 - Land Register – The primary purpose is to identify all land vested in Council, or under its control. The secondary purpose includes a consideration of public accountability as to the land held by Council. Third party access is therefore a secondary purpose.

Section 113 - Records of Approvals – The primary purpose is to identify all approvals granted under the LGA.

Section 450A - Register of Pecuniary Interests – The primary purpose of this register is

to determine whether or not a Councillor or a member of a council committee has a pecuniary interest in any matter with which the council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Section 602 - Rates Record - The primary purpose is to record the value of a parcel of land and record rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, that a disclosure on a section 603 (of the LGA) rating certificate that a previous owner was a pensioner is considered to be allowed, because the secondary purpose is "a purpose relating to the purpose of the register".

Purposes of public registers under the Environmental Planning and Assessment Act

Section 100 – Register of consents and approvals – The primary purpose is to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.

Section 149G – Record of building certificates – The primary purpose is to identify all building certificates.

Purposes of public registers under the Protection of the Environment (Operations) Act

Section 308 – Public register of licences held – The primary purpose is to identify all licences granted under the Act.

Purposes of the public register under the Impounding Act

Section 30 & 31 – Record of impounding – The primary purpose is to identify any impounding action by Council.

Secondary purpose of all Public Registers

Due to the general emphasis (to be found in the LGA and elsewhere) on local government processes and information being open and accountable, it is considered that a secondary purpose for which all public registers are held by Council includes the provision of access to members of the public. Therefore disclosure of specific records from public registers would normally be considered to be allowable under section 57 of the PPIPA.

However, requests for access, copying or the sale of the whole or a substantial part of a Public Register held by Council will not necessarily fit within this purpose. Council should be guided by the Privacy Code of Practice for Local Government in

this respect. Where Council officers have doubt as to the intended use of the information, an applicant may be requested to provide a statutory declaration so that Council may satisfy itself as to the intended use of the information.

Council will make its assessment as to the minimum amount of personal information that is required to be disclosed with regard to any request.

Other Purposes

Persons or organisations who apply to Council to have access to the information contained in any public register for a purpose not related to the purpose of the register, may be given access at the discretion of Council but only in accordance with the Privacy Code of Practice for Local Government concerning Public Registers.

2.6 Applications for access to own records on a public register

A person wishing to have access to a public register to confirm their own details needs only to prove their identity to Council before having access to their own personal information.

2.7 Applications for suppression in relation to a public register

An application for suppression in relation to a public register will be dealt with under PPIPA, rather than section 739 of the LGA.

A person about whom personal information is contained (or proposed to be contained) in a public register, may request Council under section 58 of the PPIPA to have the information removed from, or not placed on the register.

If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, Council will suppress the information in accordance with the request unless Council is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information, in accordance with section 58(2) of the PPIPA. ("Well-being" is defined in the Macquarie Dictionary as "the good or satisfactory condition of existence; welfare".)

When in doubt, Council will err in favour of suppression.

Any information that is removed from, or not placed on, that aspect of a public register to be made public may be kept on the register for other purposes. That is, the information may still be used for council functions, but it cannot be disclosed to other parties.

An application for suppression should be made in writing addressed to the General Manager and must outline the reasons for the request. The Council may require supporting documentation where appropriate.

2.8 Other registers

Council may have other registers that are not public registers. The Information Protection Principles, this Plan, any applicable Codes and the PPIPA apply to those registers or databases.

PART 3 – THE INFORMATION PROTECTION PRINCIPLES

3.1 Information Protection Principle 1 – Section 8

Section 8 Collection of personal information for lawful purposes

- (1) *A public sector agency must not collect personal information unless:*
- (a) *the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and*
 - (b) *the collection of the information is reasonably necessary for that purpose.*
- (2) *A public sector agency must not collect personal information by any unlawful means.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from the requirements of this principle.

Council Policy

Council will only collect personal information for a lawful purpose as part of its proper functions. The LGA governs Council's major obligations and functions.

Section 22 of the LGA provides other functions under other Acts. Some of those Acts are as follows:

- Community Land Development Act 1989
- Companion Animals Act 1998**
- Conveyancing Act 1919
- Environmental Planning and Assessment Act 1979
- Fire Brigades Act 1989
- Fluoridation of Public Water Supplies Act 1957
- Food Act 1989
- Impounding Act 1993
- Library Act 1939
- Protection of the Environment Operations Act 1997
- Public Health Act 1991
- Recreation Vehicles Act 1983
- Roads Act 1993
- Rural Fires Act 1997
- State Emergency Service Act 1989
- Strata Schemes (Freehold Development) Act 1973
- Strata Schemes (Leasehold Development) Act 1986;
- Swimming Pools Act 1992
- Public Health Act 1991

This list is not exhaustive.

Additionally, the exercise by Council of its functions under the LGA may also be modified by the provisions of other Acts. Some of those Acts follow:

- Coastal Protection Act 1979;
- Environmental Offences and Penalties Act 1989;
- Government Information (Public Access) Act 2009;
- Heritage Act 1977;
- State Emergency and Rescue Management Act 1989;
- Unclaimed Money Act 1995;
- Unhealthy Building Land Act 1990.

The circumstances under which Council may collect information, including personal information, are varied and numerous.

Council will not collect any more personal information than is reasonably necessary for it to fulfil its proper functions.

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information must agree to be bound not to collect personal information by any unlawful means. This will include debt recovery actions by or undertaken on behalf of Council by commercial agents.

**Companion Animals Act

Collection of information under the Companion Animals Act and Council's use of the Companion Animals Register should be guided by the Director General's guidelines, which have been developed with the PPIPA in mind.

Role of the Privacy Contact Officer

In order to ensure compliance with Information Protection Principle 1, internet contact forms, rates notices, application forms of whatsoever nature, or written requests by which personal information is collected by Council; will be referred to the Privacy Contact Officer prior to adoption or use.

The Privacy Contact Officer will also provide advice as to:

1. Whether the personal information is collected for a lawful purpose;
2. If that lawful purpose is directly related to a function of Council; and
3. Whether or not the collection of that personal information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

3.2 Information Protection Principle 2 – Direct Collection

Section 9 Collection of personal information directly from individual

A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

- (a) *the individual has authorised collection of the information from someone else, or*

- (b) *in the case of information relating to a person who is under the age of 16 years the information has been provided by a parent or guardian of the person.*

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

Council Policy

The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from the Land Titles Office would fit within section 9(a) above.

Other means include forms that customers may complete and lodge with Council for development consent, companion animal registration, applications for specific inspections or certifications or applications in respect of tree preservation orders.

In relation to petitions, the Council will treat the personal information contained in petitions in accordance with PPIPA.

Where Council or a Councillor requests or requires information from individuals or groups, that information will be treated in accordance with PPIPA.

Council regards all information concerning its customers as information protected by PPIPA. Council will therefore collect all personal information directly from its customers except as provided in section 9 or under other statutory exemptions or Codes of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

Where Council anticipates that it may otherwise need to collect personal information indirectly it will first obtain the authorisation of each individual under section 9 (a) of the PPIPA.

External and related bodies

Each of the following will be required to comply with this Plan, any applicable Privacy Code of Practice, and the PPIPA:

- Council owned businesses
- Council consultants
- Private contractors
- Council committees

Council will seek to contractually bind each of these bodies or persons to comply with the PPIPA.

Where any of the above collect personal information on behalf of Council or in relation to the performance of their activities, that body or person will be required to:

- obtain a written authorisation and consent to that collection; and
- notify those persons in accordance with Information Protection Principle 3 as to the intended recipients and other matters required by that principle.

Council owned businesses, committees and private contractors or consultants must abide by this Plan, the Code and the PPIPA under the terms of their incorporation by Council or by contract.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 2.

Existing statutory exemptions under the Act

Compliance with Information Protection Principle 2 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(2) of the PPIPA permits non-compliance with Information Protection Principle 2 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.

Section 24(4) of the PPIPA extends the operation of section 24(1) to councils and permits non-compliance with Information Protection Principle 2 if a council is:

- (i) investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 2 where the agency is lawfully authorised or required not to comply with the principle.

- (iii) Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 2 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26(1) of the PPIPA permits non-compliance with Information Protection Principle 2 if compliance would prejudice the interests of the individual concerned.

Further Explanation regarding IPP 2

Where Council cannot collect personal information directly from the person, it will ensure one of the following:

1. Council has obtained authority from the person under section 9(a) of the PPIPA.
2. The collection of personal information from a third party is permitted under an Act or law. (For example, the indirect collection from the Land Titles Office.)
3. The collection of personal information from a parent or guardian is permitted provided the person is less than 16 years of age.
4. The collection of personal information indirectly where one of the above exemptions applies.
5. The collection of personal information indirectly is permitted under the Privacy Code of Practice for Local Government or the Investigative Code of Practice.

The only other exception to the above is in the case where Council is given unsolicited information.

3.3 Information Protection Principle 3 - Requirements when collecting personal information

Section 10 Requirements when collecting personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:

- (a) *the fact that the information is being collected,*
- (b) *the purposes for which the information is being collected,*
- (c) *the intended recipients of the information,*
- (d) *whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,*
- (e) *the existence of any right of access to, and correction of, the information,*
- (f) *the name and address of the agency that is collecting the information and the agency that is to hold the information.*

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle where personal information is collected about an individual for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition without prior or subsequent notification.

Council Policy

Where Council proposes to collect personal information directly from the person, it will inform that person that the personal information is being collected, what is done

with that information and who the intended recipients will be.

Council will inform persons if the information is required by law or voluntarily given. Council will also inform individuals which department or section within Council holds their personal information, and of the right to access and correct that information. Council will adapt the general section 10 pre-collection Privacy Notification form as appropriate (See Appendix 2).

The following are examples of application procedures that will require a Privacy Notification Form in accordance with section 10:

- Lodging Development Applications;
- Lodging objections to Development Applications;
- Lodging applications for approval under the LGA;
- Any stamps or printed slips that contain the appropriate wording for notification under section 10 (see Appendix 2); and
- When collecting an impounded item.

In relation to the Privacy Notification Form that may be attached to a Development Application provided to objectors, it could be stated that objectors have a right to remain anonymous if they so choose. However, should they need to substantiate their objections, anonymous objections may be given less weight (or no weight) in the overall consideration of the Application.

Post – Collection

Where Council collects personal information indirectly from another public sector agency in respect of any one of its statutory functions, it will advise those individuals that it has collected their personal information by including a privacy notification form in the next issue of their rates notice, or otherwise by letter. A common example of the collection of information from another public sector agency is the Land Titles Office. Council receives information as to new ownership changes when property is transferred from one owner to the next. Appendix 3 contains a sample Privacy Notification Form that could be used for post-collection.

External and related bodies

Each of the following will be required to comply with Information Protection Principle 3:

- Council owned businesses
- Council consultants
- Private contractors
- Council committees

Council will seek to contractually bind each of these bodies or persons to comply with the Information Protection Principle 3.

Where any of the above collect personal information on behalf of Council or in relation to the performance of their activities, that body or person will be required to notify those persons in accordance with Information Protection Principle 3 as to the

intended recipients and other matters required by that principle.

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Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 3.

Existing statutory exemptions under the Act

Compliance with Information Protection Principle 3 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(3) permits non-compliance with Information Protection Principle 3 where information is collected for law enforcement purposes. Law enforcement means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person.

Section 24(4) of the PPIPA extends the operation of section 24(1) to councils and permits non-compliance with Information Protection Principle 3 if a council is:

- (i) investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 3 where the agency is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 3 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26(1) of the PPIPA permits non-compliance with Information Protection Principle 3 if compliance would prejudice the interests of the individual concerned.

Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Disclosure of information of research purposes

The disclosure of personal information for research purposes will be allowed only in accordance with any applicable Direction made by the Privacy Commissioner under section 41 of PPIPA or any Research Code of Practice made by the Attorney General as may be in force for the time being.

3.4 Information Protection Principle 4 - Other requirements relating to collection of personal information

Section 11 Other requirements relating to collection of personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and*
- (b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.

Council collects personal information through the various forms that customers may complete and lodge with Council. Before adoption of a new form, a draft form will be reviewed for compliance with Information Protection Principle 4 by the EEO Officer, Council's solicitor, Public Officer or other suitable person. Should Council have any residual doubts, the opinion of the Office of the Privacy Commissioner NSW will be sought.

3.5 Information Protection Principle 5 - Retention and security of personal information

Section 12 Retention and security of personal information

A public sector agency that holds personal information must ensure:

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and*
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and*
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and*
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Council may comply with this principle by using any or all of the following or similar documents:

- Records and Archives Services Manual;
- The Council's Policy on Security of and Access to Misconduct Files;
- Council's Internet Security Policy;
- Information Technology Security Policy; and
- General Records Disposal Schedule for Local Government.

Disclosure of information of research purposes

The disclosure of personal information for research purposes will be allowed only in accordance with any applicable Direction made by the Privacy Commissioner under section 41 of PPIPA or any Research Code of Practice made by the Attorney General as may be in force for the time being.

3.6 Information Protection Principle 6 - Information held by agencies

Section 13 Information about personal information held by agencies

A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) *whether the agency holds personal information, and*
- (b) *whether the agency holds personal information relating to that person, and*
- (c) *if the agency holds personal information relating to that person:*
 - (i) *the nature of that information, and*
 - (ii) *the main purposes for which the information is used, and*
 - (iii) *that person's entitlement to gain access to the information.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Section 13 of the PPIPA requires a council to take reasonable steps to enable a person to determine whether the council holds personal information about them. If Council holds any information about a person, upon request it will advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access. As a matter of practicality, not every item of personal information, however insignificant, will be capable of ascertainment.

Under section 20(5) of the PPIPA, Information Protection Principle 6 is subject to any applicable conditions or limitations contained in the *Government Information (Public Access) Act 2009* ("GIPA Act"). Council must consider the relevant provisions of the GIPA Act.

Any person can make application to Council by completing the appropriate form and submitting it to Council. An example is at Appendix 4.

Where council receives an application or request by a person as to whether council holds information about them, council will undertake a search of its records to answer the enquiry. Council may ask the applicant to describe what dealings the applicant has had with council in order to assist council to conduct the search.

Council will ordinarily provide a response to applications of this kind within 28 days of the application being made. The fee structure is commensurate to that of the Council's GIPA Act rates structure.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 6.

Existing exemptions under the Act

Compliance with Information Protection Principle 6 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 6 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 6 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Reporting matters

The Council will issue a statement to be included on its Web page (if it has one) and in its Annual Report concerning the nature of personal information it regularly collects, the purpose for which the personal information is used and an individual's right to access their own personal information.

3.7 Information Protection Principle 7 - Access to personal information held by agencies

Section 14 Access to personal information held by agencies

A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Section 14 of the PPIPA requires a council, at the request of any person, to give access to that person to personal information held about them.

Compliance with Information Protection Principle 7 does not allow disclosure of information about other people. If access to information that relates to someone else is sought, the application must be made under the GIPA Act, unless Information Protection Principles 11 and 12 or the Public Register provisions apply.

Where a person makes an application for access under the PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the GIPA Act. However use of the GIPA Act is to be a last resort. The applicant has the right to insist on being dealt with under PPIPA.

Under section 20(5) of the PPIPA, Information Protection Principle 7 is subject to any applicable conditions or limitations contained in the *Government Information (Public Access) Act 2009* ("GIPA Act"). Council must consider the relevant provisions of the GIPA Act.

Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their inquiries to the General Manager, who will make a determination. A sample form is provided at Appendix 5.

Members of staff wishing to exercise their right of access to their personal information should apply in writing on the attached form or direct their inquiries to the Manager of Personnel, who will deal with the application.

In order to comply with the requirement to provide the requested information "without excessive delay or expense", Council will ordinarily provide a response to applications of this kind within 28 days of the application being made.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 7.

Existing exemptions under the Act

Compliance with Information Protection Principle 7 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 7 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA non-compliance with Information Protection Principle 7

where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

3.8 Information Protection Principle 8 - Alteration of personal information

Section 15 Alteration of personal information

- (1) *A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:*
 - (a) *is accurate, and*
 - (b) *having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.*
- (2) *If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.*
- (3) *If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.*
- (4) *This section, and any provision of privacy code of practice that relates to the requirements set out in this section, apply to public sector agencies despite section 25 of this Act and section 21 of the State Records Act 1998.*
- (5) *The Privacy Commissioner's guidelines under section 36 may make provision for or with respect to requests under this section, including the way in which such a request should be made and the time within which such a request should be dealt with.*
- (6) *In this section (and in any other provision of this Act in connection with the operation of this section), **public sector agency** includes a Minister and a Minister's personal staff.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Section 15 of the PPIPA allows a person to make an application to council to amend (*this includes by way of corrections, deletions or additions*) personal information held about them so as to ensure the information is accurate, and, having regard to the purpose for which the information is collected, relevant to that purpose, up to date and not misleading.

Council wishes to have its information current, accurate and complete. Proposed amendments or changes to the personal information held by the Council are welcomed.

If Council declines to amend personal information as requested, it will on request of the

individual concerned, place an addendum on the information in accordance with section 15(2) of the PPIPA.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the Manager Personnel in the first instance and treated in accordance with the "Grievance and Complaint Handling Procedures".

Any alterations that are or could be the subject of a customer complaint or grievance will be referred to the General Manager, who will make a determination in relation to the matter.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 8.

Existing exemptions under the Act

Compliance with Information Protection Principle 8 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 8 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with section Information Protection Principle 8 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Procedure

Where information is requested to be amended (either by way of correction, deletion or addition), the individual to whom the information relates, must make a request. That request should be accompanied by appropriate evidence as to the cogency of the making of the amendment, sufficient to satisfy the Council that the proposed amendment is factually correct and appropriate. The Council may require further documentary evidence to support certain amendments. Council will not charge to process an application to amend a record under s.15.

The Council's application form for alteration under IPP 8 is at Appendix 6 at the end of this Plan.

Where Council is not prepared to amend

If the Council is not prepared to amend the personal information in accordance with a request by the individual the Council may attach to the information in such a manner as is capable of being read with the information, any statement provided by that individual.

Where an amendment is made

If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have the recipients of that information notified of the amendments made by the Council.

The Council will seek to notify recipients of information as soon as possible, of the making of any amendment, where it is reasonably practicable.

State Records Act

The State Records Act does not allow for the deletion of records. However, as a result of section 20(4) of the PPIPA, some deletions may be allowed in accordance with Information Protection Principle 8.

3.9 Information Protection Principle 9 - Agency must check accuracy of personal information before use

Section 16 Agency must check accuracy of personal information before use

A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

The steps taken to comply with section 16 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected.

The more significant the information, the greater the necessity that checks to ensure its accuracy and currency be undertaken prior to its use.

For example, each employee's record should be updated when there is any change of circumstances or when the employee's contact details change.

3.10 Information Protection Principle 10 - Limits on use of personal information

Section 17 Limits on use of personal information

A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:

- (a) the individual to whom the information relates has consented to the use of the information for that other purpose, or*
- (b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or*
- (c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.*

The Privacy Code of Practice for Local Government

The Code makes provision that Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances:

- (i) where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s; or
- (ii) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.

Explanatory Note

Council may use personal information obtained for one purpose for another purpose in pursuance of its lawful and proper functions. For example, the Rates Record that Council holds under section 602 of the LGA may also be used to:

- notify neighbours of a proposed development;
- evaluate a road opening; or
- evaluate a tree preservation order.

Council Policy

Council will seek to ensure that information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for one purpose for another purpose, it will first gain the consent of the individual concerned, unless an exemption applies.

External and related bodies

Each of the following will be required to comply with the Information Protection Principle 10:

- Council owned businesses
- Council consultants;
- Private contractors; and
- Council committees.

Council will seek to contractually bind each of these bodies or persons to comply. Where any of the above seek to use personal information collected for one purpose, that body or person will be required to obtain the written consent of those persons in accordance with section 17(a) to the use of the information for another purpose. The form of consent should include the following elements:

I, ⁽¹⁾ _____	(1) insert full name
of ⁽²⁾ _____	(2) insert address
hereby consent under section 17(a) of the Privacy and Personal Information Protection Act 1998 to ⁽³⁾ _____	(3) insert Council name
using the information collected from me by ⁽⁴⁾ _____	(4) insert name of collecting body/person
for the purpose of ⁽⁵⁾ _____	(5) insert purpose/s info was collected for
Signature _____	
Name to be printed _____	
Date signed _____ / _____ / _____	

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 10.

Existing exemptions under the Act

Compliance with Information Protection Principle 10 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(4) of the PPIPA permits Council not to comply with Information Protection Principle 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person. *Protection of the public revenue* means a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty.

Section 24(4) of the PPIPA extends the operation of section 24(2) to councils and permits non-compliance with Information Protection Principle 10 if a council is:

- (i) investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) the use of the information concerned for a purpose other than the purpose for which it was collected is reasonably necessary in order to enable the council to

exercise its complaint handling functions or any of its investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 10 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 10 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (e.g., the Department of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister’s (or Premier’s) administration.

3.11 Information Protection Principle 11 - Limits on disclosure of personal information

Section 18 Limits on disclosure of personal information

- (1) *A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:*
 - (a) *the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or*
 - (b) *the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or*
 - (c) *the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.*
- (2) *If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.*

The Privacy Code of Practice for Local Government

The Code makes provision for council to depart from this principle in the circumstances described below:

1. Council may disclose personal information to public sector agencies or public utilities on condition that:
 - (i) the agency has approached Council in writing;
 - (ii) Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency, and
 - (iii) Council is satisfied that the personal information is reasonably necessary for the exercise of that agency’s function/s.
2. Where personal information which has been collected about an individual is to

be disclosed for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition.

3. Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

Council Policy

Council will not disclose the personal information to another person or other body, unless the disclosure is required for law enforcement activities or at the request of the individual concerned.

Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with section 10), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates.

The Council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Public Registers

Sections 18 and 57 of the PPIPA should be read in conjunction in regard to Public Registers. Public Registers are discussed further in Part 2 of this Plan.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 11.

Existing exemptions under the Act

Compliance with Information Protection Principle 11 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(5)(a) of the PPIPA permits non-compliance with Information Protection

Principle 11 where disclosure is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. However

Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(b) of the PPIPA permits non-compliance with Information Protection Principle 11 where the disclosure is made to a law enforcement agency for the purpose of ascertaining the whereabouts of a person reported to be missing. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(c) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is authorised by subpoena, search warrant or other statutory instrument. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(i) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary for the protection of the public revenue. *Protection of the public revenue* could mean a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(ii) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary to investigate an offence where there are reasonable grounds to believe an offence has been committed.

Section 24(4) of the PPIPA permits non-compliance with Information Protection Principle 11 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency, and
- (ii) if the disclosure is to an investigative agency.

(Note: “investigative agency” is defined at s.3 of PPIPA.)

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 11 where Council is lawfully authorised or required not to comply with the principle. Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 11 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (e.g. the Division of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier)

about any matter within the Minister’s (or Premier’s) administration.

It is anticipated that a disclosure of personal information for research purposes will be allowed under a s.41 Direction made by the Privacy Commissioner until such time as a

Research Code of Practice is made by the Attorney General.

Suppression

Information held by Council may be suppressed such as to disallow disclosure that would otherwise be allowed in the circumstances outlined above. See Part 1 of this Plan for more details about suppression of personal information.

3.12 Information Protection Principle 12 - Special restrictions on disclosure of personal information

Section 19 Special restrictions on disclosure of personal information

- (1) *A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.*
- (2) *A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:*
 - (a) *a relevant privacy law that applies to the personal information concerned is in force in the that jurisdiction or applies to that Commonwealth agency, or*
 - (b) *the disclosure is permitted under a privacy code of practice.*
- (3) *For the purposes of subsection (2), a **relevant privacy law** means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.*
- (4) *The Privacy Commissioner is to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales and to Commonwealth agencies.*
- (5) *Subsection (2) does not apply:*
 - (a) *until after the first anniversary of the commencement of this section, or*
 - (b) *until a code referred to in subsection (4) is made,*

whichever is the later.

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle in the circumstances described below:

1. For the purposes of s.19(2) only, where Council is requested by a potential employer outside New South Wales, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to

give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

Council Policy

Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Public Registers

Sections 19 and 57 of the PPIPA should be read in conjunction in regard to Public Registers. Public Registers are discussed further in Part 2 of this Plan.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 12.

Existing exemptions under the Act

Compliance with Information Protection Principle 12 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(7) of the PPIPA permits non-compliance with Information Protection Principle 12 where the disclosure is necessary to investigate an offence or where there are reasonable grounds to believe an offence has been or may be committed.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 12 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 12 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Section 28(2) permits non-compliance with Information Protection Principle 12 where, in the case of health information, the consent of the person cannot reasonably be obtained and the disclosure is made by an authorised person to another authorised person. "Authorised person" means a medical practitioner, health worker, or other official or employee providing health or community services who is employed or engaged by a public sector agency.

Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (e.g. the Division of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier)

about any matter within the Minister's (or Premier's) administration.

It is anticipated that a disclosure of personal information for research purposes will be allowed under a s.41 Direction made by the Privacy Commissioner until such time as a Research Code of Practice is made by the Attorney General.

Suppression

Information held by Council may be suppressed such as to disallow disclosure that would otherwise be allowed in the circumstances outlined above. See Part 1 of this Plan for more details about suppression of personal information.

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PART 4 – HEALTH PRIVACY PRINCIPLES

In 2002, most references to ‘health information’ were taken out of the PPIPA and separate legislation was enacted. The HRIPA was enacted to deal with this specific type of personal information. On and from September 2004, various agencies and organisations, including local councils were expected to comply with the HRIPA in their collection and management of health information.

Health information includes personal information that is information or an opinion about the physical or mental health or a disability of an individual. Health information *also* includes personal information that is information or an opinion about:

- a health service provided, or to be provided, to an individual;
- an individual’s express wishes about the future provision of health services to him or her;
- other personal information collected in connection with the donation of human tissue; or
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants.

Health information is defined in section 6 of the HRIPA. Local councils will often hold health information by reason of their role in elder care, child care and various types of community health support services. It is therefore very important for councils to be familiar with the 15 Health Protection Principles (“HPP”) set down in Schedule 1 to the HRIPA. Each of these HPPs are considered below.

The following is a non-exhaustive list of examples of the types of health information and circumstances in which councils may collect health information in exercising their functions:

- Tree pruning/removal application where residents approach council for a reconsideration or reassessment of a tree pruning/removal application on medical grounds;
- Issuing of clean up orders which may include recording information about a residents health, GP professional contact details or involvement with mental health services;
- Volunteer programs where volunteers are asked to disclose health conditions which may preclude them from some types of volunteer work;
- Meals on wheels programs where residents may be asked for medical or dietary requirements, e.g. allergies for catering purposes;
- Seniors bus outings where information may be collected on special medical needs;
- Councils may provide respite and social support services collecting information that is consistent with the client intake and referral record system;
- Information on families for the purposes of children’s services. e.g. history of illness, allergies, asthma, diabetes, epilepsy etc;
- Physical exercise classes;
- Some councils run Podiatry services;
- Information may be collected through a healthy community program;
- Children’s immunization records; and
- Family counsellor/youth support workers records.

HPPs 1-4 concern the collection of health information, HPP 5 concerns the storage of health information, HPPs 6-9 concern the access and accuracy of health information, HPP 10 concerns the use of health information, HPP 11 concerns the disclosure of health information, HPPs 12-13 concern the identifiers and anonymity of the persons to which health information relate, HPPs 14-15 concern the transferral of health information and the linkage to health records across more than one organisation.

Health Privacy Principle 1

Purposes of collection of health information

- (1) *An organisation must not collect health information unless:*
 - (a) *the information is collected for a lawful purpose that is directly related to a function or activity of the organisation, and*
 - (b) *the collection of the information is reasonably necessary for that purpose.*
- (2) *An organisation must not collect health information by any unlawful means.*

Health Privacy Principle 2

Information must be relevant, not excessive, accurate and not intrusive

An organisation that collects health information from an individual must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) *the information is collected is relevant to that purpose, is not excessive and is accurate, up to date and complete, and*
- (b) *the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.*

Health Privacy Principle 3

Collection to be from the individual concerned

- (1) *An organisation must collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so.*
- (2) *Health information is to be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.*

Health Privacy Principle 4

Individual to be made aware of certain matters

- (1) *An organisation that collects health information about an individual from the individual must, at or before the time it collects the information (or if that is not practicable, as soon as practicable after that time), take steps that are reasonable in the circumstances to ensure that the individual is aware of the following:*
 - (a) *the identity of the organisation and how to contact it,*
 - (b) *the fact that the individual is able to request access to the information,*
 - (c) *the purposes for which the information is collected,*

- (d) *the persons to whom (or the type of persons to whom) the organisation usually discloses information of that kind,*
 - (e) *any law that requires the particular information to be collected,*
 - (f) *the main consequences (if any) for the individual if all or part of the information is not provided.*
- (2) *If the organisation collects health information about an individual from someone else, it must take any steps that are reasonable in the circumstances to ensure that the individual is generally aware of the matters listed in subclause (1) except to the extent that:*
 - (a) *making the individual aware of the matters would impose a serious threat to the life or health of any individual, or*
 - (b) *the collection is made in accordance with guidelines issued under subclause (3).*
- (3) *The Privacy Commissioner may issue guidelines setting out circumstances in which an organisation is not required to comply with subclause (2).*
- (4) *An organisation is not required to comply with a requirement of this clause if:*
 - (a) *the individual to whom the information relates has expressly consented to the organisation not complying with it or,*
 - (b) *the organisation is lawfully authorised or required not to comply with it, or*
 - (c) *non-compliance is otherwise permitted (or necessarily implied or reasonably contemplated) under any Act or any other law including the State Records Act 1998), or*
 - (d) *compliance by the organisation would, in the circumstances, prejudice the interests of the individual to whom the information relates, or*
 - (e) *the information concerned is collected for law enforcement purposes or,*
 - (f) *the organisation is an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions.*
- (5) *If the organisation reasonably believes that the individual is incapable of understanding the general nature of the matters listed in subclause (1), the organisation must take steps that are reasonable in the circumstances, to ensure that any authorised representative of the individual is aware of those matters.*
- (6) *Subclause (4) (e) does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.*
- (7) *The exemption provided by subclause (4) (f) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.*

Council Policy

Council will only collect health information for a lawful purpose that is directly related to Council's activities and is necessary for that purpose (HPP 1)

Council will ensure that the health information is relevant, accurate, up to date and not excessive and that the collection is not unnecessarily intrusive into the personal affairs of the individual (HPP 2).

Council will only collect health information directly from the individual that the information concerns, unless it is unreasonable or impractical for Council to do so. (HPP

3).

Council will tell the person why the health information is being collected, what will be done with it, who else might see it and what the consequences are if the person decides not to provide it. Council will also tell the person how he or she can see and correct the health information.

If Council collects health information about a person from someone else, Council will take reasonable steps to ensure that the subject of the information is aware of the above points (HPP 5).

Health Privacy Principle 5

Retention and Security

(1) *An organisation that holds health information must ensure that:*

- (a) *the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and*
- (b) *the information is disposed of securely and in accordance with any requirements for the retention and disposal of health information, and*
- (c) *the information is protected, by taking such security safeguards as are reasonable in the circumstances against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and*
- (d) *if it is necessary for the information to be given to a person in connection with the provision of a service to the organisation, everything reasonably within the power of an organisation is done to prevent the unauthorised use or disclosure of the information.*

Note. Division 2 (Retention of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

(2) *An organisation is not required to comply with a requirement of this clause if:*

- (a) *the organisation is lawfully authorised or required not to comply with it, or*
- (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).*

(3) *An investigative agency is not required to comply with subclause (1)(a).*

Council Policy

Council will store health information securely and protect health information from unauthorised access, use or disclosure. Health information will not be kept for any longer than is necessary and will be disposed of appropriately (HPP 5).

Health Privacy Principle 6

Information about health information held by organizations

(1) *An organisation that holds health information must take such steps as are, in the circumstances, reasonable, to enable any individual to ascertain:*

- (a) *whether the organisation holds health information, and*
 - (b) *whether the organisation holds health information relating to that individual, and*
 - (c) *if the organisation holds health information relating to that individual:*
 - (i) *the nature of that information*
 - (ii) *the main purposes for which the information is used, and*
 - (iii) *that person's entitlement to request access to the information.*
- (2) *An organisation is not required to comply with a provision of this clause if:*
- (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under any Act or any other law (including the State Records Act 1998).*

Health Privacy Principle 7

Access to health information

- (1) *An organisation that holds health information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.*

Note: Division 3 (Access to health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

Access to health information held by public sector agencies may also be available under the Government Information (Public Access) Act 2009 or the State Records Act 1998.

- (2) *An organisation is not required to comply with a provision of this clause if:*
- (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).*

Health Privacy Principle 8

Amendment of health information

- (1) *An organisation that holds health information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the health information:*
- (a) *is accurate, and*
 - (b) *having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to day, complete and not misleading.*

- (2) *If an organisation is not prepared to amend health information under subclause (1) in accordance with a request by the individual to whom the information relates, the*

organisation must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read

with the information, any statement provided by that individual of the amendment sought.

- (3) *If health information is amended in accordance with this clause, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the organisation.*

Note: Division 4 (Amendment of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

Amendment of health information held by public sector agencies may also be able to be sought under the Privacy and Personal Information Protection Act 1998.

- (4) *An organisation is not required to comply with a provision of this clause if:*
- (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).*

Health Privacy Principle 9

Accuracy

An organisation that holds health information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate and up to date, complete and not misleading.

Council Policy

Council will provide details about what health information Council is holding about an individual and with information about why Council is storing that information and what rights of access the individual has (HPP 6).

Council will allow the individual to access his or her health information without reasonable delay or expense (HPP 7).

Council will allow the individual to update, correct or amend his or her health information where necessary (HPP 8).

Council will make sure that the health information is relevant and accurate before using it (HPP 9).

Health Privacy Principle 10

- (1) *An organisation that holds health information must not use the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:*

(a) **Consent**

the individual to whom the information relates has consented to the use of the information for that secondary purpose, or

(b) **Direct relation**

the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use the information for the secondary purpose or,

Note: For example, if information is collected in order to provide a health service to the individual, the use of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.

(c) Serious threat to health or welfare

the use of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:

- (i) a serious and imminent threat to the life, health or safety of the individual or another person, or*
- (ii) a serious threat to public health and safety, or*

(d) Management of health services

the use of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:

- (i) either:*
 - (A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
 - (B) reasonable steps are taken to de-identify the information, and*
- (ii) if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(e) Training

the use of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:

- (i) either:*
 - (A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
 - (B) reasonable steps are taken to de-identify the information, and*
- (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(f) Research

the use of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:

(i) *either:*

- (A) *that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
- (B) *reasonable steps are taken to de-identify the information, and*

- (ii) *if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) *the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purpose of this paragraph, or*

(g) Find missing person

the use of the information for the secondary purpose is by a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

(h) Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline

the organisation:

(i) *has reasonable grounds to suspect that:*

- (A) *unlawful activity has been or may be engaged in, or*
- (B) *a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a the Health Practitioner Regulation National Law (NSW), or*
- (C) *an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and*

(ii) *uses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or*

(i) Law enforcement

the use of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

(j) Investigative agencies

the use of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or

(k) Prescribed circumstances

the use of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.

- (2) *An organisation is not required to comply with a provision of this clause if:*
- (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).*
- (3) *The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.*
- (4) *Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:*
- (a) *to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or*
 - (b) *to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.*
- (5) *The exemption provided by subclause (1) (j) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.*

Council policy

Council will only use the health information for the purpose for which it was collected or for a directly related purpose that the individual to whom the information relates would expect. Otherwise, Council will obtain the individual's consent (HPP 10).

Health Privacy Principle 11

- (1) *An organisation that holds health information must not disclose the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:*
- (a) **Consent**
the individual to whom the information relates has consented to the disclosure of the information for that secondary purpose, or
 - (b) **Direct relation**
the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to disclose the information for the secondary purpose, or

Note: *For example, if information is collected in order to provide a health service to the*

individual, the disclosure of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.

- (c) **Serious threat to health or welfare**

the disclosure of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:

- (i) a serious and imminent threat to the life, health or safety of the individual or another person, or*
- (ii) a serious threat to public health or public safety, or*

(d) Management of health services

the disclosure of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:

- (i) either:*
 - (A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or*
 - (B) reasonable steps are taken to de-identify the information, and*
- (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(e) Training

the disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:

- (i) either:*
 - (A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or*
 - (B) reasonable steps are taken to de-identify the information, and*
- (ii) if the information could reasonably be expected to identify the individual, the information is not made publicly available, and*
- (iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(f) Research

the disclosure of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:

- (i) either:*
 - (A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or*
 - (B) reasonable steps are taken to de-identify the information, and*

- (ii) *the disclosure will not be published in a form that identifies particular individuals or from which an individual's identity can reasonably be ascertained, and*
- (iii) *the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(g) Compassionate reasons

the disclosure of the information for the secondary purpose is to provide the information to an immediate family member of the individual for compassionate reasons and:

- (i) *the disclosure is limited to the extent reasonable for those compassionate reasons, and*
- (ii) *the individual is incapable of giving consent to the disclosure of the information, and*
- (iii) *the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which the organisation was aware or could make itself aware by taking reasonable steps, and*
- (iv) *if the immediate family member is under the age of 18 years, the organisation reasonably believes that the family member has sufficient maturity in the circumstances to receive the information, or*

(h) Finding missing person

the disclosure of the information for the secondary purpose is to a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

(i) Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline

the organisation:

- (i) *has reasonable grounds to suspect that:*
 - (A) *unlawful activity has been or may be engaged in, or*
 - (B) *a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a the Health Practitioner Regulation National Law (NSW), or*
 - (C) *an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and*
- (ii) *discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or*

(j) Law enforcement

the disclosure of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

(k) Investigative agencies

the disclosure of the information for the secondary purpose is reasonably

necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or

(l) Prescribed circumstances

the disclosure of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.

- (2) *An organisation is not required to comply with a provision of this clause if:*
 - (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or*
 - (c) *the organisation is an investigative agency disclosing information to another investigative agency.*
- (3) *The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.*
- (4) *Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:*
 - (a) *to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or*
 - (b) *to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.*
- (5) *If health information is disclosed in accordance with subclause (1), the person, body or organisation to whom it was disclosed must not use or disclose the information for a purpose other than the purpose for which the information was given to it.*
- (6) *The exemptions provided by subclauses (1) (k) and (2) extend to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.*

Council Policy

Council will only disclose health information under the following circumstances:

- With the consent of the individual to whom the information relates; or
- For the purpose for which the health information was collected or a directly related purpose that the individual to whom it relates would expect; or
- If an exemption applies (HPP 11).

Health Privacy Principle 12

Identifiers

- (1) *An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently.*

- (2) *Subject to subclause (4), a private sector person may only adopt as its own identifier of an individual an identifier of an individual that has been assigned by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:*
- (a) *the individual has consented to the adoption of the same identifier, or*
 - (b) *the use or disclosure of the identifier is required or authorised by or under law.*
- (3) *Subject to subclause (4), a private sector person may only use or disclose an identifier assigned to an individual by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:*
- (a) *the use or disclosure is required for the purpose for which it was assigned or for a secondary purpose referred to in one or more paragraphs of HPP 10 (1) (c)-(k) or 11 (1) (c)-(l), or*
 - (b) *the individual has consented to the use or disclosure, or*
 - (c) *the disclosure is to the public sector agency that assigned the identifier to enable the public sector agency to identify the individual for its own purposes.*
- (4) *If the use or disclosure of an identifier assigned to an individual by a public sector agency is necessary for a private sector person to fulfil its obligations to, or the requirements of, the public sector agency, a private sector person may either:*
- (a) *adopt as its own identifier of an individual an identifier of the individual that has been assigned by the public sector agency, or*
 - (b) *use or disclose an identifier of the individual that has been assigned by the public sector agency.*

Council Policy

Council will only give an identification number to health information if it is reasonably necessary for Council to carry out its functions effectively (HPP 12).

Health Privacy Principle 13

Anonymity

Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving health services from an organisation.

Council Policy

Council will provide health services anonymously where it is lawful and practical (HPP 13).

Health Privacy Principle 14

Transborder data flows and data flow to Commonwealth agencies.

An organisation must not transfer health information about an individual to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:

- (a) *the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling*

- of the information that are substantially similar to the Health Privacy Principles, or*
- (b) the individual consents to the transfer, or*
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request, or*
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party, or*
- (e) all of the following apply:*
 - (i) the transfer is for the benefit of the individual,*
 - (ii) it is impracticable to obtain the consent of the individual to that transfer,*
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it, or*
- (f) the transfer is reasonably believed by the organisation to be necessary to lessen or prevent:*
 - (i) a serious and imminent threat to the life, health or safety of the individual or another person, or*
 - (ii) a serious threat to public health or public safety, or*
- (g) the organisation has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles, or*
- (h) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.*

Council Policy

Council will only transfer personal information out of New South Wales if the requirements of Health Privacy Principle 14 are met.

Health Privacy Principle 15

Linkage of health records

- (1) An organisation must not:*
 - (a) include health information about an individual in a health records linkage system unless the individual has expressly consented to the information being so included, or*
 - (b) disclose an identifier of an individual to any person if the purpose of the disclosure is to include health information about the individual in a health records linkage system, unless the individual has expressly consented to the identifier being disclosed for that purpose.*
- (2) An organisation is not required to comply with a provision of this clause if:*
 - (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or*
 - (c) the inclusion of the health information about the individual in the health records information system (including an inclusion for which an identifier of the individual is to be disclosed) is a use of the information that complies with HPP 10 (1) (f) or a disclosure of the information that complies with HPP 11 (1) (f).*
- (3) In this clause:*

health record means an ongoing record of health care for an individual.

health records linkage system means a computerised system that is designed to link health records for an individual held by different organisations for the purpose of facilitating access to health records, and includes a system or class of systems prescribed by the regulations as being a health records linkage system, but does not include a system or class of systems prescribed by the regulations as not being a health records linkage system.

Council Policy

Council will only include health information in a system to link health records across more than one organisation if the individual to whom the health information relates expressly consents to the link (HPP 15).

PART 5 – IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN

5.1 Training Seminars/Induction

During induction, all employees should be made aware that the performance management system has the potential to include personal information on their individual work performance or competency.

Councillors, all staff of the Council including staff of council businesses, and members of council committees should be acquainted with the general provisions of the PPIPA, the HRIPA and in particular, the 12 Information Protection Principles (IPPs), the 15 Health Privacy Principles (HPPs), the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice.

5.2 Responsibilities of the Privacy Contact Officer

It is assumed that the Public Officer within Council will be assigned the role of the Privacy Contact Officer unless the General Manager has directed otherwise.

In order to ensure compliance with PPIPA and the HRIPA, the Privacy Contact Officer will review all contracts and agreements with consultants and other contractors, rates notices, application forms of whatsoever nature, and other written requests by which personal information is collected by Council, to ensure that Council is in compliance with the PPIPA.

Interim measures to ensure compliance with IPP 3 in particular may include the creation of stamps or printed slips that contain the appropriate wording (see Appendices 2 and 3).

The Privacy Contact Officer will ensure Council in its public areas has special provisions for working with computer screens. Computer screens may require:

- fast screen savers;
- face the computers away from the public; or
- only allow the record system to show one record at a time.

Council's electronic databases should also be reviewed to ensure that they contain procedures and protocols to check the accuracy and currency of personal and health information.

The Privacy Contact Officer will also provide opinions within Council as to:

- (i) Whether the personal or health information is collected for a lawful purpose;
- (ii) If that lawful purpose is directly related to a function of Council; and
- (iii) Whether or not the collection of that personal or health information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

Should the Council require, the Privacy Contact Officer may assign designated officers as "Privacy Resource Officers", within the larger departments of Council. In this manner the Council may ensure that the information protection principles are more broadly understood and that individual departments have a greater focus on the information protection principles and are directly applied to Council's day to day functions.

5.3 Distribution of information to the public

Council may prepare its own literature such as pamphlets on the PPIPA, HRIPA or it may obtain and distribute copies of literature available from the Office of the Privacy Commissioner NSW.

PART 6 – INTERNAL REVIEW

6.1 How does the process of Internal Review operate?

Under section 53 of the PPIPA a person (the applicant) who is aggrieved by the conduct of a council is entitled to a review of that conduct. An application for internal review is to be made within **6 months** of when the person first became aware of the conduct.

The application is to be in writing and addressed to Council's Privacy Contact Officer. The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application. The Reviewing Officer must be an employee and suitability qualified.

The review must be completed as soon as is reasonably practicable in the circumstances. If the review is not completed within **60 days** of the lodgement, the applicant is entitled to seek external review.

The Council must notify the Privacy Commissioner of an application as soon as practicable after its receipt, keep the Commissioner informed of the progress of the application and inform the Commissioner of the findings of the review and of the action it proposes to take in relation to the application.

The Privacy Commissioner is entitled to make submissions in relation to internal reviews and the council is required to consider any relevant material submitted by the Privacy Commissioner. The Council must provide the Privacy Commissioner with a draft of the council's internal review report to enable the Privacy Commissioner to make a submission.

Council may provide a copy of any submission by Privacy Commissioner's to the applicant.

The Council must notify the applicant of the outcome of the review within **14 days** of its determination. A copy of the final review should also be provided to the Privacy Commissioner where it departs from the draft review.

An internal review checklist has been prepared by the Office of the Privacy Commissioner NSW and can be accessed from its website <http://www.ipc.nsw.gov.au>.

The Privacy Commissioner must be notified of a complaint, briefed on progress and notified of the outcome of an internal review under the PPIPA or HRIPA.

6.2 What happens after an Internal Review?

If the complainant remains unsatisfied, he/she may appeal to the Administrative Decisions Tribunal which hears the matter afresh and may impose its own decision and can make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle.

PART 7 – OTHER RELEVANT MATTERS

7.1 Contracts with consultants and other private contractors

It is necessary to have specific provisions to protect the Council in any dealings with private contractors.

7.2 Confidentiality

The obligation of confidentiality is additional to and separate from that of privacy. Nevertheless, a duty to withhold information lies at the heart of both concepts. Confidentiality attaches to information per se, personal or health information to the person to whom that information relates.

An obligation of confidentiality exists for all employees whether express or implied as a matter of law.

Information which may be confidential is also likely to have a separate and independent obligation attaching to it in the form of privacy and in that regard, a release for the purposes of confidentiality will not suffice for privacy purposes. Two separate releases will be required and, in the case of privacy, the person to whom the information relates will be required to provide the release.

7.3 Misuse of personal or health information

Section 664 of the LGA makes it an offence for anyone to disclose information except in accordance with that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case.

7.4 Regular review of the collection, storage and use of personal or health information

The information practices relating to the collection, storage and use of personal or health information will be reviewed by the Council every three (3) years. Any new program initiatives will be incorporated into the review process with a view to ascertaining whether or not those programs comply with the PPIPA.

7.5 Regular review of Privacy Management Plan

When information practices are reviewed from time to time, the Privacy Management Plan will also be reviewed to ensure that the Plan is up to date.

7.6 Further information

For assistance in understanding the processes under the PPIPA and HRIPA, please contact the Council or the Office of the Privacy Commissioner NSW.

PART 8 – APPENDICES

DRAFT

**Appendix 1: Statutory Declaration for access under Section 57 of
the Privacy and Personal Information Protection Act 1998 to a
Public Register held by Council**

Statutory Declaration
Oaths Act, 1900, Ninth Schedule

I, the undersigned ⁽¹⁾ _____ (1) insert full name

of ⁽²⁾ _____ (2) insert address

in the State of New South Wales, do solemnly and sincerely declare that:

I am ⁽³⁾ _____ (3) insert relationship, if
any, to person inquired
about

I seek to know whether ⁽⁴⁾ _____ (4) insert name

is on the public register of ⁽⁵⁾ _____ (5) Applicant to describe
the relevant public
public register

The purpose for which I seek this information is ⁽⁶⁾ _____ (6) insert purpose for
seeking information

The purpose for which the information is required is to ⁽⁷⁾ _____ (7) insert purpose

**And I make this solemn declaration conscientiously believing the same to be true and
by virtue of the Oaths Act 1994.**

Signature of Applicant

Declared at: _____

in the said State this _____ day of _____ 20 _____

before me. _____

Signature of Justice of the Peace/Solicitor

Name of Justice of the Peace/Solicitor to be printed

Appendix 2: Privacy Notification Form - Section 10 (Pre – Collection)

(Addressed to the person from whom information is about to be collected or has been collected.)

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 (PPIPA).

The intended recipients of the personal information are:

- officers within the Council;
- data service providers engaged by the Council from time to time;
- any other agent of the Council; and
- _____
(INSERT NAME OF OTHER INTENDED RECIPIENTS)

The supply of information by you is: ☐ Voluntary ☐ Not voluntary

If you cannot provide, or do not wish to provide, the information sought, the Council

- ☐ maybe unable to process your application.
- ☐ will be unable to process your application.

Council is collecting this personal information from you in order to:

You may make application for access or amendment to information held by Council.

You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIPA.

Council is to be regarded as the agency that holds the information. However, if it **is not** Council who holds or controls the information, please state below who does:

(INSERT NAME OF AGENCY WHO HOLDS OR CONTROLS THE INFORMATION)

Enquiries concerning this matter can be addressed to: _____

Signature _____

Name to be printed _____

Date signed / /

Appendix 3: Privacy Notification Form - Section 10 (Post – Collection)

(Addressed to the person from whom information has been collected.)

The personal information that Council has collected from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 (PPIPA).

The intended recipients of the personal information are:

- officers within the Council;
- data service providers engaged by the Council from time to time;
- any other agent of the Council; and
-

(INSERT NAME OF OTHER INTENDED
RECIPIENTS)

The supply of information by you is: ☐ Voluntary ☐ Not voluntary

If you cannot provide, or do not wish to provide, the information sought, the Council may:

Council has collected this personal information from you in order to:

You may make application for access or amendment to information held by Council.

You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIPA.

Council is to be regarded as the agency that holds the information. However, if it ***is not*** Council who holds or controls the information, please state below who does:

(INSERT NAME OF AGENCY WHO HOLDS OR CONTROLS THE INFORMATION)

Enquiries concerning this matter can be addressed to:

Signature

Name to be printed

Date signed

/ /

**Appendix 4: Application under Section 13 of the Privacy and
Personal Information Protection Act 1998: To determine whether
Council holds personal information about a person.**

Personal information held by the Council

I, ⁽¹⁾ _____ (1) insert full name
of ⁽²⁾ _____ (2) insert address
Hereby request the General Manager of ⁽³⁾ _____ (3) insert name of Council

provide the following:

☐ Does the Council hold personal information about me? ☐ Yes ☐ No

☐ If so, what is the nature of that information?

☐ What is the main purpose for holding the information?

☐ Am I entitled to access the information? ☐ Yes ☐ No

My address for response to this application is:

State: _____ Post Code: _____

Note to applicants

Council **will not** record your address or any other contact details that you provide for any other purpose other than to respond to your application.

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIPA). There is a separate application form to gain access.

The Council may refuse to process this application in part or in whole if:

- there is an exemption to section 13 of the PPIPA; or
- a Code of Practice may restrict the operation of section 14.

Enquiries concerning this matter can be addressed to:

**Appendix 5: Application under section 14 of the Privacy And
Personal Information Protection Act 1998: For access to Applicant's
Personal Information**

Personal information held by the Council

I, ⁽¹⁾ _____ (1) insert full name
 of ⁽²⁾ _____ (2) insert address
 Hereby request that the ⁽³⁾ _____ (3) insert name of Council

Provide me with:

- ☐ (a) access to all personal information held concerning myself; or
☐ (b) access to the following personal information only (LIST INFORMATION REQUIRED BELOW):

My address for response to this application is:

 _____ State: _____ Post Code: _____

Note to applicants

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIPA).

You are entitled to have access without excessive delay or cost.

Council may refuse to process your application in part, or in whole, if:

- the correct amount of fees has not been paid;
- there is an exemption to section 14 of the PPIPA; or
- a Code of Practice may restrict disclosure.

Enquiries concerning this matter can be addressed to:

**Appendix 6: Application under section 15 of the Privacy and
Personal Information Protection Act 1998: For alteration of
Applicant's Personal Information**

Personal information held by the Council

I, ⁽¹⁾ _____ (1) insert full name
of ⁽²⁾ _____ (2) insert address
Hereby request that the ⁽³⁾ _____ (3) insert name of Council

alter personal information regarding myself in the following manner:

- I propose the following changes: _____
- The reasons for the changes are as follows: _____
- The documentary bases for those changes is as shown on the attached documents

Note to Applicants :

You have a right to request appropriate amendments are made (whether by way of corrections, deletions or additions) to ensure that the personal information held by the Council:

- (a) is accurate, and
- (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up-to- date, complete and not misleading.

If Council is not prepared to amend the personal information in accordance with a request by you, Council must take such steps as are reasonable to attach to the information in such a manner as is capable of being read with the information, any statement provided by you.

If your personal information is amended, you are entitled under the Privacy and Personal Information Protection Act 1998 (PPIPA), if it is reasonably practicable, to the have recipients of that information notified of the amendments made by Council.

Council may refuse to process your application in part, or in whole, if:

- there is an exemption to section 15 of the PPIPA; or
- a Code of Practice may restrict alteration.

Enquiries concerning this matter can be addressed to: _____

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-265

Attachment 4
Draft Public Interest Disclosure
Policy



CUMBERLAND
COUNCIL

Public Interest Disclosure Policy

AUTHORISATION & VERSION CONTROL

Policy Number	<i>POL-010</i>
Policy Owner	<i>Director Finance & Governance</i>
Date Adopted	
Version No	<i>2</i>
TRIM Number	<i>RM0073337/2018</i>
Review Date	

PURPOSE

Cumberland Council (Council) does not tolerate corrupt conduct, maladministration or serious waste of public money. In accordance with the *Public Interest Disclosures Act 1994 (PID Act)*, this Policy establishes an internal reporting system for Councillors and staff to report wrongdoing without fear of reprisal. It sets out who you can report wrongdoing to in Council, what can be reported and how reports of wrongdoing will be dealt with by Council.

SCOPE

The Policy applies to Councillors and staff including permanent, temporary and casual employees, consultants and individual contractors working for Council. This Policy also applies to members of committees including the Local Planning Panel, Audit, Risk and Improvement Committee and other advisory committees. It may also apply to other people who perform public official functions such as volunteers.

DEFINITIONS

Local Government Authority

- (a) A council
- (b) A county council within the meaning of the *Local Government Act 1993*.

Public authority

Any public authority whose conduct or activities may be investigated by an investigating authority, and includes (without limitation) each of the following:

- (a) A Public Services agency
- (b) A state owned corporation and any subsidiary of a State owned corporation
- (c) A local government authority
- (d) The NSW Police Force and the Law Enforcement Conduct Commission
- (e) The Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.

Public Interest Disclosure

A disclosure satisfying the applicable requirements of Part 2 of the *Public Interest Disclosures Act 1994 (PID Act)*.

That is, a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention or local government pecuniary interest contravention by Council, Councillors or staff or by another public authority or any of its officers. 'Public Interest Disclosure' is the new term for a protected disclosure.

Public Official

An individual who is an employee of or otherwise in the service of a public authority.

POLICY STATEMENT

Council is committed to encouraging and supporting the reporting of wrongdoing, and to protect those who make public interest disclosures from any adverse action motivated by their report, keeping their identity confidential where possible.

What should be reported?

You should report any wrongdoing you see within Council.

Reports about the five categories of serious wrongdoing - corrupt conduct, serious maladministration, serious and substantial waste of public money, government information contravention and local government pecuniary interest contravention – which otherwise meet the criteria of a public interest disclosure, will be dealt with under the *PID Act* as Public Interest Disclosures and according to this Policy.

a) Corrupt Conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official. For example, this could include:

- The improper use of knowledge, power or position for personal gain or the advantage of others
- Acting dishonestly or unfairly, or breaching public trust.

b) Maladministration

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

- Making a decision and/or taking action that is unlawful
- Refusing to grant someone a licence for reasons that are not related to the merits of their application
- Issuing an order against a person without giving them procedural fairness

c) Serious or substantial waste of public money

Serious or substantial waste is any uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public money. This includes all revenue, loans and other money collected, received or held by, for or on account of the council. For example, this could include:

- Poor project management practices leading to projects running overtime
- Having poor or no processes in place for a system involving large amounts of public funds.
- not following a competitive tendering process for a large scale contract

d) Government information contravention

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act). For example, this could include:

- Intentionally overlooking documents that are clearly covered by an access application

- Destroying, concealing or altering records to prevent them from being released
- Knowingly making decisions that are contrary to the GIPA Act
- Directing another person to make a decision that is contrary to the GIPA Act.

e) Local government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, lodge written declaration and disclose pecuniary interests at council and council committee meetings.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. For example, this could include:

- A senior council staff member recommending a family member for a council contract and not declaring the relationship
- A General Manager holding an undisclosed shareholding in a company competing for a council contract.
- A councillor participating in consideration of a DA for a property they or their family have an interest in.

Other wrong doing

Although reports about the previous five categories can attract the specific protections of the *PID Act*, you should report all activities or incidents that you believe are wrong. For example, these could include:

- Bullying, harassment or unlawful discrimination.
- Reprisal action against a person who has reported wrongdoing.
- Practices that endanger the health or safety of staff or the public.

These types of issues should be reported to your manager or supervisor in line with Council's policies:

- Code of Conduct
- Fraud and Corruption Prevention Policy
- Councillor and Staff Interaction Policy
- Compliments and Complaints Management Policy
- Good Working Relationships
- Grievance & Dispute Handling

Consideration should be given to the Code of Conduct, the EEO Guidelines, Bullying and Harassment Guidelines and the WH&S Policy Statement and your obligations to act in accordance with these policies and report wrongdoing.

Even if these reports are not dealt with as Public Interest Disclosures, Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal. Matters can also be reported to the Internal Ombudsman Shared Service.

When will a report be protected?

Council will support any staff who report wrongdoing. Council will treat a report as a

Public Interest Disclosure if it meets all the requirements under the PID Act. These requirements are:

- the report must be about one of the following five categories of serious wrongdoing – corrupt conduct, serious maladministration, serious and substantial waste of public money, government information contravention and local government pecuniary interest contravention
- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing; and
- The report has to be made to either:
 - a) A position nominated in this policy
 - b) The General Manager, or for reports about the general manager the Mayor
 - c) One of the investigating authorities nominated in the PID Act

Reports by staff and Councillors will not be considered to be protected disclosures if they:

- Mostly question the merits of government policy, including the policy of the governing body of the council
- Are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record.

The staff member should keep a copy of this record. If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

Documentation relating to reports will be filed appropriately and handled in such a way as to ensure appropriate confidentiality.

The Council encourages staff to utilise the Public Interest Disclosures form available in this Policy.

Can a report be anonymous?

There will be some situations in which you may not want to identify yourself when you make a report. Although these reports will still be dealt with by Council, it is best if you identify yourself. This allows Council to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

Maintain confidentiality

Council realises many staff will want their report to remain confidential. This can help to

prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However, there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risk of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under Council's Code of Conduct, as this may mean certain information will have to be tabled at a council meeting.

If you report wrongdoing, you should only discuss your report with those dealing with it. This will include the Public Interest Disclosures Coordinator and the General Manager. If you discuss your report more broadly, you may affect the outcome of any investigation and also weaken our ability to keep your identity confidential.

Any staff or councillors involved in the investigation or handling of a report, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report.

Who can receive a report within Council?

You are encouraged to report general wrongdoing to your supervisor. However, within Council, the PID Act requires that – for a report to be a Public Interest Disclosure – it must be made to certain public officials, which includes Disclosures Officers listed in Section (d) below, in accordance with this Policy.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below. If you are Council staff and your report involves a Councillor, you should make it to the General Manager or the Mayor. If you are a Councillor and your report is about another Councillor, you should make it to the General Manager or the Mayor.

The following positions are the only staff within Council who can receive a Public Interest Disclosure

a) General Manager

You can report wrongdoing directly to the General Manager, who will:

- Decide if a report is a Public Interest Disclosure
- Determine what needs to be done next, including referring it to other authorities
- Decide what needs to be done to correct the problem that has been identified.

The General Manager will ensure there are systems in place in the Council to support and protect staff who report wrongdoing, and will refer any actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC).

b) Mayor

If you are making a report about the General Manager, you should make your report to the Mayor who will:

- Decide if a report is a Public Interest Disclosure

- Determine what needs to be done next, including referring it to other authorities.
- Decide what needs to be done to correct the problem that has been identified.

The Mayor will ensure there are systems in place in the Council to support and protect staff who report wrongdoing and will refer any actual or suspected corrupt conduct to the ICAC.

c) Disclosures Coordinator

The Public Interest Disclosure Coordinator (Disclosures Coordinator) is the Internal Ombudsman, who has a central role in dealing with reports made by staff. The Disclosures Coordinator can receive complaints, assess them, and refer them to the people within the Council who can deal with them appropriately. The Assistant Internal Ombudsman is the alternate Disclosures Coordinator in the absence of the Internal Ombudsman.

All council officers and officials can make a Public Interest Disclosure directly to the Public Interest Disclosure Coordinator. Public Interest Disclosures may also be referred to the Public Interest Disclosure Coordinator by the General Manager, Mayor, or Council staff as outlined in this Policy.

The Public Interest Disclosure Coordinator can be contacted on 8757 9620.

d) Disclosures Officers

Disclosures Officers work with the Disclosures Coordinator within the internal reporting system. They can provide advice on the internal reporting process, receive reports of wrongdoing and assist staff and Councillors to make reports. Disclosures Officers are responsible for the following:

- Documenting in writing any verbal reports, and having the document signed and dated by the reporter;
- Making arrangements to ensure reporters can make reports privately, confidentially and away from the workplace if necessary;
- Discussing with the reporter any concerns they may have regarding reprisal or workplace conflict; and
- Conducting a preliminary assessment and forwarding reports to the Disclosures Coordinator or the General Manager for full assessment.

Staff occupying the following positions are Public Interest Disclosures Officers for the purpose of this policy:

General Manager

Manager Executive Support
General Counsel

Director Community Development

Executive Manager Community and Place
Manager Communications and Events
Manager Children, Families and Youth
Manager – Aged & Disability Services
Manager Library Services

Director Finance & Governance

Executive Manager Corporate Services
Manager Corporate Information Systems
Manager Property Development
Manager Finance

Director Works & Infrastructure

Executive Manager City Services
Executive Manager Regulatory and Technical

Director People & Performance

Manager HR Services
Manager Corporate Planning
Manager Business Improvement & Performance
Manager Customer Experience
Business Support Coordinator
Business Support Coordinator

Director Environment & Planning

Executive Manager Development & Building
Executive Manager City Strategy
Executive Manager Environment & Precincts
Manager Development Operations

Who can receive a report outside of the Council?

Councillors and staff are encouraged to report wrongdoing within Council, but internal reporting is not your only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can also make a Public Interest Disclosure to an investigating authority. You can do this first, or at any stage after your initial report to Council. If your report is about the General Manager or the Mayor, you should consider making it to an investigating authority. You can also choose to make a report to a Member of Parliament (MP) or a journalist, but only in limited circumstances.

a) Investigating Authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the category of wrongdoing each authority can deal with. The relevant investigating authorities are:

- The Independent Commission Against Corruption (ICAC) – for corrupt conduct.
- The NSW Ombudsman – for serious maladministration.
- The Law Enforcement Conduct Commission (LECC)
 - The LECC can only deal with disclosures that are about the conduct of:
 - One or more employees of the NSW Police Force (including a police officer or administrative employee), or
 - One or more employees of the Crime Commission. The Office of the Inspector of the LECC – for disclosures about the LECC staff.
- The Office of the Local Government, Department of Premier and Cabinet – for wrongdoing in local government corrupt conduct, maladministration, serious and substantial waste of local government money, government information

contravention or local government pecuniary interest by any one or more of: a local government authority; a delegate of a local government authority; a Councillor; a member of a County Council; a member of staff of a local Council; a representative on the board of a joint organisation within the meaning of the *Local Government Act 1993*.

- The NSW Audit Office – for serious and substantial waste
- The ICAC Inspector – for disclosures about the ICAC or its staff.
- The Information Commissioner – for government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is likely the investigating authority will discuss the case with Council. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff and Councillors who report wrongdoing to an investigating authority.

b) Members of Parliament or Journalists

To have the protections of the PID Act, staff reporting wrongdoing to an MP or a journalist **must** have already made substantially the same report to one of the following:

- The General Manager.
- A person occupying a position nominated in this Policy.
- An investigating authority in accordance with the PID Act.

Also Council or the investigating authority that received the report must have either:

- Decided not to investigate the matter.
- Decided to investigate the matter, but not completed the investigation within six months of the original report.
- Investigated the matter but not recommended any action as a result.
- Not told the person who made the report, within the six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist, you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the Council, contact Council's Public Interest Disclosures Coordinator (the Internal Ombudsman) or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

Feedback to staff who report wrongdoing

Councillors and staff who report wrongdoing will be told what is happening in response to their report. When you make a report, you will be given:

- An acknowledgement that your disclosure has been received.
- The timeframe for when you will receive further updates.
- The name and contact details of the people who can tell you what is happening.

This information will be given to you within three working days from the date you make your report. After a decision is made about how your report will be dealt with, you will be given:

- Information about the action that will be taken in response to your report.
- Likely timeframes for any investigation.
- Information about the resources available within Council to handle any concerns you may have.
- Information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- Information on the ongoing nature of the investigation.
- Information about the progress of the investigation and reasons for any delay.
- Advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you will be given:

- Enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified.
- Advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

Council will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed under the PID Act include imprisonment and fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- Injury, damage or loss.
- Intimidation or harassment.
- Discrimination, disadvantage or adverse treatment in relation to employment.
- Dismissal from, or prejudice in, employment.
- Disciplinary proceedings.

a) Responding to allegations of reprisal

Council will act to protect Councillors and staff who report wrongdoing from reprisals. When an initial Public Interest Disclosure is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should immediately tell your supervisor, a Disclosures Officer, the Public Interest Disclosures Coordinator or the General Manager.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Public Interest Disclosures Coordinator or the General Manager.

If the Public Interest Disclosures Coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- Assess the allegation of reprisal to decide whether the matter warrants investigation or if other action should be taken to resolve the issue.
- Ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal.
- Give the results of the investigation to the General Manager for a decision.
- Give the results of that investigation to the Mayor for a decision if the allegation of reprisal action is about the General Manager.
- If it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure.
- Take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The General Manager may issue specific directions to help protect against reprisals. If the allegation of reprisal action is about the General Manager, the Mayor may issue similar directions. These may include:

- Issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure.
- Relocating the member of staff who made the disclosure or the subject officer within the current workplace.
- Transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified.
- Granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it. The Public Interest Disclosures Coordinator will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the NSW Ombudsman or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this

policy.

b) Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

Support for those reporting wrongdoing

The Council will make sure that Councillors and staff who have reported wrongdoing, regardless of whether they have made a Public Interest Disclosure are provided with access to any professional support they may need as a result of the reporting process – including through Council's Employee Assistance Program (EAP) and other assistance such as for stress management, counselling services, legal or career advice.

We also have staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering from any form of reprisal. Reporters and other staff involved in the process can discuss their support options with the disclosures coordinator.

Sanctions for making false or misleading disclosures

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing

Support for the subject of a report

The Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- Treated fairly and impartially
- Informed of the allegation made against you and given the opportunity to respond
- Told your rights and obligations under our policies and procedures
- Kept informed and supported during any investigation
- Told the result of the investigation

More Information

More information around public interest disclosures is available on our intranet. Staff can also access advice and guidance from Council's Public Interest Disclosures Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au

Resources – External Investigating Authorities

The contact details for external investigating authorities that staff can make a Public Interest Disclosure to or seek advice from are listed below.

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)

Phone: 02 8281 5999

Toll free: 1800 463 909

Tel. typewriter (TTY): 02 8281 5773

Facsimile: 02 9264 5364

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 7, 255 Elizabeth Street, Sydney NSW 2000

For disclosures about breaches of the GIPA Act:

Information and Privacy Commission (NSW)

Toll free: 1800 472 679

Facsimile: 02 8114 3756

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

Address: Level 17, 201 Elizabeth Street, Sydney NSW 2000

For disclosures about serious and substantial waste of public money:

Auditor General

Phone: 02 9275 7100

Email: governance@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: GPO Box 12, Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman

Phone: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Tel. typewriter (TTY): 02 9264 8050

Facsimile: 02 9283 2911

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about local councils:

Office of Local Government

Phone: 02 4428 4100

Tel. typewriter (TTY): 02 4428 4209

Facsimile: 02 4428 4199

Email: olg@olg.nsw.gov.au

Web: www.olg.nsw.gov.au

Address: 5 O'Keefe Avenue, Nowra, NSW 2541

RELATED LEGISLATION

- *Local Government Act 1993*
- *Public Interest Disclosures Act 1994*
- *Independent Commission Against Corruption Act 1988*
- *Government Information (Public Access) Act 2009 (GIPA Act)*
- *NSW Ombudsman Act 1974*

RELATED DOCUMENTS AND COUNCIL POLICY

- Code of Conduct
- Public Interest Disclosure Internal Report Form
- Internal Ombudsman Shared Service Governance Charter
- NSW Ombudsman Public Interest Disclosure Guidelines
- NSW Ombudsman Model Internal Reporting Policy Local Government
- Compliments and Complaints Handling Policy
- Fraud and Corruption Prevention Policy

- Councillor and Staff Interaction Policy
- Grievance & Dispute Handling Guidelines

DRAFT

Public Interest Disclosure Internal Report Form

To be completed by an internal reporter and submitted to a nominated Disclosures Officer
(Refer to Council's Public Interest Disclosure Policy for further details)

Details of reporter (You can make an anonymous report by leaving this section blank)										
Name:										
Position:										
Division/Unit:		Preferred method of contact								
Telephone:		<input type="checkbox"/> Telephone								
Email:		<input type="checkbox"/> Email								
Postal address:		<input type="checkbox"/> Post								
Details of the wrongdoing being reported										
Description:										
<ul style="list-style-type: none"> • What happened? • Where did this happen? • When did this happen? • Is it still happening? 										
<i>[Attach an additional page if required]</i>										
How did you become aware of this?										
Name and position of people involved in the wrongdoing:	<table border="1"> <thead> <tr> <th>Name</th> <th>Position</th> </tr> </thead> <tbody> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </tbody> </table>	Name	Position							
Name	Position									
Attach any additional relevant information or indicate where supporting evidence may be found:	<table border="1"> <thead> <tr> <th>Supporting evidence</th> <th>Attached</th> </tr> </thead> <tbody> <tr><td></td><td><input type="checkbox"/></td></tr> <tr><td></td><td><input type="checkbox"/></td></tr> <tr><td></td><td><input type="checkbox"/></td></tr> </tbody> </table>	Supporting evidence	Attached		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
Supporting evidence	Attached									
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Name and position of other people who may have additional information:	<table border="1"> <thead> <tr> <th>Name</th> <th>Position</th> </tr> </thead> <tbody> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </tbody> </table>	Name	Position							
Name	Position									
Statement										
I honestly believe that the above information shows or tends to show wrongdoing.										
<div> <div>Signature of reporter (Do not sign if you want to make an anonymous report)</div> <div>Date report submitted (Essential information)</div> </div>										

**DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-265**

Attachment 5

**General Manager Expenses &
Facilities Policy (Proposed to be
rescinded)**

CUMBERLAND
COUNCIL

General Manager's Expenses And Facilities Policy

AUTHORISATION & VERSION CONTROL

Policy Number	<i>POL-009</i>
Policy Owner	<i>Director Finance & Governance</i>
Date Adopted	<i>2 August 2017</i>
Version No	<i>1</i>
TRIM Number	<i>ED17/51385</i>
Review Date	<i>May 2019</i>

POLICY SUMMARY

To allow for the General Manager to receive adequate and reasonable expenses and provisions to carry out the functions of the position, ensuring accountability and transparency.

PART A – INTRODUCTION

1. INTRODUCTION

This policy is made having regard to the provisions of the Office of Local Government Circular to Council number 11/14 dated 8 July 2011 regarding the Appointment and Oversight of General Managers. The Guidelines made pursuant to section 23A of Local Government Act 1993 requires that the Council must have policies to guide the Mayor in the Mayor's role in the day-to-day management of the General Manager addressing the following:

- Approving leave
- Approving expenses incurred
- Managing complaints about the General Manager

The Guidelines requires that these policies be kept under regular review.

2. POLICY OBJECTIVES

2.1. The objectives of this policy are to:

- enable the reasonable and appropriate reimbursement of expenses incurred by the General Manager whilst undertaking Council related duties
- enable facilities of a reasonable and appropriate standard to be provided to the General Manager to support them in undertaking their Council related duties
- ensure accountability and transparency in reimbursement of expenses and provision of facilities to the General Manager

3. PRINCIPLES

3.1. The General Manager commits to the following principles:

- **Proper conduct:** Council staff acting lawfully and honestly, exercising care and diligence in carrying out their functions
- **Reasonable expenses:** Providing for the General Manager to be reimbursed for expenses reasonably incurred as part of the role
- **Appropriate use of resources:** Providing clear direction on the appropriate use of Council resources in accordance with best practice and community expectations
- **Accountability and transparency:** Clearly stating the expenses and facilities provided to the General Manager

4. PRIVATE BENEFIT

4.1. The General Manager must not obtain private benefit from any expense or facility provided under this policy.

4.2. Private use of Council equipment and facilities by the General Manager may occur from time to time. For example, telephoning home to advise that a Council meeting will run later than expected.

- 4.3. Such incidental private use does not require a compensatory payment back to Council.
- 4.4. The General Manager should avoid obtaining any greater private benefit from Council than an incidental benefit. Where there are unavoidable circumstances and more substantial private use of Council facilities does occur, the General Manager must reimburse Council.

5. APPROVAL OF LEAVE

5.1. Procedure for Leave Approval

All leave to be taken by the General Manager, where it is possible to do so, must be applied for in advance and in writing via the same means that a non-senior member of Council staff is required to undertake and to be in advance approved by the Mayor.

5.2. Procedure for Urgent Leave Approval

In the event of a need for urgent leave such as in respect of sick leave or concessional leave, the General Manager is to notify the Mayor or an appropriate Council staff member to in turn notify the Mayor of the absence as soon as it is reasonably possible to do so. Upon return from leave the General Manager is to make the leave application to be approved by the Mayor retrospectively. All leave taken by the General Manager will be recorded in Council's leave register by the pay officer.

PART B – EXPENSES

6. RE-IMBURSEMENT OF EXPENSES

The General Manager is entitled to be reimbursed for any reasonable expense properly incurred on Council business and the expense must not have a private benefit. Original documents evidencing payment for the expense incurred must be approved by the Mayor and surrendered to Council to support the reimbursement.

7. APPROVAL OF EXPENSES

The General Manager will:

- Keep records of expenses, travel and motor vehicle use as required by Council from time to time
- Be reimbursed by Council for expenses properly incurred on Council business, subject to Council's prior approval to this expense being incurred
- Only use any credit card provided by Council for expenses incurred on Council business
- Return any credit card provided by Council on request from Council

8. GENERAL TRAVEL ARRANGEMENTS AND EXPENSES

8.1. Travel

- All travel by the General Manager should be undertaken using the most direct route and the most practicable and economical mode of transport.
- Travel by motor vehicle will be at the General Manager's full cost as this is part of their overall remuneration package.
- Costs of vehicle hire and/or taxi fares which are reasonably incurred while attending conferences will be reimbursed by the Council.

8.2.Out-of-pocket Expenses

- Reasonable out-of-pocket expenses will be reimbursed for costs associated with attending the conference, seminar or function, including meals, refreshments and entertainment, but excluding expenses of a normal private matter or contain a personal benefit.

8.3.Accompanying Person

- No objection is raised to the General Manager being accompanied by their accompanying person subject to Council not being involved in further registration, travel and accommodation costs and any out of pocket or peripheral expenses.

8.4.Carer Expenses

- Carer expenses incurred to facilitate attendance are of a private nature and will not be reimbursed by Council.

8.5.Interstate, overseas and long distance intrastate travel expenses

- In accordance with Section 4, Council will scrutinise the value and need for the General Manager to undertake overseas travel. The General Manager should avoid interstate, overseas and long distance intrastate trips unless direct and tangible benefits can be established for the Council and the local community. This includes travel to sister and friendship cities.
- The General Manager seeking approval for any long distance intrastate travel must submit a case to, and obtain the approval of, the Mayor prior to travel.
- The General Manager seeking approval for any interstate or overseas travel must submit a case to, and obtain the approval of, a full Council meeting prior to travel.
- The case should include:
 - objectives to be achieved in travel, including an explanation of how the travel aligns with current Council priorities and business, the community benefits which will accrue as a result
 - who is to take part in the travel
 - duration and itinerary of travel
 - a detailed budget including a statement of any amounts expected to be reimbursed by the participant/s
- For interstate and long distance intrastate journeys by air, the class of air travel is to be economy class.
- For international travel, the class of air travel is to be premium economy if available. Otherwise, the class of travel is to be economy.
- For air travel that is reimbursed as Council business, the General Manager will not accrue points from the airline's frequent flyer program. This is considered a private benefit.

8.6.Representing Council on a board or other third party

- The General Manager seeking to represent Council on a Board of Directors, or in any other capacity by virtue of holding the office of General Manager must comply with the following requirements:
 - (i) The General Manager must seek approval to represent Council via Council resolution.
 - (ii) Any travel and associated expense claims associated with representation of Council must be handled in accordance with this policy.
 - (iii) Payments or expenses claimed from any third party must be refused unless a Council resolution endorses this.

- (iv) Any payments or expenses claimed from a third party endorsed by Council resolution must be claimed by Council directly from the third party. Council will claim the amount as outlined in the Council resolution and reimburse that amount to the General Manager, subject to the relevant form being filled out and claim approved by the Mayor.
- (v) Any breach of the above may constitute a breach of the Code of Conduct.

8.7.Travel expenses not paid by council

- Council will not pay any traffic or parking fines or administrative charges for road toll accounts.

8.8.Accommodation and meals

- Council will reimburse costs for accommodation and meals whilst the General Manager is undertaking prior approved travel or professional development outside the Sydney metropolitan area.
- The daily limits for accommodation and meal expenses within Australia are to be consistent with those set out in Part B Monetary Rates of the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, as adjusted annually.
- The General Manager will not be reimbursed for alcoholic beverages.

8.9.Refreshments for council related meetings

- Appropriate refreshments will be available for Council meetings, Council Committee meetings, Councillor briefings, approved meetings and engagements, and official Council functions as approved by the General Manager.
- As an indicative guide for the standard of refreshments to be provided at Council related meetings, the General Manager must be mindful of Part B Monetary Rates of the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, as adjusted annually, as well as Councils Catering Procedure as endorsed by Council's Leadership Team.

9. PROFESSIONAL DEVELOPMENT, CONFERENCES AND SEMINARS

9.1. Conferences and seminars

- Council is committed to ensuring the General Manager is up to date with contemporary issues facing council and the community, and local government in NSW through the attendance of relevant professional development opportunities, as well conferences and seminars.
- The General Manager requires the approval in writing of the Mayor to attend professional development, conferences or seminars should they:
 - require payment by Council of a registration fee or accommodation costs
 - require travel outside of metropolitan Sydney
 - require the granting of leave
- Should the General Manager request interstate or international travel approval for a conference or seminar, approval must be sought via Council resolution per clause 8.5.
- Council will meet the reasonable cost of registration fees, transportation and accommodation associated with attendance at conferences approved by the Mayor. Council will also meet the reasonable cost of meals when they are not included in the conference fees. Reimbursement for accommodation and meals not included in the conference fees will be subject to Clause 8.8.

9.2. Local Government Professionals National Congress

- The General Manager may wish to attend the Local Government Professionals National Congress on behalf of Council.
- For the Local Government Professionals National Congress only, the General Manager may seek written approval from the Mayor for long distance intrastate or interstate travel in accordance with this policy.
- For the Local Government Professionals National Congress only, Council will meet the costs of the official conference dinner for an accompanying person of the General Manager.
- All other expenses incurred by the General Manager in the attendance of the Local Government Professionals National Congress must be in accordance with this policy.

PART C - FACILITIES

10. INFORMATION AND COMMUNICATION TECHNOLOGY

- The General Manager will be provided with Information Communication Technology equipment. The following equipment shall be provided under this clause:
 - Smart Phone
 - Notebook or Tablet device
 - Mobile phone plan with included data allowance

ICT equipment will be issued in accordance with Councils corporate standard issued equipment and corporate mobile phone plan.

PART D - PROCESSES

11. PAYMENT IN ADVANCE

- The Council will normally pay registration fees, accommodation deposits and airline tickets direct in advance. Where this is not appropriate or possible, a cash advance or cheque/s made out to the relevant payee/s will be provided to the General Manager subject to a reconciliation statement being submitted for approval by the Mayor.
 - The maximum value of a cash advance is \$100 per day of the conference, seminar or professional development to a maximum of \$300
 - Requests for advance payment must be submitted to the Mayor for assessment against this policy using the prescribed form with sufficient information and time to allow for the claim to be assessed and processed.
 - Out of pocket expenses may be paid to the General Manager in advance upon written request subject to a reconciliation statement together with a refund of any unexpended amount being submitted for approval by the Mayor, within one month of the expense being incurred. Any unexpended cash together with the approved reconciliation must be returned to the Chief Financial Officer without delay upon the Mayor's authorisation.

12. TIMEFRAME FOR REIMBURSEMENT

- Unless otherwise specified in this policy, the General Manager must provide all claims for reimbursement within one month of an expense being incurred. Claims made after this time cannot be approved.

13. NOTIFICATION

- If a claim is approved, Council will make payment directly or reimburse the General Manager through accounts payable.
- If a claim is refused, the Mayor will inform the General Manager in writing that the claim has been refused and the reason for the refusal.

14. DISPUTE RESOLUTION

- If the General Manager disputes a determination under this policy, the General Manager should submit the dispute in writing to the Mayor, detailing the nature of the dispute.

15. RETURN OR RETENTION OF FACILITIES

- All unexpended facilities or equipment supplied under this policy are to be relinquished immediately upon the cessation of employment.
- Should the General Manager desire to keep any equipment allocated by Council, then this policy enables the General Manager to purchase any such equipment at an agreed fair market price or written down value for the item of equipment. This excludes the General Manager's motor vehicle, which will be disposed of at public auction in accordance with Council's Fleet Management Procedure.

16. REIMBURSEMENT TO COUNCIL

- If Council has incurred an expense on behalf of the General Manager that exceeds reasonable incidental private use or is not provided for in this policy:
 - Council will invoice the General Manager for the expense.
 - the General Manager will reimburse Council for that expense within 14 days of the invoice date.
- If the General Manager cannot reimburse Council within 14 days of the invoice date, they are to submit a written explanation to the Mayor.

17. PUBLICATION

- This policy will be published on Council's website.

18. AUDITING

- The operation of this policy, including claims made under the policy, will be included in Council's audit program and an audit undertaken at least every two years.

19. BREACHES

- Suspected breaches of this policy are to be reported to the Mayor.
- Alleged breaches of this policy shall be dealt with by following the processes outlined for breaches of the Code of Conduct, as detailed in the Code and in the Procedures for the Administration of the Code.

Part E – Appendices

Appendix I: Related legislation, guidance and policies**Relevant legislation and guidance:**

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Office of Local Government Guidelines for the Appointment and Oversight of General Managers (pursuant to Section 23A of the Local Government Act 1993)
- Councillor Expenses & Facilities Policy

Related Council policies:

- Code of Conduct

Appendix II: Definitions

The following definitions apply throughout this policy.

Term	Definition
Accompanying Person	Means a spouse, partner or de facto or other person who has a close personal relationship with or provides carer support to the General Manager
Appropriate Refreshments	Means food and beverages, excluding alcohol, provided by Council to support the General Manager undertaking Council related business
Act	Means the Local Government Act 1993 (NSW)
Clause	Unless stated otherwise, a reference to a clause is a reference to a clause of this policy
Code Of Conduct	Means the Code of Conduct adopted by Council or the Model Code if none is adopted
General Manager	Means the General Manager of Council
ICT	Means Telecommunications and Information Communications and Technology
Incidental Personal Use	Means use that is infrequent and brief and use that does not breach this policy or the Code of Conduct
Long Distance Intrastate Travel	Means travel to other parts of NSW of more than three hours duration by private vehicle
NSW	New South Wales
Official Business	Means functions that the General Manager is required or invited to attend to fulfil their role and responsibilities for Council or result in a direct benefit for Council and/or for the local government area, and includes: <ul style="list-style-type: none"> • civic receptions hosted or sponsored by Council • meetings, functions, workshops and other events to which attendance by the General Manager has been requested or approved by Council
Professional Development	Means a seminar, conference, training course or other development opportunity relevant to the role of the General Manager
Regulation	Means the Local Government (General) Regulation 2005 (NSW)
Year	Means the financial year, that is the 12 month period commencing on 1 July each year

Item No: C11/19-266

RESPONSE TO NOTICE OF MOTION - GRANVILLE BOUNDARY ADJUSTMENT

Responsible Division: Community Development
Officer: Director Community Development
File Number: SC685
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

This report provides a response to the Notice of Motion – Granville Boundary Adjustment resolved at the Ordinary Meeting of Council held on 17 April 2019 (Min.495) and presents the outcome of the community engagement program undertaken in relation to the proposed boundary adjustments for Granville and Mays Hill.

RECOMMENDATION

That Council:

1. **Receive and note the outcome of the community engagement program undertaken in relation to the proposed boundary adjustments for Granville and Mays Hill.**
2. **Not proceed with a submission under Section 218E of the Local Government Act to alter the boundary between Council and the City of Parramatta.**
3. **Notify the City of Parramatta and residents that made a submission during the community engagement process of the outcome.**

REPORT

Background

In 2016, the NSW Government drew boundaries for the Cumberland Local Government Area, which saw the suburb of Granville divided along the Main Western Railway Line and parts of Mays Hill and Parramatta formerly within the former Holroyd City Council area, bounded by the Great Western Highway, Burnett Street, the M4, Pitt Street, Banks Street and Steele Street, excised to the City of Parramatta.

At the Ordinary Meeting of Council held on 17 April 2019, (Min.495, Item C04/19-67), Council considered the Notice of Motion - Granville Boundary Adjustment and resolved that Council:

- “1. *Note the significant level of high rise development occurring on the northern side of the railway line at Granville in the City of Parramatta arising from the Parramatta Road Urban Transformation Strategy.*
2. *Note that the residents of these buildings will inevitably use the community facilities (pool, community centre, library and parks) provided by Cumberland Council in Granville and that Cumberland Council will receive no rates and no developer contributions from these developments.*
3. *Note that during the Council amalgamation process both the former Auburn and Holroyd Councils made a submission to the Delegate reviewing the proposed amalgamation advocating that the boundary of Cumberland Council at Granville should be the M4.*
4. *Note that the Parramatta Council submission to the Delegate reviewing the proposed amalgamation proposed that the boundary between Cumberland Council and the City of Parramatta at Granville should be Parramatta Road.*
5. *Agree that the process required under Section 218E of the Local Government Act to amend the boundary between Cumberland Council and the City of Parramatta at Granville to the M4 be commenced.*
6. *Write to the City of Parramatta outlining Cumberland Council's concerns about the boundary at Granville and seek the City of Parramatta's support for a submission under Section 218E of the Local Government Act to amend the boundary between Cumberland Council and the City of Parramatta at Granville to the M4.*
7. *Seek information about any asbestos contamination in the area bounded by Kemp St, Parramatta Rd, James Ruse Drive, and the M4 and a report be returned to Council on the responsible parties for remediation and the costs to Council if the area is transferred to Cumberland Council.*
8. *Write to the City of Parramatta Council seeking support for a proposal to the Minister for Local Government to alter the boundary between Cumberland Council and the City of Parramatta Council as follows:*
 - a) *That the area of the former Holroyd City Council which was bounded by the Great Western Highway, Burnett Street, the M4 Motorway, Pitt Street, Banks Street and Steele Street and which was included in the area of the new City of Parramatta Council when it was constituted on 12 May 2016 be transferred into the area of Cumberland Council.*
9. *Undertake consultation with affected residents as part of this process.”*

In accordance with the above Council resolution, Council wrote to the City of Parramatta on 9 May 2019 to seek their support for a submission under Section 218E of the *Local Government Act* to amend the boundary at Granville and Mays Hill, and information about any asbestos contamination in the nominated area.

The City of Parramatta responded to Council on 24 June 2019 advising that they did not support the proposed boundary changes and that they were in receipt of a petition from concerned residents against the proposal. This petition was tabled at the Ordinary Meeting of Cumberland Council held on 1 May 2019.

Further to this, Council undertook consultation with affected residents directly in relation to the proposed boundary adjustments for Granville and Mays Hill. This report presents the outcome of the community engagement program.

Overview of Community Engagement Program

Council undertook a comprehensive community engagement program from May 2019 to September 2019. The engagement program aimed to inform the community of the proposed boundary adjustments and determine the level of support for the proposals. The community engagement program included multiple engagement methods, including face-to-face, online and postal channels.

Further details on the engagement program are included in the 'community engagement' section of this report and in Attachments 1 and 2.

Summary of Engagement Results

The following table provides a summary of the community engagement results:

Postal Survey (Total)	Postal Survey Results	Online Submissions (Total)	Online Submission Results	Other
AFFECTED AREA: GRANVILLE (NORTH)				
74 postal surveys received (out of a possible 1,172; 6% response rate).	Amend Boundary to Parramatta Road: <ul style="list-style-type: none"> • 22 respondents (30%) in support; • 46 respondents (62%) not in support; • 6 respondents (8%) undecided/not stated. Amend Boundary to the M4: <ul style="list-style-type: none"> • 12 respondents (16%) in support; • 60 respondents (81%) not in support; • 2 respondents (3%) undecided/not stated. 	14 online submissions were received.	Summary of online submissions: <ul style="list-style-type: none"> • 6 respondents in support; • 2 respondents in support (with special conditions); • 4 respondents not in support; • 2 respondents undecided/not stated. 	One petition in opposition to the proposed boundary adjustment (174 signatures) was received.
AFFECTED AREA: MAYS HILL (INCLUDES PART OF SUBURB OF PARRAMATTA)				
52 postal surveys received (out of a possible 285; 18% response rate).	<ul style="list-style-type: none"> • 21 respondents (40%) in support; • 31 respondents (60%) not in support. 	15 online submissions were received.	Summary of online submissions: <ul style="list-style-type: none"> • 3 respondents in support; • 11 respondents not in support; 	Two petitions in support of the proposed boundary adjustment (7 signatures and 25 signatures) were received.

Postal Survey (Total)	Postal Survey Results	Online Submissions (Total)	Online Submission Results	Other
			<ul style="list-style-type: none"> 1 respondent undecided/not stated. 	One letter of support was received from a community group.

Overall, the engagement results indicate that the majority of respondents in the affected areas do not support the proposed boundary adjustments in Granville and Mays Hill. Additional details about the community engagement outcomes are included in Attachments 1 and 2.

COMMUNITY ENGAGEMENT

The community engagement program was implemented in accordance with Council's *Community Engagement and Participation Strategy* and involved multiple engagement methods to promote awareness of and participation in the consultation process.

During the community engagement period, the following activities were undertaken:

- Public notice of the consultation period was included in the Auburn Review (30 July and 6 August 2019) and in the Parramatta Advertiser (31 July and 7 August 2019).
- A postal survey was distributed to residents in the affected areas to inform residents of the proposed boundary changes and ascertain community sentiment.
- An online survey was hosted on Council's 'Have Your Say' website. The survey was open for 66 days, from 12 July 2019 to 16 September 2019.
- Letters were sent to community organisations in the affected areas and follow up phone calls were made to inform the community of the proposal and seek feedback.
- Information flyers were distributed at Granville Railway Station on four occasions to increase awareness of the proposed boundary changes.
- A Council pop up information stall was delivered in Freame Park (Mays Hill) to clarify information on the Mays Hill proposal. The pop up was promoted via letterbox drop to the affected area, and via the Have Your Say portal and social media.
- Flyers and information were provided to parents collecting children from Council's OOSH service at Parramatta West Public School (OOSH).
- Council's social media platforms were used to inform the community of the proposed boundary changes and promote related engagement activities.
- A video featuring the Mayor with key messages was created in relation to the proposal and distributed via Council's website and social media.

In response to the above engagement activities, Council received a total of 156 responses including postal surveys, online submissions and letters. Three petitions were also received, including one petition (174 signatures) in opposition to the proposed Granville boundary adjustment and two petitions (32 signatures) in support

of the Mays Hill boundary adjustment. Some properties and/or individuals were identified to have made multiple submissions.

Council data indicates that many more community members were informed about the community engagement program, including:

- The relevant 'Have Your Say' pages received 1,092 visits;
- Social media posts reached over 14,039 people; and
- The Mayor's video message received over 2,500 views.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS



There are no financial implications for Council associated with this report.

CONCLUSION

This report provides a response to the Notice of Motion – Granville Boundary Adjustment resolved at the Ordinary Meeting of Council held on 17 April 2019 (Min.495) and presents the outcome of the community engagement program undertaken in relation to the proposed boundary adjustments for Granville and Mays Hill.

The community engagement outcomes indicate that the majority of respondents in the affected areas do not support the proposed boundary adjustments. Given the relative low level of community support, this report recommends that Council does not proceed with a submission under Section 218E of the *Local Government Act* to alter the boundary between Council and the City of Parramatta at this time.

ATTACHMENTS

1. Granville Boundary Adjustment Proposal – Engagement Outcomes Report [!\[\]\(8355073e142dc50a1ca12e74a2b70822_img.jpg\)](#) 
2. Mays Hill Boundary Adjustment Proposal – Engagement Outcomes Report [!\[\]\(186d5b84fc2deeef38d8f92b59230a21_img.jpg\)](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-266

Attachment 1
Granville Boundary Adjustment
Proposal – Engagement
Outcomes Report



ENGAGEMENT OUTCOMES REPORT

Boundary Adjustment Proposal - Granville

October 2019

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ACKNOWLEDGEMENT

Cumberland Council would like to thank all members of the community who participated in the community engagement activities. Council values your input and ideas in relation to the proposed boundary adjustment for Granville.

1. BACKGROUND

In 2016, the NSW Government drew new boundaries for the Cumberland and City of Parramatta Local Government Areas, which saw the suburb of Granville divided along the Main Western Railway Line.

In April 2019, Council resolved to consider a change to the boundary between Cumberland Council and the City of Parramatta at Granville.



Figure 1: Area affected by proposed boundary adjustment

The objectives of the boundary adjustment were to:

- Ensure coherent planning in the local area, especially along the Parramatta Road corridor
- Restore historical and cultural links by bringing communities of interest back together.

Council has always determined that the M4 Boundary is an easily identified boundary between the two local government areas. The motorway is a natural boundary enabling councils on either side to undertake consistent urban development and precinct planning.

Further, creating a boundary that aligns with the M4 Motorway through Granville would result in the Parramatta Road Corridor being part of a single council entity, from its western end at Granville all the way through to the eastern end of the Cumberland Council area to Strathfield (approximately 10km).

A change to local government area boundaries requires a submission to the NSW Boundaries Commission. In accordance with the *Local Government Act 1993*, an affected council can initiate a proposal to alter its boundaries.

Prior to initiating any proposal to alter its boundaries, Cumberland Council resolved to undertake consultation with affected residents as part of the process.

2. OVERVIEW OF ENGAGEMENT ACTIVITIES

Council undertook community and stakeholder engagement from 9 May 2019 to 16 September 2019 using a range of engagement methods, outlined in Table 1.

Table 1: Overview of engagement activities

Activity	Description and purpose	Timeframe
Postal survey	Information flyers and reply paid postal surveys were sent to all dwellings in the affected area to inform residents of the proposed boundary changes and ascertain community sentiment.	Survey closed on 16 September 2019.
Online survey	An online survey hosted on Council's Have Your Say website. The online survey also acted as an online portal for information relating the project, including objectives, key dates, and contacts. The website could be translated into a variety of languages using its automatic language translation function.	The survey was open for 66 days, from 12 July 2019 to 16 September 2019.
Flyer distribution	Information flyers were distributed during morning peak periods at Granville Railway Station on four occasions to increase awareness of the proposed boundary changes and provide an opportunity to ask questions face-to-face.	19 July, 31 July, 8 August and 13 August 2019.
Social media campaign	Council's Facebook page was used to inform the community of the proposed boundary changes and promote related engagement activities.	Ongoing social media posts were delivered throughout the engagement period.
Video featuring Mayor	A video featuring the Mayor was created in relation to the proposal and distributed on Council's social media.	September 2019.
Engagement with community organisations	Letters were sent and follow up phone calls made to community organisations in the affected area.	July - September 2019.

The following provides an outline of the community feedback received.

3. POSTAL SURVEY

Residents in the affected area were provided with information on the proposed boundary adjustment and an opportunity to provide feedback by post. The package included an information leaflet and a reply paid postal survey. The postal survey asked about support for the proposed boundary change and preference for the M4 or Parramatta Road as the new boundary. The survey is attached in Appendix A: Postal survey. Of the 1,172 postal surveys that were distributed, Council received 74 responses.

Postal survey findings

Proposal for boundary adjustment to Parramatta Road

With regard to the proposal to revise the local government area boundary to align with Parramatta Road:

- 22 respondents (or 30%) supported this proposal
- 46 respondents (or 62%) did not support this proposal
- 6 respondents (or 8%) were undecided or not stated.

Key reasons provided by respondents who supported the proposal to explain their position included the following:

- Prefer to be part of the Cumberland LGA
- Feel more affiliated with the Cumberland LGA
- All of Granville should be under one Council, and Parramatta Road is the logical boundary.

Key reasons provided by respondents who did not support the proposal to explain their position included in following:

- Prefer to be part of the Parramatta LGA
- Want to stay with the City of Parramatta for historical reasons
- City of Parramatta provides better services and facilities
- Geographically closer to the centre of Parramatta
- Cumberland Council cannot look after what they already have/ is not clean
- City of Parramatta has excellent plans for the area.

Proposal for boundary adjustment to M4

With regard to the proposal to revise the local government area boundary to align with the M4 motorway:

- 12 respondents (or 16%) supported this proposal
- 60 respondents (or 81%) did not support this proposal
- 2 respondents (or 3%) were not stated or undecided.

Key reasons provided by respondents who supported the proposal to explain their position included the following:

- Granville should be united
- City of Parramatta has no interest in the area
- All of Granville should be under one Council
- To speed up the planning for the Parramatta Road Corridor and rezoning of the area.

Key reasons provided by respondents who did not support the proposal to explain their position included in following:

- Preferred to be part of the Parramatta LGA
- Want to stay with the City of Parramatta for historical reasons
- City of Parramatta provides better services and facilities
- Geographically closer to the centre of Parramatta
- Plans for the area are already in place with the City of Parramatta

- The railway line makes a logical boundary as is or Parramatta Road is the logical boundary
- Cumberland Council cannot look after what they already have/ is not clean.

4. HAVE YOUR SAY ONLINE SITE AND SURVEY

Council's online community engagement portal, Have Your Say, hosted information about the project, and channels of engagement for the broader community. The general public was provided with the opportunity to comment on the local government boundary adjustment at Granville through an online survey. The survey was open for 66 days, from 12 July 2019 to 16 September 2019. The online survey is attached in Appendix B: 'Have Your Say' survey.

The Have Your Say page promoting the proposal received 656 page visits. There were 14 responses to the survey. Of the respondents who provided an address, 10 respondents provided an address within the existing Cumberland LGA; 3 respondents were in the affected area and one was missing address information.

Have Your Say survey findings

Of those who responded to the online survey:

- 6 respondents (or 43%) generally supported the proposal
- 4 respondents (or 29%) generally did not support the proposal
- 2 respondents (or 14%) were not stated or unclear
- 2 respondents (or 14%) were supportive with specific conditions.

Key reasons provided by respondents who supported the proposal to explain their position included the following:

- The suburb of Granville should be united
- Preferred to part of the Cumberland LGA
- Did not like the amount of development in the City of Parramatta.

Other issues highlighted by respondents included the traffic flow to the north and south of Granville Railway Station, which is impacted recent high rise approvals, residents would be using Cumberland Council facilities and that Granville residents have been cut out of the light rail link.

Key reasons provided by respondents who did not support the proposal to explain their position included in following:

- Prefer to be part of the Parramatta LGA
- Parramatta looks clean and Cumberland looks dirty.

The conditions mentioned by those respondents who were supportive with specific conditions included:

- Would like library services to be increased for the area
- Supports change only up to Parramatta Road.

5. OTHER SUBMISSIONS

Council also received one petition in opposition to the boundary adjustment (174 signatures), which was tabled at the Ordinary Meeting of Council held on 1 May 2019.

APPENDIX A: POSTAL SURVEY



CUMBERLAND
COUNCIL

Help shape the future of Granville
'Have your say' on the Proposed Boundary Change for Granville

Cumberland Council is undertaking community consultation in relation to a proposed boundary change for Granville.

In 2016 the NSW Government drew boundaries for the new Cumberland Council Local Government Area which saw the suburb of Granville divided in half.

Cumberland Council wants to put Granville back together and support you to:

- Have a say in the facilities and services you already use
- Access high quality services and programs in your local neighbourhood
- Eliminate fragmented planning to support the future growth of Granville
- Ensure your rates are invested in your local neighbourhood
- Restore historical and cultural links by bringing communities of interest back together

Cumberland Council is committed to putting your rates back into localised services and projects that support a growing and connected community.



1. Do you support Cumberland Council's proposed boundary change for Granville to amend the boundary to the M4 Motorway?

☐ Yes ☐ No

Please tell us why/why not: _____

2. Do you support an alternate boundary change for Granville to amend the boundary to Parramatta Road? ☐ Yes ☐ No

Please tell us why/why not? _____

Would you like receive updates on the outcome? ☐ Yes ☐ No

What is your preferred way to receive updates?

☐ Postal - Address: _____

☐ Email - Address: _____

APPENDIX B: 'HAVE YOUR SAY' SURVEY

'Have your say' on the Proposed Boundary Change for
Granville



Please write your submission on Cumberland Council's proposed boundary change for Granville. *

You can upload your submission on Cumberland Council's proposed boundary change for Granville here.

Choose File

Please provide your full name. *

Please limit answer to 255 characters

Maximum characters 255

Please provide your street address. *

Please limit answer to 255 characters

Maximum characters 255

Please state your suburb. *

Please include your email address.

Please include your phone number (optional).

Please limit answer to 255 characters

Maximum characters 255

Information about making a submission

All submissions are subject to a request for access by any interested persons under the Government Information (Public Access) Act 2008. If such a request is received, your submission, including your name and address, may be made available for inspection. You may request for your personal information to be suppressed under section 58 of the Privacy and Personal Information Protection (PPIP) Act 1998. Council will consider this request in accordance with the PPIP Act. Please contact the Customer Service Team on 8757 9000 if you have any questions about Council's planning for the future of Cumberland.

You can access the Have Your Say Privacy Policy here - <https://haveyoursay.cumberland.nsw.gov.au/privacy>

Cancel Submit

DOCUMENTS
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Attachment 2

Mays Hill Boundary Adjustment
Proposal – Engagement
Outcomes Report



ENGAGEMENT OUTCOMES REPORT

Boundary adjustment proposal - Mays Hill

October 2019

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ACKNOWLEDGEMENT

Cumberland Council would like to thank all members of the community who participated in community engagement activities. Council values your input and ideas towards the proposed boundary adjustment in Mays Hill.

1. BACKGROUND

In 2016, the NSW Government drew boundaries for the new Cumberland Local Government Area. All of the former Holroyd City Council Local Government Area became part of the new Cumberland Council Local Government Area, except a part of the suburb of Mays Hill and Parramatta, bounded by the Great Western Highway, Burnett Street, the M4, Pitt Street, Banks Street and Steele Street (which became part of the City of Parramatta).

In April 2019, Cumberland Council resolved to consider a change involving changing its boundary and incorporating this section of Mays Hill into the Cumberland Council area.

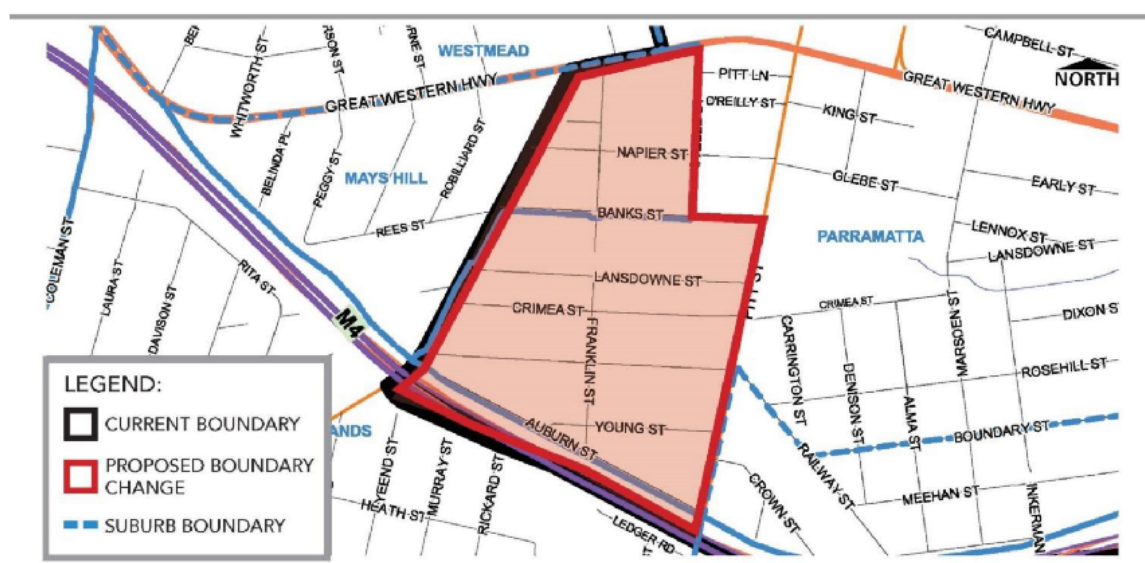


Figure 1: Area affected by proposed boundary adjustment

The objectives of the boundary adjustment were to restore historical and cultural links by bringing communities of interest back together.

A change to local government area boundaries requires a submission to the NSW Boundaries Commission. In accordance with the *Local Government Act 1993*, an affected council can initiate a proposal to alter its boundaries.

Prior to initiating any proposal to alter its boundaries, Cumberland Council resolved to undertake consultation with affected residents as part of the process.

2. OVERVIEW OF ENGAGEMENT ACTIVITIES

Council undertook community and stakeholder engagement from 9 May 2019 to 16 September 2019 using a range of engagement methods, outlined in Table 1.

Table 1: Overview of engagement activities

Activity	Description and purpose	Timeframe
Postal survey	Information flyers and reply paid postal surveys were sent to all dwellings in the affected area to	Survey closed on 16 September 2019.

Engagement Outcomes Report: Boundary adjustment proposal - Mays Hill

Activity	Description and purpose	Timeframe
	inform residents of the proposed boundary changes and ascertain community sentiment.	
Online survey	An online survey hosted on Council's Have Your Say website. The online survey also acted as an online portal for information relating the project, including objectives, key dates, and contacts. The website could be translated into a variety of languages using its automatic language translation function.	The survey was open for 66 days, from 12 July 2019 to 16 September 2019.
Freame Park Council Pop Up Stall	A Council pop up information stall in Freame Park provided residents with the opportunity to meet and speak with Council to clarify information and provide comment on the proposal. The pop up was promoted via letterbox drop to the affected area, and via the Have Your Say site and social media.	24 August 2019
Parramatta West Public School (OOSH)	Flyers and information was provided to parents collecting children from Council's OOSH service.	5 July, 9 July, 21 August and 23 August 2019.
Social media campaign	Council's Facebook site was used to inform the community of the proposed boundary change and promote related engagement activities.	Ongoing social media posts were delivered throughout the engagement period.
Video featuring Mayor	A video featuring the Mayor with key messages was created in relation to the proposal and distributed on Council's social media.	September 2019
Video featuring Mays Hill residents	A video featuring residents in the affected area was created in relation to the proposal and distributed on Council's social media.	September 2019
Engagement with community organisations	Letters were sent and follow up phone calls made to community organisations in the affected area.	July – September 2019.

The following provides an outline of the community feedback received.

3. POSTAL SURVEY

Residents in the affected area were informed of the proposed boundary adjustment and an opportunity to provide feedback by post. The package included an information leaflet and a reply paid postal survey. The postal survey asked about support for the proposed boundary change and is attached in

Appendix A: Postal survey. Of the 285 postal surveys that were distributed, Council received 52 responses.

Postal survey findings

With regard to the proposal to revise the local government area boundary for Mays Hill:

- 21 respondents (or 40%) supported this proposal
- 31 respondents (or 60%) did not support this proposal.

Key reasons provided by respondents who supported the proposal to explain their position included the following:

- Preferred to be part of Cumberland LGA
- Cumberland Council provides better services
- Liked being part of the former Holroyd City Council
- Area is more affiliated with and connected to Cumberland LGA
- Public recreation and open space is being lost with City of Parramatta
- Cumberland has cheaper rates and friendly staff.

Key reasons provided by respondents who did not support the proposal to explain their position included in following:

- Preferred to be part of Parramatta LGA
- City of Parramatta provides better services
- Feel more affiliated or connected with the Parramatta LGA
- Property values are higher in the Parramatta LGA
- Area is geographically closer to the centre of Parramatta
- For some respondents, their suburb name is Parramatta so it makes sense to stay with City of Parramatta
- Rates are cheaper with the City of Parramatta.

4. HAVE YOUR SAY ONLINE SURVEY

Council's engagement portal, Have Your Say, hosted information about the project, the Cumberland LGA and channels of engagement for the broader community. The general public was provided with the opportunity to comment through an online survey. The survey was open for 66 days, from 12 July 2019 to 16 September 2019. The online survey is attached in Appendix B: 'Have Your Say' survey.

A total of 15 online responses were received from 436 page visits. Of the 15 online responses received, 4 respondents live within the existing Cumberland LGA, and 10 respondents live in the affected area (which is currently outside the Cumberland LGA). One response was missing address information.

Have Your Say survey findings

Of those who responded to the online survey:

- 3 respondents (or 21%) supported the proposal
- 11 respondents (or 64%) did not support the proposal
- 1 respondent (or 7%) was undecided.

Engagement Outcomes Report: Boundary adjustment proposal - Mays Hill

Key reasons provided by respondents who supported the proposal to explain their position included the following:

- Historical links, in particular for Mays Hill Cemetery and to the former Holroyd City Council
- Geographical fit
- Boundary change should not have happened in the first place.

Key reasons provided by respondents who did not support the proposal to explain their position included in following:

- Parramatta provides better services and facilities
- Prefer to be part of the Parramatta LGA.

5. OTHER SUBMISSIONS

Submissions were also invited via post and email. Council received 2 petitions in support of the boundary adjustment (7 signatures and 25 signatures), and 1 letter of support from a community group.

6. MAYS HILL INFO STALL AND PARRAMATTA WEST PUBLIC SCHOOL OUT OF SCHOOL HOURS SERVICE

Council provides the Out of School Hours (OOSH) service that operates from Parramatta West Public School. Flyers and information was provided to parents across 4 visits to raise awareness of the proposal and to seek their participation in the postal survey and on the online submission portal.

7. POP UP STALL AT FREAME PARK

A pop-up information stall was held at Freame Park on 24 August 2019. This provided residents in the affected area with an opportunity to find out more information about the proposal. As a result of this activity two residents participated in the subsequent video promoting the boundary readjustment.

APPENDIX A: POSTAL SURVEY

Help shape the future of Mays Hill

'Have your say' on the Proposed Boundary Change for Mays Hill

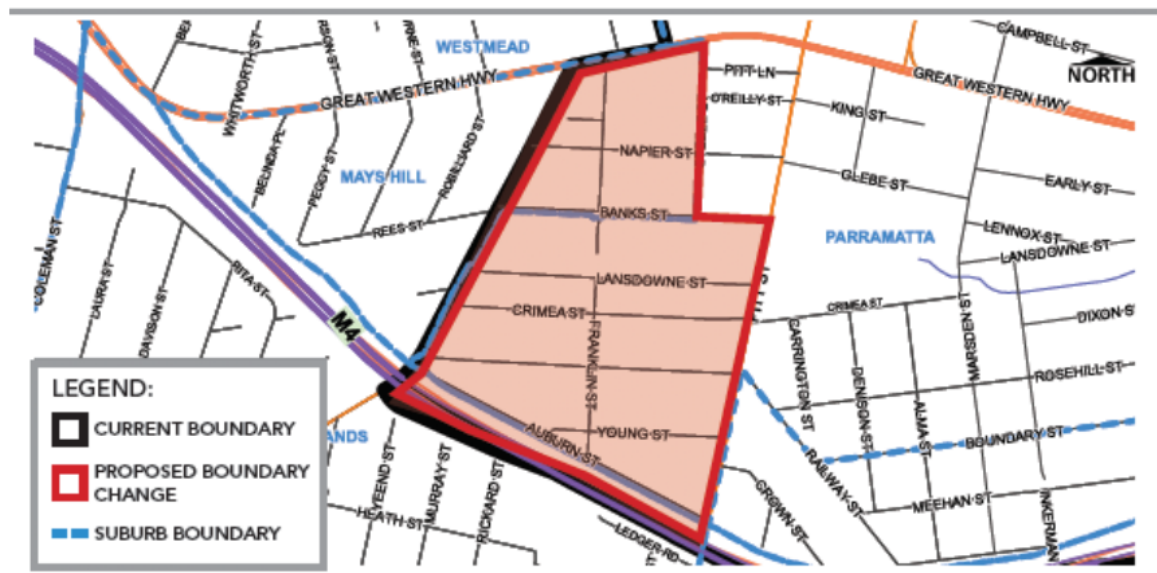
Cumberland Council is undertaking community consultation in relation to a proposed boundary change for Mays Hill.

In 2016 the NSW Government drew boundaries for the new Cumberland Council Local Government Area which saw the suburb of Mays Hill excised to the City of Parramatta with no consultation.

Cumberland Council wants to reinstate Mays Hill as part of Cumberland Council and support you to:

- Restore historical and cultural links shared by the people of Mays Hill and Cumberland
- Access high quality services and programs in your local neighbourhood
- Eliminate fragmented planning to support the future growth of Mays Hill
- Ensure your rates are invested in your local neighbourhood.

Cumberland Council is committed to putting your rates back into localised services and projects that support a growing and connected community.



Do you support Cumberland Council's proposed boundary change for Mays Hill? ☐ Yes ☐ No

Please tell us why/why not: _____

Would you like receive updates on the outcome? ☐ Yes ☐ No

What is your preferred way to receive updates?

☐ Postal - Address: _____

☐ Email - Address: _____

APPENDIX B: 'HAVE YOUR SAY' SURVEY

'Have your say' on the Proposed Boundary Change for Mays Hill



Please write your submission on Cumberland Council's proposed boundary change for Mays Hill . *

You can upload your submission on Cumberland Council's proposed boundary change for Mays Hill here.

Choose File

Please provide your full name. *

Please limit answer to 255 characters

Maximum characters 255

Please provide your street address. *

Please limit answer to 255 characters

Maximum characters 255

Please state your suburb. *

Enter your suburb name

Please include your email address.

Please include your phone number (optional).

Please limit answer to 255 characters

Maximum characters 255

Information about making a submission

All submissions are subject to a request for access by any interested persons under the Government Information (Public Access) Act 2008. If such a request is received, your submission, including your name and address, may be made available for inspection. You may request for your personal information to be suppressed under section 58 of the Privacy and Personal Information Protection (PPIP) Act 1998. Council will consider this request in accordance with the PPIP Act. Please contact the Customer Service Team on 8757 9000 if you have any questions about Council's planning for the future of Cumberland.

You can access the Have Your Say Privacy Policy here - <https://haveyoursay.cumberland.nsw.gov.au/privacy>

Cancel Submit

Item No: C11/19-267

PROPOSED CHANGES TO LONG DAY CARE CENTRE FEES AND CHARGES

Responsible Division: Community Development
Officer: Director Community Development
File Number: S-57-50
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

Council has undertaken an internal service review to improve the financial sustainability of its education and care services.

This report recommends minor increases to Council's Fees and Charges for its Long Day Care Centres, effective from January 2020, and recommends that the *Draft Long Day Care Centre Fees and Charges* be placed on public exhibition for consultation with the community.

RECOMMENDATION

That Council place the *Draft Long Day Care Centre Fees and Charges* on public exhibition for a period of 28 days, with a report to be provided back to Council following the conclusion of the exhibition period.

REPORT

Background

Cumberland Council is the approved provider of 17 education and care services that currently deliver 1,049 education and care places per day to over 1,700 children aged from birth to 13 years.

Of these services, Council currently operates 6 Long Day Care centres and is in the process of bringing an additional 2 centres into operation under the Long Day Care model in early 2020. These additional centres include the upgrade and reopening of the Friend Park Children's Centre, Wentworthville to operate as a 40 place Long Day Care centre, and the transition of the Sometime Centre, Merrylands into a Long Day Care centre to meet community needs and ensure the ongoing viability of the service.

Sustainable Education and Care Provision

Council's education and care services are not for profit and revenue is received through a combination of client fees and grants. The costs associated with operating quality

education and care services continue to increase annually, and the existing fees that Council charges do not cover the operational requirements of its services.

A number of key changes impacted on this service area in 2018/19, including:

- Regulatory changes for the supervision of children leading to increased staffing costs.
- The introduction of the Australian Government's new childcare package in July 2018. The new system rolled the Child Care Benefit (CCB) and Child Care Rebate (CCR) into one new means-tested payment, called the Child Care Subsidy (CCS). The impacts of the new subsidy on education and care provision and demand are yet to be fully realised across the sector, however, have resulted in changed demand and price changes (Cred Consulting, 'The State of Education and Care in Cumberland', July 2019).
- Lower utilisation across some of Council's services leading to underachievement of operating revenue.

To ensure sustainable education and care provision, Council has undertaken an internal service review to identify an immediate strategy to improve its budget performance in this service area. Key changes include:

- Implementation of a new organisation structure and improved budget oversight to improve accountability and budget monitoring at the service level.
- Council has made changes (and is continuing to make changes) to its service types in response to changed regulations.
- Council has addressed the low utilisation rates of its services experienced in 2018/19 through increased marketing and promotion of the role of early education. Utilisation has improved substantially as at Quarter 1, 2019/20 with current Long Day Care Centres operating at 100% occupancy.
- Reductions in staffing costs by \$1.1 million in the service area as at Quarter 1, 2019/20, without compromising the quality of education and care.

In addition to the above, Council has also identified the need to increase its existing Long Day Care Centre Fees and Charges to improve its operating revenue for 2019/20.

Current Long Day Care Centre Fees and Charges

Council's current fees for Long Day Care (0-5 years) are:

- \$95 per day for services that operate from 7am to 6pm; and
- \$97 per day for services that operate from 6am to 6pm.

The 'Care for Kids' website reports that the average cost of Long Day Care in Cumberland is approximately \$101 per child per day before subsidies (See: <https://www.careforkids.com.au/home/childcarecosts>). Therefore, Council is currently charging below the industry average for the Cumberland Local Government Area.

Moreover, all education and care services are rated against the National Quality Standard for Education and Care Services (NQS). All services run by Council are rated

as either Exceeding or Meeting the National Quality Standard. Non-Council services across Cumberland are on average of lower quality with only 20% of Long Day Care services in Cumberland rated as 'Exceeding' the NQS and 33% rated as 'Working Towards' the NQS (Cred Consulting, 'The State of Education and Care in Cumberland', July 2019).

Proposed Increases to Long Day Care Centre Fees and Charges

The following table outlines the approved Long Day Care Centre Fees and Charges for 2018/19 and 2019/20 alongside the Draft Long Day Care Centre Fees and Charges proposed for implementation from January 2020:

	Per day/Per Child	Per day/Per Child	Per day/Per Child
Fee Name	2018/2019	2019/2020	Draft 2019/2020
	Jul - Jun	Jul - Dec	Jan - Jun
Long Day Care Daily Fee (Open 7am – 6pm)			
Meals Included	\$92.00	\$95.00	\$100.00
No Meals Included	-	-	\$95.00
Long Day Care Daily Fee (Open 6am – 6pm)			
Meals Included	\$95.00	\$97.00	\$105.00

It should be noted that Centrelink administers the Child Care Subsidy (CCS) and this amount is dependent on the circumstances of each family. Consideration is given to the income and the number of hours of recognised activities of parent/s or carer/s.

Most existing customers of Council's education and care services receive some level of CCS and therefore will not receive the full impact of the proposed increases. This is subject to change depending on the hours of care accessed and individual circumstances.

COMMUNITY ENGAGEMENT

If endorsed by Council, the Draft Long Day Care Centre Fees and Charges will be placed on public exhibition for a period of 28 days for consultation with the community in accordance with S610F of the *Local Government Act 1993*.

During the public exhibition period, the following actions will be undertaken:

- The Draft Long Day Care Centre Fees and Charges will be distributed to existing customers and families on the waiting list for feedback and comment. Council will also ensure clear visibility of the proposed fees and charges at all Council education and care services.
- The Draft Long Day Care Centre Fees and Charges will be made available on the Council website and at Council libraries, staffed community centres and customer service centres.
- Advertisement of the public exhibition period via advertisements in the Auburn Review and Parramatta Advertiser.

Feedback and public comments arising from the public exhibition period will be reported back to Council in December 2019. Pending community feedback and Council's approval, the new fees and charges will be effective from January 2020.

POLICY IMPLICATIONS

The *Children and Families Strategy 2019 – 2023* was adopted by Council on 2 October 2019 and provides a strategic approach to the delivery of services, programs and initiatives that support children and families in Cumberland.

It identifies education and care as a key priority area, and includes the following strategies and actions for Council related to this report:

Strategy	Actions	Timeframe
2.1 Deliver high quality education and care for all children in the Cumberland area.	2.1a Continue to deliver high quality education and care services to the community.	Y1-4
	2.1f Complete the upgrade and re-open Friend Park Children's Centre, Wentworthville to operate as a 40 place long day care centre.	Y1
2.3 Improve the distribution of Council operated education and care services across the Cumberland area, based on community need.	2.3a Transition The Sometime Centre, Merrylands into a long day care centre with ongoing occasional care places to meet community need and ensure the ongoing viability of the service.	Y1

RISK IMPLICATIONS

In accordance with the *Community Strategic Plan 2017-2027*, Strategic Goal 6 - *Transparent and accountable leadership*, Council must operate efficiently and sustainably. Council has identified the existing shortfalls in the budget that relate to the ongoing operation of education and care services. This matter has been brought to the attention of Council along with a strategy to improve the ongoing operational budget performance of its education and care services in 2019/20. Failure to increase the operating revenue for education and care will result in a continued high level of subsidy from Council.

FINANCIAL IMPLICATIONS

The proposed fee increases will generate an additional estimated revenue of \$211,500 over a 6 month period from January 2020 to June 2020.

Following the completion of Council's immediate actions to improve its budget performance in this service area in 2019/20, subsequent fee increases will be staged as part of Council's ongoing budget review processes where required.

CONCLUSION

The *Community Strategic Plan 2017-2027*, Strategic Goal 4 highlights Council's commitment to 'A strong local economy' by supporting access to jobs locally and access to education and care services. The recently adopted *Children and Families Strategy 2019 – 2023* also recognises that access to quality education and care services has social and economic benefits for families, the broader community and Council.

To ensure ongoing sustainable education and care provision, Council has undertaken an internal service review to identify an immediate strategy to improve its budget performance in this service area. Subsequently, this report recommends a minor fee increase to improve the operating revenue result for 2019/20, whilst ensuring fees remain affordable for local families and competitive when compared against other local service providers. The proposed increase in fees is for Council's Long Day Care services only and is within the average cost for Long Day Care in Cumberland.

ATTACHMENTS

Nil

Item No: C11/19-268

PROPOSED INTRODUCTION AND GENERAL CONTROLS FOR INCLUSION IN THE NEW CUMBERLAND DEVELOPMENT CONTROL PLAN

Responsible Division: Environment & Planning
Officer: Director Environment & Planning
File Number: S-5750-01
Community Strategic Plan Goal: *A resilient built environment*

SUMMARY

The preparation of a new Cumberland Development Control Plan (DCP) is underway, with the focus on harmonising the planning controls of the three DCPs in operation across Cumberland into a single set of detailed planning controls under a comprehensive DCP.

This report outlines some of the proposed planning controls to be included in the new Cumberland DCP. It recommends that Council endorse the planning approach for the introduction of the DCP and general controls for the Cumberland area. This information will be included in the draft new Cumberland DCP that is currently being prepared.

RECOMMENDATION

That Council:

- 1. Endorse the planning approach to the introduction of the Development Control Plan and general controls in the Cumberland area, as provided in Attachment 1; and**
- 2. Note that the above items will be included in the draft Cumberland Development Control Plan.**

REPORT

Background

Cumberland Council is currently operating under three separate sets of planning controls, known as a Development Control Plans (DCP), which are available on Council's website. The current approach does not provide an integrated planning framework for the Cumberland areas, with inconsistent planning controls in place, and is not aligned to current strategic plans and policies from Council and the NSW Government.

New Cumberland Development Control Plan (DCP)

The preparation of a new Cumberland DCP will complement the work being undertaken on the new Cumberland LEP, by providing more detailed planning controls for development in the area. This report focuses on the introduction and general controls of the new Cumberland DCP, as shown in Figure 1.



Figure 1: Proposed Planning Controls Covered in Council Report

Part A – Introduction and General Controls

This part of the DCP focuses on the introductory section and general controls of the DCP. It provides detailed guidance on a range of important aspects, including:

- Introduction
- DA submission requirements
- DA notification requirements
- Site amalgamation and isolated sites
- Subdivision

The DCP review will result in consistent controls applied across Cumberland. This report recommends that Council adopt the planning approach to these parts of the DCP as outlined in Attachment 1.

Next Steps

Subject to endorsement, the proposed planning controls will be included in the draft Cumberland DCP. The draft new Cumberland DCP will be provided for consideration by Council in late 2019 or early 2020, prior to proceeding to public exhibition.

COMMUNITY ENGAGEMENT

Consultation will be undertaken on the draft new Cumberland DCP, and this is anticipated to occur in early 2020.

POLICY IMPLICATIONS

The preparation of the Cumberland DCP supports the new Cumberland Local Environmental Plan, which is required under the Environmental Planning and Assessment Act, 1979. The Cumberland DCP will also align with the strategic directions outlined in Council's Community Strategic Plan and Draft Cumberland 2030: Our Local Strategic Planning Statement.

RISK IMPLICATIONS

The preparation of a new Cumberland DCP is designed to align with the milestones on work for the new Cumberland Local Environmental Plan, which is required to be completed by mid-2020. The release of funds from the grant is also linked to these milestones. Endorsement of the proposed planning controls will assist Council in meeting these milestones.

FINANCIAL IMPLICATIONS

Work undertaken on the Cumberland DCP, including analysis, document preparation and planned community consultation activities, will be funded from the accelerated Local Environmental Plan Funding Grant provided by the NSW Government.

CONCLUSION

The preparation of a new Cumberland Development Control Plan (DCP) is underway. This report outlines some of the proposed planning controls to be included in the new Cumberland DCP. It recommends that Council endorse the planning approach for the introduction of the DCP and general controls for the Cumberland area. This information will be included in the draft new Cumberland DCP that is currently being prepared

ATTACHMENTS

1. Development Control Plan - General Controls [↓](#)

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-268

Attachment 1
Development Control Plan -
General Controls



Part A Introduction and General Controls

Introduction

Recommendation:

- Provide information on a range of items in the introduction, including name and application, purpose of DCP, aims of DCP, relationship to other plans and policies, legislative context and adoption, and structure of DCP.

Current position

- several common elements across the DCPs:
 - name of DCP
 - where the DCP applies
 - relationship to other plans and policies
 - purpose/aims/objectives of the DCP
 - document structure
- DCPs have additional sections:
 - Holroyd – adoption, savings provision.
 - Auburn – adoption, other approvals, how to use DCP.
 - Parramatta – legislative background, terms used.

Key considerations

- introduction sets the overall approach, context of the DCP, and administrative aspects of the plan.

Item No: C11/19-269

PROPOSED RESIDENTIAL PLANNING CONTROLS FOR INCLUSION IN THE NEW CUMBERLAND DEVELOPMENT CONTROL PLAN

Responsible Division: Environment & Planning
Officer: Director Environment & Planning
File Number: S-5750-01
Community Strategic Plan Goal: *A resilient built environment*

SUMMARY

The preparation of a new Cumberland Development Control Plan (DCP) is underway, with the focus on harmonising the planning controls of the three DCPs in operation across Cumberland into a single set of detailed planning controls under a comprehensive DCP.

This report outlines some of the proposed planning controls to be included in the new Cumberland DCP. It recommends that Council endorse the planning approach for residential planning controls in the Cumberland area. This information will be included in the draft new Cumberland DCP that is currently being prepared.

RECOMMENDATION

That Council:

- 1. Endorse the planning approach to controls for residential development in the Cumberland area, as provided in Attachment 1; and**
- 2. Note that the above items will be included in the draft Cumberland Development Control Plan.**

REPORT

Background

Cumberland Council is currently operating under three separate sets of planning controls, known as a Development Control Plans (DCP), which are available on Council's website. The current approach does not provide an integrated planning framework for the Cumberland areas, with inconsistent planning controls in place, and is not aligned to current strategic plans and policies from Council and the NSW Government.

New Cumberland Development Control Plan (DCP)

The preparation of a new Cumberland DCP will complement the work being undertaken on the new Cumberland LEP, by providing more detailed planning controls for development in the area. This report focuses on proposed residential planning controls within the new Cumberland DCP, as shown in Figure 1.

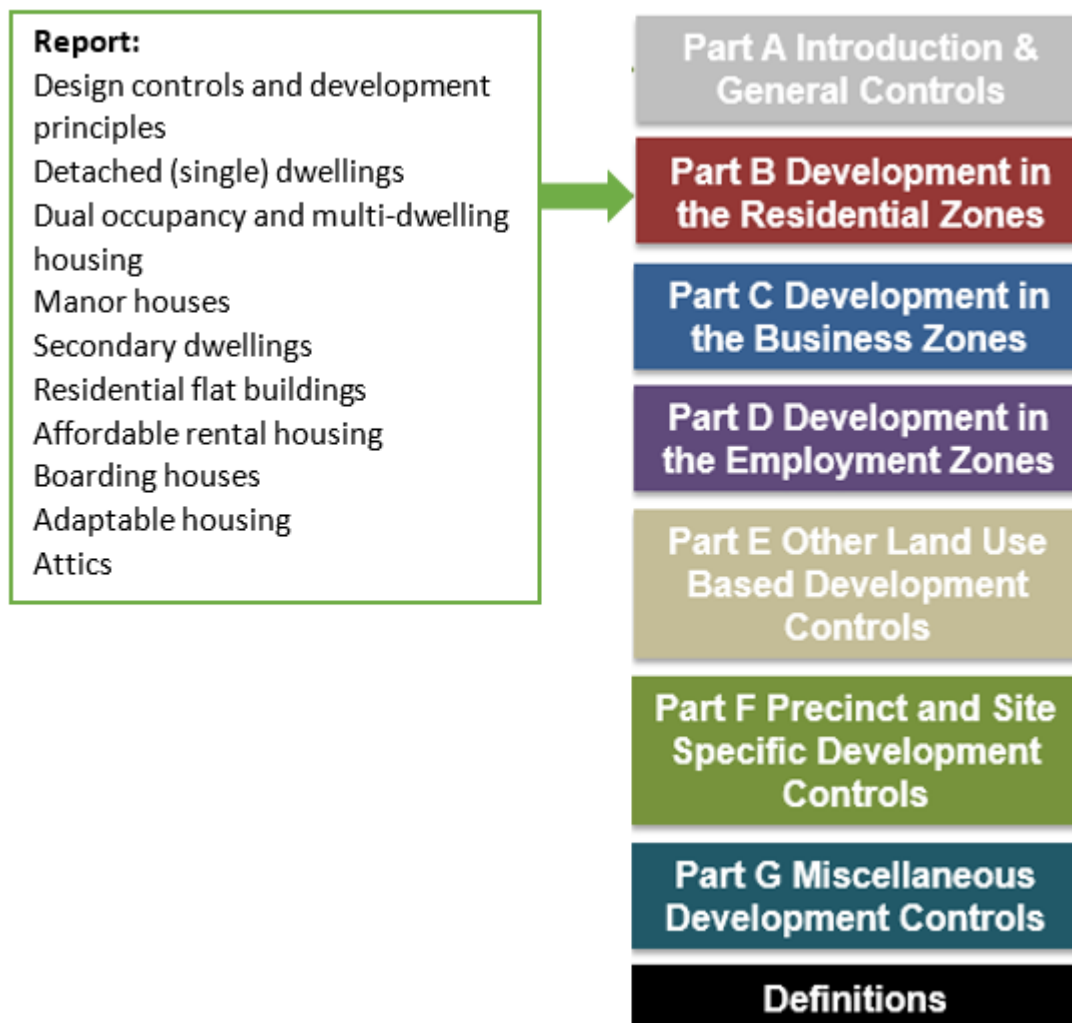


Figure 1: Proposed Planning Controls Covered in Council Report

Part B – Development in the Residential Zones

This part of the DCP contains the controls which apply to all residential development within the R2 Low Density Residential zone, R3 Medium Density Residential zone and R4 High Density Residential zone. In some cases, it also applies to residential development within the business zones. It provides detailed design controls and development principles for a range of development types, including:

- Detached (single) dwellings
- Dual occupancy and multi-dwelling housing
- Manor houses

- Secondary dwellings
- Residential flat buildings
- Affordable rental housing
- Boarding houses
- Adaptable housing
- Attics

The recommended DCP controls address a range of general and locally specific matters that are not covered by mandatory provisions in relevant SEPPs, Codes and/or Guidelines (e.g. the Low Rise Medium Housing Code and Design Guidelines, and State Environmental Planning Policy (SEPP) 65 and Apartment Design Guidelines).

The DCP review will result in consistent controls applied across Cumberland. This report recommends that Council adopt the planning approach to these parts of the DCP as outlined in Attachment 1.

Next Steps

Subject to endorsement, the proposed planning controls will be included in the draft Cumberland DCP. The draft new Cumberland DCP will be provided for consideration by Council in late 2019 or early 2020 prior to proceeding to public exhibition.

COMMUNITY ENGAGEMENT

Consultation will be undertaken on the draft new Cumberland DCP, and this is anticipated to occur in early 2020.

POLICY IMPLICATIONS

The preparation of the Cumberland DCP supports the new Cumberland Local Environmental Plan, which is required under the Environmental Planning and Assessment Act 1979. The Cumberland DCP will also align with the strategic directions outlined in Council's Community Strategic Plan and Draft Cumberland 2030: Our Local Strategic Planning Statement.

RISK IMPLICATIONS

The preparation of a new Cumberland DCP is designed to align with the milestones on work for the new Cumberland Local Environmental Plan, which is required to be completed by mid-2020. The release of funds from the grant is also linked to these milestones. Endorsement of the proposed planning controls will assist Council in meeting these milestones.

FINANCIAL IMPLICATIONS

Work undertaken on the Cumberland DCP, including analysis, document preparation and planned community consultation activities, will be funded from the accelerated Local Environmental Plan Funding Grant provided by the NSW Government.

CONCLUSION

The preparation of a new Cumberland Development Control Plan (DCP) is underway. This report outlines some of the proposed planning controls to be included in the new Cumberland DCP. It recommends that Council endorse the planning approach for residential development controls in the Cumberland area. This information will be included in the draft Cumberland DCP that is currently being prepared.

ATTACHMENTS

1. Proposed Residential Planning Controls [↓](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-269

Attachment 1
Proposed Residential Planning
Controls

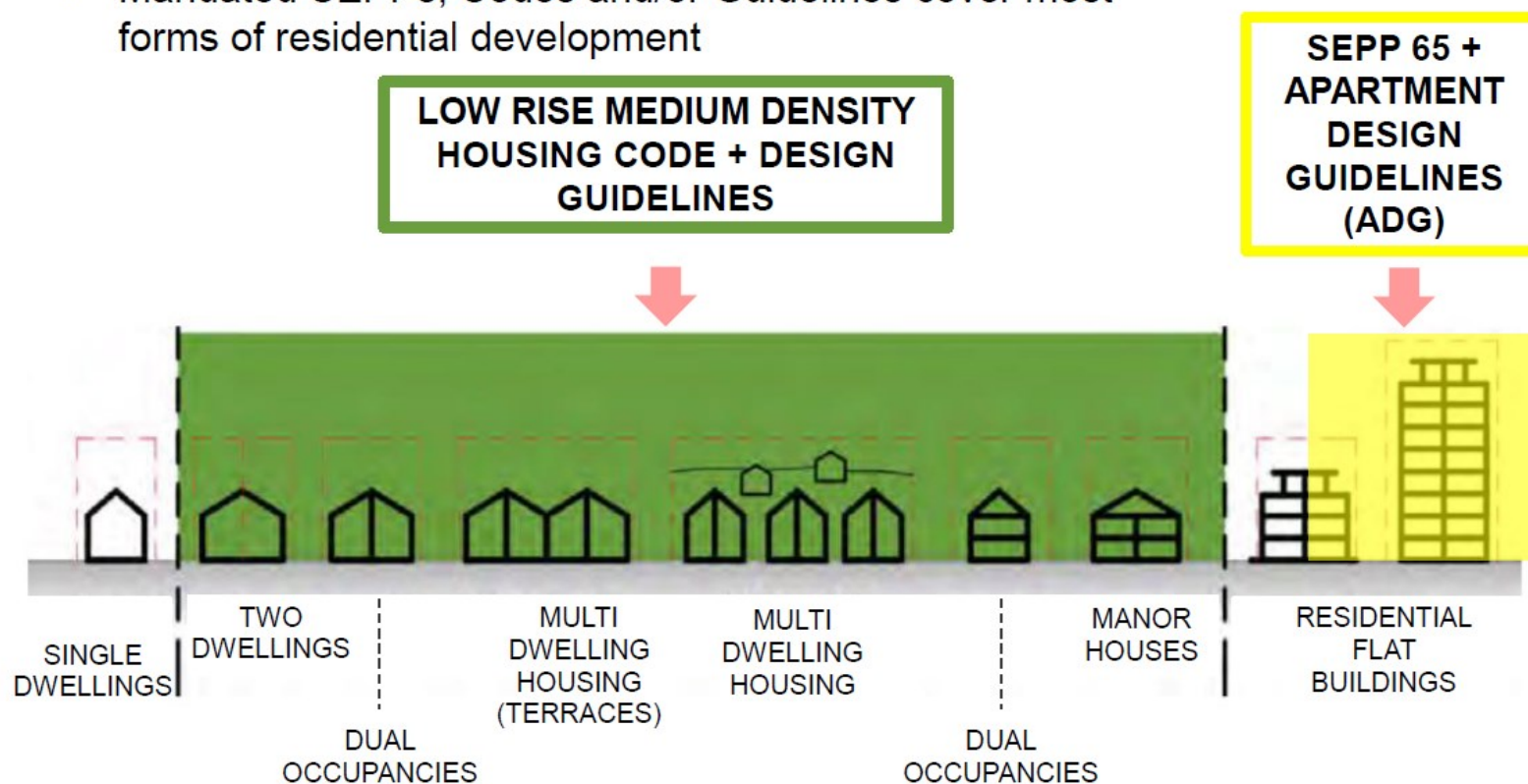


Part B

Development in the Residential Zones

Design controls and development principles

- Mandated SEPPs, Codes and/or Guidelines cover most forms of residential development





Design controls and development principles

- Relationship of Low Rise Medium Density Design Code to LEP and DCP

LEP	CODE	DCP
	BUILT FORM CONTROLS	
Maximum height of building	A Building Envelopes - Heights and Setbacks	Setbacks and building envelopes
Floor Space Ratio / Gross Floor Area	B Gross Floor Area / Floor Space Ratio	
Landscaped Area*	C Landscaped Area	Landscaped Area
Land use tables	D Local Character and Context	Character statement / site specific plans
Min lot size for development	E Public Domain Interface	
Minimum subdivision lot size	F Pedestrian and Vehicle Circulation	Design and location of streets
	G Orientation, Siting and Subdivision	
	AMENITY	
Miscellaneous provisions	H Solar and Daylight Access	
Additional local provisions	I Natural Ventilation	
	J Ceiling Height	
	K Dwelling Size and layout	
	L Principal Private Open Spaces	
	M Storage	
	N Car and Bicycle Parking	Car parking rates
	O Visual Privacy	
	P Acoustic Privacy	
	Q Noise and Pollution	
	CONFIGURATION	
	R Architectural Form and Roof Design	Character statement / site specific plans
	S Visual Appearance and Articulation	
	T Pools and Detached Development	
	ENVIRONMENT	
	U Energy Efficiency**	
	V Water Management and Conservation**	Stormwater management
	W Waste Management	Waste collection and bin quantity
	X Universal Design	
	Y Communal Areas and Open Space	



Part B

Development in the Residential Zones

Design controls and development principles

Recommendation:

- Overarching design controls and development principles address a range of general and common matters that are not covered by mandatory provisions in relevant SEPPs, Codes and/or Guidelines.
- These are to be used for all types of residential development, including detached dwellings, dual occupancies, manor houses, multi-dwelling housing, residential flat buildings, secondary dwellings, affordable rental housing and boarding houses.

Current position

- The Parramatta and Holroyd DCP provide a range of overarching design controls and development principle that can be applied to all residential developments.
- The Auburn DCP provides a limited number general controls, with specific sections on each type of residential development containing general controls tailored to that development type.
- The Holroyd DCP also has specific controls for small lot housing and landlocked sites.

Key considerations

- The Affordable Rental Housing SEPP and Low Rise Medium Density Development Code (and its guideline) set out the controls and principles for these types of residential development. These controls will override DCP controls for those specific development types.



Part B

Development in the Residential Zones

Detached (Single) Dwellings

Recommendation:

- Specific DCP principles and controls for detached dwellings, that carry over and standardise the existing similar provisions of the 3 DCPs, addressing: lot size and frontage, site coverage, setbacks, floor to ceiling heights, building design and appearance, landscaped area, deep soil, privacy and security, solar access, ancillary site facilities, and out buildings. Dwelling size may also be considered.
- The following specific provisions, that would apply to detached dwellings, will be covered by a broader consideration of the topic as it applies to all development types (subsequent briefing): parking and access, stormwater reuse.

Current position

- The Holroyd and Auburn DCPs have specific objectives and controls addressing aspects of detached dwelling developments.
- The Holroyd and Parramatta DCP have general controls for any residential development type including detached dwellings.

Key considerations

- Focus on consistency across the LGA
- Focus on existing controls that work well, reflect best practice
- The existing 3 DCP provisions are similar in requirements.



Part B

Development in the Residential Zones

Detached dwellings

Mandated development controls

- Nil

Additional provisions in DCP

- Lot size and frontage
- Site coverage
- Setbacks
- Floor to ceiling heights
- Dwelling size
- Building design / appearance
- Landscaped area
- Deep soil
- Privacy and security
- Solar access
- Ancillary site facilities
- Outbuildings

The following potential provisions will be addressed as part of a broader consideration that is to apply to all development types:

- Stormwater reuse
- Parking and access



Part B

Development in the Residential Zones

Dual occupancy and multi-dwelling housing

Recommendation:

- Adopt the Low Rise Medium Density Housing Code and Design Guidelines where applicable for dual occupancy and multi-dwelling housing detached dwellings.
- Specific DCP controls for multi-dwelling housing not provided in mandated Codes and Guidelines, including setbacks, landscaped areas, pedestrian and vehicle circulation, car and bicycle parking, architectural form and roof design, water management, and conservation and waste management.

Current position

- All three DCPs currently contain specific controls for multi-dwelling housing (with varying detail).
- The *Low Rise Medium Density Code* will apply to all R2 and R3 zones from 31 October 2019. The '*Low Rise Medium Density Design Guide for Development Applications*' provides best practices standards for dual occupancy, manor houses and multi-dwelling housing. This guide can be adopted in full or in part if Council does not have prescribed controls in a DCP.

Key considerations

- The '*Low Rise Medium Density Design Guide for Development Applications*' provides guidance on a range of built form, amenity, configuration and environment criteria.



Part B

Development in the Residential Zones

Dual occupancy and multi-dwelling housing

Mandated development controls	Mandated development controls	Additional provisions in DCP
<p>Built Form Controls</p> <ul style="list-style-type: none"> • Building Envelope – heights and setbacks • Gross floor area / floor space ratio • Landscaped area • Local character and content • Public domain interface • Pedestrian and vehicle circulation • Orientation siting and subdivision <p>Environment</p> <ul style="list-style-type: none"> - Energy efficiency - Water management and conservation - Waste management - Universal design - Communal areas and open space 	<p>Amenity</p> <ul style="list-style-type: none"> • Solar and daylight access • Natural ventilation • Ceiling heights • Dwelling size and layout • Principle / private open spaces • Storage • Car and bicycle parking • Visual privacy • Acoustic privacy • Noise and pollution <p>Configuration</p> <ul style="list-style-type: none"> - Architectural form and roof design - Visual appearance and articulation - Pools and detached development 	<ul style="list-style-type: none"> • Set backs and building envelopes • Landscaped areas • Character statement / site specific plans • Design and location of streets <p>The following additional provisions can be addressed in topic specific parts of the DCP:</p> <ul style="list-style-type: none"> • Car parking rates • Stormwater management • Waste collection and bin quantity



Part B

Development in the Residential Zones

Manor houses

Recommendation:

- Adopt the Low Rise Medium Density Housing Code and Design Guidelines where applicable for manor houses, including for built form controls, configuration, amenity, and environment.
- Specific DCP controls for manor houses not provided in mandated Codes and Guidelines, including setbacks and landscaping.

Current position

- Currently none of the three DCPs contain any controls specifically relating to manor houses.

Key considerations

- The Codes SEPP permits manor houses with consent in RU5, R1, R2 and R3 zones if multi dwelling housing or residential flat buildings (or both) are permitted in the zone.
- In Cumberland, applicants will only be able to rely on the *Low Rise Medium Density Code* for manor house permissibility within the R3 zone as neither multi-dwelling housing or RFBs are permitted within the R2 zone in the draft Cumberland LEP.



Part B

Development in the Residential Zones

Manor houses

Mandated development controls

Built Form Controls

- Building Envelope – heights and setbacks
- Gross floor area / floor space ratio
- Landscaped area
- Local character and content
- Public domain interface
- Pedestrian and vehicle circulation
- Orientation siting and subdivision

Environment

- Energy efficiency
- Water management and conservation
- Waste management
- Universal design
- Communal areas and open space

Mandated development controls

Amenity

- Solar and daylight access
- Natural ventilation
- Ceiling heights
- Dwelling size and layout
- Principle / private open spaces
- Storage
- Car and bicycle parking
- Visual privacy
- Acoustic privacy
- Noise and pollution

Configuration

- Architectural form and roof design
- Visual appearance and articulation
- Pools and detached development

Additional provisions in DCP

- Set backs and building envelopes
- Landscaped areas
- Character statement / site specific plans
- Design and location of streets

The following additional provisions can be addressed in topic specific parts of the DCP:

- Car parking rates
- Stormwater management
- Waste collection and bin quantity



Part B

Development in the Residential Zones

Secondary dwellings

Recommendation:

- Adopt the Affordable Rental Housing SEPP objectives and controls for secondary dwellings where this use is permissible
- Specific DCP controls for secondary dwellings not provided in mandated SEPPs and Guidelines, including maximum number of secondary dwellings, deep soil zone, internal design and external design.

Current position

- Currently, secondary dwellings are prohibited in all residential zones under the draft Cumberland LEP by inclusion of the group term “residential accommodation” within prohibited land uses within each zone.
- Any development applications for secondary dwellings in residential areas will rely on the ARHSEPP for permissibility either through complying development or a DA.

Key considerations

- The ARHSEPP allows the development of secondary dwellings with consent within all residential zones if development for the purposes of a dwelling houses is permissible within the land use tables for the residential zone.
- The ARHSEPP provides that a consent authority must not refuse consent for a secondary dwelling on the grounds of site area or parking if the DA complies with the development standards for these matters. As a result, there is no need to include controls for parking or site area within the consolidated DCP.



Part B

Development in the Residential Zones

Secondary dwellings

Mandated development controls

Affordable Rental Housing SEPP, in particular Division 2 and Schedule 1, which addresses:

- Site requirements including lot size, maximums site coverage, maximum floor area of dwelling, setbacks and maximum floor areas for balconies etc,
- Building height and setback requirements including from boundaries, roads and for privacy.
- Landscaping requirements including minimum landscape area.

Additional provisions in DCP

- Maximum number of secondary dwellings – 1 per allotment
- Deep soil zone - to ensure minimum area required for a dwelling house maintained.
- Internal design requirements including layout
- External design and appearance - in relation to the principle dwelling



Part B

Development in the Residential Zones

Residential flat buildings

Recommendation:

- Adopt the Apartment Design Guide as a minimum standard for residential flat buildings.
- Specific DCP controls for residential flat buildings not provided in mandated SEPPs and Guidelines, including lot size and frontage. Some additional numeric values to be included for matters covered under the Apartment Design Guide.

Current Position

- The 3 DCPs provide additional controls not covered by the ADG that will require further detailed consideration eg: lot size and frontage; site coverage; head of height windows.
- The 3 DCPs provide specific numeric controls for some matters covered generally by the ADG.
- Some existing DCP controls for RFBs will be considered in the context of all types of development – such as relating to ecological considerations and site amalgamation/isolated sites.

Key Considerations

SEPP 65 – Design Quality of Residential Apartment Development

- SEPP 65 provides that consent cannot be refused if the DA for an RFB complies with the design criteria set out in the ADG for:
 - Car parking rates
 - Minimum apartment sizes
 - Minimum ceiling heights
- SEPP 65 states that controls contained in a DCP which relate to visual privacy, solar and daylight access, common circulation and spaces, apartment size and layout, ceiling heights, private open space and balconies, natural ventilation and storage will have no effect.

Apartment Design Guide (ADG)

- The ADG sets out consistent planning and development standards for apartment development.



Part B

Development in the Residential Zones

Residential flat buildings

Mandated development controls

- SEPP 65 Design Quality of Residential Apartment Development and associated Apartment Design Guide
- SEPP 65 sets out the 9 design principles for this buildings type.
- The ADG comprises 4 Parts that considered an RFB from broad scale to the detail, and provides general guidance, objectives and design guidance for a building.
- ADG Part 2 including building depth, separation and setbacks
- ADG Part 3 includes public / communal open space, visual privacy, pedestrian and vehicle access, parking.
- ADG Part 4 includes amenity, configuration, and environmental performance.

Additional provisions in DCP

- Lot size and frontage
- Some types of facilities and amenities eg screen walls, utilities, TV antennae.
- For matters covered by the ADG but no numeric controls re nominated, the DCP may nominate numeric values – such as:
 - Front, rear and side setbacks, and upper storey setbacks,
 - Landscaping
 - Building appearance eg for articulation
 - Dwelling mix (% by number of bedrooms)
 - Water management and conservation (eg rainwater tanks)



Part B

Development in the Residential Zones

Housing diversity (mix)

Recommendation:

- Adopt objectives for apartment mix from Apartment Design Guide.
- Numerical dwelling mix requirement of an equal mix of studio/1, 2 and 3 bedrooms for all forms of apartments and medium density housing, with justification provided for variations based on local demographic characteristics.
- Family units to be located on the ground floor where possible.

Current position

- The 3 DCPs currently all require a dwelling mix for RFBs, with Parramatta provide specific percentages which must be met. However, Holroyd only includes a threshold for 1-bedroom units.
- Auburn also includes a controls requiring that there is a mix of dwelling sizes for multi-dwelling housing.

Key considerations

- Analysis of local housing indicates that:
 - 60-80% of new projects are 2 bedroom units
 - gap of supply in studio/1-bed units and larger dwellings
 - “missing middle” evident in CumberlandNeeds to be considered when adopting housing mix controls.
- The ADG includes objectives for apartment mix but does not include specific numerical controls.



Part B

Development in the Residential Zones

Affordable rental housing

Recommendation:

- Adopt the Affordable Rental Housing SEPP minimum standards, provisions and controls for these dwellings within or of development types.

Current position

- The Affordable Rental Housing SEPP (ARH SEPP) provides specific controls.
- Affordable rental housing as a dwelling type is not specifically addressed under any of the three existing DCPs.
- Affordable rental housing can be provided as, or within, other types of residential developments including boarding houses, secondary dwellings, residential flat buildings, and group homes.
- Development controls that are not covered by the ARH SEPP can be applied though the residential development type to the affordable rental housing dwelling/s.

Key considerations

- The ARH SEPP provides provisions and controls for affordable rental housing as various dwelling types.
- Additional controls may be considered for specific matters that are not addressed under, or to go beyond, the ARH SEPP and may be general to the development type such as RFBs.
- Review and extend other DCP provisions to ensure these cover ARH developments.
- Some specific types of affordable rental housing are separately addressed in this briefing.



Part B

Development in the Residential Zones

Affordable rental housing

Mandated development controls

- Affordable Rental Housing SEPP (ARH SEPP) relating to various types of affordable rental housing including:
 - Infill of dual occupancies, multi-dwelling or RFBs.
 - Secondary dwellings
 - Boarding houses
 - Supportive accommodation
 - RFB involving social housing providers, public authorities and joint ventures
 - Group homes
- It provides differing controls, standards and matters to be considered as relate to these development types

Additional provisions in DCP

- As nominated for specific types of affordable rental housing in this briefing eg as nominated for boarding houses, secondary dwellings.
- As nominated for other types of residential accommodation in this briefing eg as nominated for multi dwelling or RFB providing these are not inconsistent with the ARH SEPP



Part B

Development in the Residential Zones

Boarding houses

Recommendation:

- Adopt the Affordable Rental Housing SEPP minimum standards, provisions and controls for boarding houses in residential and some business zones.
- Specific DCP controls for boarding houses not provided in mandated SEPPs and Codes, including site planning, operational management, visual privacy, general building design and internal design.

Current position

- Only the Parramatta DCP provides controls for boarding houses. However many of these are covered by the Affordable Rental Housing SEPP (ARH SEPP) or Building Code of Australia (BCA).
- Neither the Auburn or Holroyd DCPs have specific controls for Boarding Houses.

Key considerations

- The ARH SEPP provides provisions and controls for boarding houses in R1, R2, R3, R4, B1, B2 and B4 zones.
- As the proposed Cumberland LEP prohibits boarding houses in remaining land use zones, no further controls are required for boarding houses in zones not covered by ARH SEPP.
- Additional controls may be considered for specific matters that are not addressed under, or go beyond, the ARH SEPP.
- The Building Code of Australia (BCA) also applies.
- To extend other provisions of the DCP to ensure these cover boarding houses.



Part B

Development in the Residential Zones

Boarding houses

Mandated development controls

- Affordable Rental Housing SEPP (ARHSEPP) relating to minimum levels of solar access, private open space and accommodation size, the provision of common living area, private room floor area, provision of bathroom and kitchen facilities and parking, and consideration of the local area character.

Additional provisions in DCP

- Access and proximity to services and facilities including retail and commercial, services, community services and facilities, recreation and entertainment, employment opportunities, public transport.
- Site planning / site Analysis
- Operational management relating to local amenity and impacts
- General design
- Specific area design: bedrooms, bathrooms, kitchen, communal areas, private open space.
- Acoustics
- Visual privacy
- Overshadowing



Part B

Development in the Residential Zones

Adaptable housing

Recommendation:

- Adopt an adaptable housing requirement of 20% for multi-dwelling housing, residential flat buildings and shop-top housing.
- Adopt Liveable Housing Design Guidelines as minimum standard for the design of adaptable housing units.
- Adopt AS4299 Adaptable Housing as the minimum standard for the siting and design of adaptable housing units.

Current position

- Both Auburn and Parramatta include controls relating to the provision of adaptable housing. Parramatta has a numerical control whereas Auburn has more detailed objectives and controls.
- AS4299 – Adaptable housing provides guidance

Key considerations

- Adaptable units should be provided on all sizes of development. Council may want to consider increasing the % of adaptable housing required in larger development to 20% in line with the ADG.
- The design of adaptable housing units should be inline with current Liveable Housing Design Guidelines and achieve the basic level in the first instance.
- A DCP requirement or incentive could be included for larger developments to have units which reach gold or platinum level under the Liveable Housing Design Guidelines eg: a unit which achieved Platinum level could account for 2 adaptable units.



Part B

Development in the Residential Zones

Adaptable housing

Mandated development controls

- Australian Standard AS 4299 -Adaptable Housing
- Livable Housing Design Guidelines
- The Apartment Design Guide for SEPP65 for RFBs shop top housing and mixed use developments of 3 or more storeys.

Additional provisions in DCP

- To require a minimum number of adaptable dwellings within an overall residential development – with the number of adaptable units to be provided related to the scale of the overall development
- An adaptable housing requirement of 20% for multi-dwelling housing, residential flat buildings and shop-top housing



Part B

Development in the Residential Zones

Attics

Recommendation:

- Attics to be permitted for any form of residential dwelling, with the function to provide storage and/or an additional room.
- Specific DCP controls to be provided on internal habitable room requirements and visual privacy for adjoining neighbour.

Current position

- The three DCPs have different positions regarding the inclusion of attics in a development.

Key considerations

- Attics can be used for a variety of purposes.
- If used for additional sleeping accommodation – this will in reality form a bedroom and therefore will need to be of appropriate dimensions.



Part B

Development in the Residential Zones

Attics

Mandated development controls

- The Standard Instrument LEP defines an attic as *“as any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like”*

Additional provisions in DCP

A control to protect the visual privacy of adjacent dwellings and private open space. Attics are to directly face the public domain

Control/s to guide the dimensions of the attic space habitable area. This can be done as numeric values:

- 1.5m minimum wall height at the edge of the room with a 30 degree minimum ceiling slope

Compliance with guiding principles relating to:

- other height and floor to ceiling height requirements in Codes and Guidelines
- fit within the building envelope
- not to increase the bulk and height of the roof

Item No: C11/19-270

CLASSIFICATION OF LAND, 191-201 PITT STREET MERRYLANDS, LOT 11 DP 1178684, AS OPERATIONAL LAND FOR THE PURPOSE OF ENTERING INTO A FREE PARKING AGREEMENT

Responsible Division: Works & Infrastructure
Officer: Director Works & Infrastructure
File Number: HC-11-16-9/02
Community Strategic Plan Goal: *A safe accessible community*

SUMMARY

At the meeting on 4 September 2019 Council considered a report (C09/19-200) regarding the classification of land, Stockland Mall (known as 191-201 Pitt Street, Merrylands Lot 11 DP 1178684) as Operational Land and entering into a Free Parking Agreement with the property owner. The report recommended that Council give Public Notice of its intention to classify the land as Operational Land for the purposes of entering into a Free Parking Agreement with the land owner and then receive a further report on the outcome of the Public Notice period.

The aim of this report is to provide feedback on the public notification and consultation process and to seek Council's approval for the classification of land, Stockland Mall (known as 191-201 Pitt Street, Merrylands Lot 11 DP 1178684) as Operational Land and enter into a Free Parking Agreement with the property owners, being The Trust Company Limited and Stockland Trust Management Limited.

RECOMMENDATION

That Council:

- 1. Classify Stockland Mall (known as 191-201 Pitt Street, Merrylands Lot 11 DP 1178684) as Operational Land and enter into a Free Parking Agreement with the property owners, being The Trust Company Limited and Stockland Trust Management Limited; and**
- 2. Give Public Notice of the resolution to classify the land as Operational Land, for the purposes of entering into a Free Parking Agreement with the land owner.**

REPORT

Council has received correspondence from the landowners (The Trust Company Limited and Stockland Trust Management Limited) of Stockland Mall (known as 191-201 Pitt Street, Merrylands Lot 11 DP 1178684) requesting that Council enter into a Free Parking Agreement. The *Local Government Act 1993* allows Council to enter into

a Free Parking Agreement with private landowners under section 650 (6). Before Council can enter into a Free Parking Agreement however, it must first resolve to classify the land as Operational Land and undertake public consultation by way of a Public Notice.

A public notice was therefore placed in Council's Corporate Column of the Auburn Review on 17 September 2019 and the Parramatta Advertiser on 18 September 2019. Furthermore, Council invited feedback through the 'Have Your Say' portal of Cumberland Council's website in order for community members to make representations or provide objections. The public consultation period closed on 7 October 2019 with no submissions received.

Application of the Free Parking Agreement is anticipated to assist local residents by way of providing more accessible parking for the purpose of shopping in Merrylands. Monitoring of the area by Council's regulatory staff will also increase pedestrian safety and provide greater protection of Stockland assets, by encouraging parking in approved marked spaces.

Council staff have also been in consultation with the landowner to improve signage within the Stockland Mall carpark, to ensure there is no confusion regarding areas that will continue to be subject to the paid ticketed system and that which will be subject to the Free Parking Agreement (located at ground level and accessed by Neil Street & Pitt Street, Merrylands).

Patrols of this area will allow Council Officers to monitor vehicles parked in marked spaces, 'No Parking' and disabled parking spaces only.

COMMUNITY ENGAGEMENT

In the instance of Council agreeing with the recommendations of this report, Council shall give Public Notice of the resolution to classify the land as Operational Land, for the purposes of entering into a Free Parking Agreement with the land owner.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.




FINANCIAL IMPLICATIONS

Under the term of the Free Parking Agreement, the owner must maintain the carpark to the applicable standards including the installation and maintenance of Parking Restriction signs. Any income generated through enforcement will be retained fully by Council.

CONCLUSION

It is recommended that Council resolve to classify Stockland Mall (known as 191-201 Pitt Street, Merrylands Lot 11 DP 1178684) as Operational Land and enter into a Free Parking Agreement with The Trust Company Limited and Stockland Trust Management Limited, in terms described by way of the draft Free Parking Agreement provided at Attachment 1.

ATTACHMENTS

1. Stockland Mall Free Parking Agreement - Draft [↓](#) 
2. Location Map Lot 11 DP 1178684 [↓](#) 
3. Office of Local Government - Free Parking & Strata / Community Parking Area Agreements - Guidelines for Councils [↓](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-270

Attachment 1
Stockland Mall Free Parking
Agreement - Draft

AGREEMENT FOR FREE PARKING AREA

Between:

Cumberland Council (ABN 22 798 563 329)

and

The Trust Company Limited (ACN 004 027 749)

Stockland Trust Management Limited (ACN 001 900 741)

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THIS AGREEMENT is made on

BETWEEN Cumberland Council of 16 Memorial Avenue, Merrylands, NSW, 2160 (ABN 22 798 563 329) ("Council")

AND The Trust Company Limited (ACN 004 027 749) c/- Stockland Trust Management Limited, Level 25, 133 Castlereagh Street, Sydney NSW 2000 ("Owner")

Stockland Trust Management Limited, Level 25, 133 Castlereagh Street, Sydney NSW 2000 ("Responsible Entity")

RECITALS:

- A The Owner is the registered proprietor of the Land upon which land or adjacent thereto is constructed Stockland Merrylands.
- B The Land is subject to the Car Parking Easement.
- C The Owner wishes to place the Carpark under the control of Council so that the Carpark is managed and operated as a Free Parking Area under the provisions of section 650(6) of the Act.
- D Council has agreed to enter into this Agreement to manage and operate the Carpark as a Free Parking Area upon the terms contained in this Agreement.
- E Other than the management of the Carpark as a Free Parking Area, the Free Parking Area Land will be under the operation and management of the Owner.

OPERATIVE PROVISIONS:

1. Purpose and interpretation

- 1.1 In this Agreement unless the contrary intention appears:

Act means the *Local Government Act 1993* (NSW).

Carpark means the Free Parking Area Land.

Car Parking Easement means the existing easement over the Land between the parties, granting Council a car parking licence, marked "(R)" on DP1178684.

Council means Cumberland Council.

Easement Deed means the Deed of Cancellation and Creation of Car Parking Easements dated 4 July 2007.

Guidelines mean Guidelines as in force from time to time under section 650(7) of the Local Government Act, 1993.

Free Parking Area means a free parking area for the purposes of section 650(6) of the Act.

Free Parking Area Land means that part of the Land described in Item 2 of Schedule 1 intended by this Agreement to be set aside as a Free Parking Area.

Initial Parking Restriction Signs means the Parking Restriction Signs agreed by the parties (in terms of specification, location and cost) prior to the execution of this Agreement, as shown on the plans attached as Annexure B to this Agreement.

Land means the land described in Schedule 1.

Loss means any loss (including loss of profit and loss of expected profit) claim, action, liability, proceeding, summons, demand, notice, damage, death, personal injury, suit, judgment, order, cost, charge, fee, expense, or diminution in value which a party pays, suffers or incurs or is liable for including:

- (a) interest and other amounts payable to third parties;
- (b) legal and other expenses reasonably incurred in connection with investigating or defending any claim or action; and
- (c) amounts paid in settlement of any claim or action.

Owner is The Trust Company Limited (ACN 000 900 741).

Parking Restriction Signs means the signs and/or notices that restrict or otherwise limit the standing and/or parking of vehicles in the Carpark including signs relating but not limited to:

- (a) the time or times during which the public may use the Carpark;
- (b) the maximum period for which a vehicle may be parked in the Carpark (or in any part of the Carpark); and
- (c) the designation of a parking space within the Carpark as a space for the sole use of persons with disabilities.

Safety Audit means the safety audit to be carried out by the Owner pursuant to clause 2 in relation to the Free Parking Area Land. The safety audit is to identify and make recommendations regarding suggested measures in relation to managing safety risks with regards to the Free Parking Area Land including, but not limited to the following items:

- (d) the lighting available at the Free Parking Area Land;
- (e) enclosed space hazards;
- (f) exhaust emission levels;
- (g) the existence of emergency exits;
- (h) any slip, trip and fall hazards;
- (i) the existence of physical barriers preventing ideal line of sight for safety of Council's contractors and agents;

- (j) the requirement for security measures such as cameras, surveillance, static guard, currently implemented onsite and recommendations for further security measures to be implemented by the Owner; and
- (k) any other issues or risks identified as relevant by the qualified person/company undertaking the safety audit.

1.2 In this Agreement:

- (a) A reference to this Agreement or another instrument includes any agreed variation or replacement of them.
- (b) A reference to a person includes a reference to a corporation, partnership, joint venture, trust, association, government or public authority and vice versa.
- (c) A reference to a party to this or any other document includes the party's successors or permitted assigns, the party's administrators, successors, substitutes (including persons taking by novation), transferees.
- (d) A reference to a clause or schedule or annexure shall be construed as a reference to a clause of or schedule or annexure to this Agreement and references to this Agreement shall include its schedules, any annexures and exhibits.
- (e) A reference to a statute, code or other law includes regulations and other instruments under it, consolidations, amendments, re-enactments or replacements of any of them.
- (f) The singular includes the plural and vice versa.
- (g) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (h) Any Agreement, representation, covenant, warranty or provision on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

1.3 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.4 The Owner acknowledges that Council is vested with statutory functions which must be exercised according to law. No provision of this Agreement is intended to constitute an unlawful fetter on Council and this Agreement is to be construed so as to give effect to that intention. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that an exercise of power under this agreement cannot be exercised without giving rise to an unlawful fetter on Council's discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and

- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

- 1.5 The Owner acknowledges that Council has the right to automatically vary this Agreement to reflect changes in law, so far as they relate to Council's statutory functions.

2. Responsibilities of the Owner

- 2.1 The Owner agrees that the Carpark is to be managed and operated as a Free Parking Area and that Council is authorised by this Agreement to do all acts and things as Council requires or considers necessary or appropriate to fully and effectually perform and observe its functions under section 650 of the Act in relation to the use of the Free Parking Area Land.
- 2.2 Within fourteen (14) days of the signing of this Agreement the Owner will carry out or cause to be carried out a Safety Audit by a suitably qualified person/company at its cost and forward a copy of such completed Safety Audit to Council. Any recommendations of the Safety Audit are to be implemented by the Owner at its cost and evidence of such implementation provided to Council prior to Council commencing regulation of the parking restrictions within the Carpark.
- 2.3 Notwithstanding anything in this Agreement to the contrary, and subject to anything to the contrary contained in the Easement Deed, the Owner will:
 - (a) promptly and at its cost:
 - (i) ensure the condition of the Carpark complies with all relevant guidelines and legislation prior to Council regulating the parking restrictions. This includes, but is not limited to signage, allocation of parking spaces and line marking to the standard required by Council on or in the Carpark;
 - (ii) comply with all reasonable directions of Council in respect of the maintenance of the condition of the Carpark; and
 - (b) maintain and keep the Carpark clean at its cost.
- 2.4 The Owner agrees to pay to Council within 14 days of the date demanded by Council the costs (including GST payable on such costs) specified in the quote attached as Annexure B to this Agreement for the manufacture and installation of the Initial Parking Restriction Signs.

3. Council's Right to operate and manage the Carpark Land as a Free Parking Area

- 3.1 Council agrees to manage and operate the land as a Free Parking Area and:
 - (a) monitor compliance with; and
 - (b) issue infringement notices in relation to breaches of

the Parking Restriction Signs in the Carpark in accordance with the terms of this Agreement.

- 3.2 Without limiting clause 3.1 the Owner agrees that Council may at its sole discretion:
- (c) give any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the Carpark; and
 - (d) prosecute persons in respect of any breach of section 650 of the Act with regard to the use of the Carpark.
- 3.3 The Owner acknowledges that nothing in this Agreement which vests any right, entitlement or power in Council binds Council to exercise any such right, entitlement or power, which remains at all times within the sole discretion of Council.
- 3.4 Council agrees to manufacture and install the Initial Parking Restriction Signs in accordance with the agreed specifications and locations as soon as practicable after the date of this Agreement.
- 3.5 In respect of any Parking Restriction Signs, other than the Initial Parking Restrictions Signs, which Council wishes to install at the Carpark:
- (a) Council must first submit to the Owner the specifications and location of the proposed Parking Restriction Signs for the Owner's approval, which the Owner may accept or reject in its absolute discretion within a reasonable time of receiving the proposal; and
 - (b) if the Owner accepts the proposal, Council must manufacture and install the Parking Restriction Signs at Council's cost within a reasonable time of receiving confirmation of the Owner's acceptance of the proposal.
- 3.6 Council agrees that it is responsible for any costs associated with the public notification including any advertising costs in relation to the classification of the Free Parking Area Land as operational land.

4. Limitations

- 4.1 Council agrees that it may exercise rights in respect of the Carpark as a Free Parking Area (including use, control and management of the Carpark) only for the term of this Agreement, and only for the purposes of this Agreement and not for any other purposes.
- 4.2 The Owner may operate, manage and make all other decisions regarding the Carpark that are not related to the Carpark being a Free Parking Area and nothing in this Agreement is intended to limit, reduce or otherwise affect the obligations of the Owner at law in its capacity as the Owner of the Free Parking Area Land.

5. Maintenance of Parking Restriction Signs

- 5.1 Council is not liable for:

- (a) the cost to rectify any damage to the Initial Parking Restriction Signs, the Parking Restriction Signs and damage to the Carpark;
 - (b) damage to any property within the Carpark; and
 - (c) injury to any person within the Carpark.
- 5.2 The Initial Parking Restriction Signs will at all times be owned by the Owner and the Parking Restriction Signs (other than the Initial Parking Restriction Signs) will at all times be owned by Council.

6. Fines and penalties

Council is entitled to retain the full amount of any fines or penalties recovered by it arising out of any breach of regulation of the use of the Carpark (consistent with this Agreement) and shall bear the cost of recovery thereof whether such recovery is carried out through its own resources or pursuant to the Self Enforcing Infringement Notice Scheme (SEINS) administered by the New South Wales Police Service Infringement Processing Bureau.

7. Patrol of Carpark

Council may carry out patrols of the Carpark at its discretion and at such times as it deems appropriate and will otherwise maintain complete discretion as to the performance of all regulatory and enforcement activities in relation to the Carpark.

8. Term

- 8.1 This Agreement will commence on the date of its execution by all parties (and if executed by counterparts on the date the final counterpart is signed) and shall continue until terminated by one of the parties in accordance with this clause.
- 8.2 Either Council or the Owner may terminate this Agreement upon giving one calendar month's written notice in accordance with this Agreement to the other party having the effect that this Agreement shall terminate but without prejudice to any action or other right or remedy that party may have for any prior default under the terms of this Agreement.
- 8.3 If this Agreement is terminated pursuant to clause 8.2:
 - (a) at the sole cost of the terminating party, Council may enter upon the Free Parking Area Land for the purpose of removing the Initial Parking Restriction Signs and the Parking Restriction Signs which may have been erected pursuant to this Agreement and the Owner will ensure Council has uninterrupted access so as to allow removal of the Initial Parking Restriction Signs and the Parking Restriction Signs;
 - (b) Council will return the Initial Parking Restriction Signs to the Owner; and
 - (c) The Owner must not re-erect the Initial Parking Restriction Signs unless all references to Council's name or logo are first removed from the Initial Parking Restriction Signs or the Owner and Council enter into a new agreement in respect of the Free Parking Area Land.

- 8.4 Termination of this Agreement does not remove responsibility for any agreed expense or loss, or any expense or loss relating to damages for which a party is responsible.

9. Contractors

Subject to the Act, Council may at its cost enter into contracts or other arrangements with third parties for the purposes of carrying out any of its rights, obligations and functions under this Agreement, except Council's right to issue fines and penalties under this Agreement.

10. Classification of Free Parking Area Land as Operational Land

- 10.1 The Owner acknowledges that upon execution of this Agreement the Free Parking Area Land becomes public land under the Act.
- 10.2 Pursuant to section 25 of the Act Council must classify the Free Parking Area Land as operational land.
- 10.3 Attached at Schedule 2 of this Agreement is a copy of the resolution classifying the Free Parking Area Land as operational land. If no resolution is attached at Schedule 2 then within 3 months of the date of this Agreement Council may, subject to having undertaken all necessary public notification in accordance with the Act, resolve to treat this Free Parking Area Land as operational land. If Council does not resolve to classify the land as operational then Council will terminate this Agreement in accordance with clause 8.2.

11. Indemnities and Releases of Owner

- 11.1 The Owner is liable for and must indemnify Council at all times for all Loss paid, suffered or incurred by Council or for any Loss that Council may be or becomes or would except for this indemnity have been liable and that is wholly or partly due to or arising out of the Owner or its contractors or agents or in exercising its rights or carrying out its obligations under this Agreement, including but not limited to:
- (a) the cost to rectify any damage to the Initial Parking Restriction Signs, the Parking Restriction Signs and damage to the Carpark;
 - (b) damage to any property within the Carpark; and
 - (c) injury to any person within the Carpark.

It is not necessary for Council to incur any expense or make any payment before enforcing this right of indemnity.

- 11.2 The Owner hereby releases Council from any and all claims and liability arising directly or indirectly in connection with any Loss that the Owner may have but for this clause in connection with the performance by Council of its obligations under this Agreement, except to the extent that Council caused the action or demand by a wilful or negligent act or omission.

12. Insurance

- 12.1 The Owner must at all times take out and maintain such insurance policies as Council nominates in writing from time to time in connection with the Carpark, including but not limited to public liability insurance and building insurance cover /replacement insurance that is normally taken out by the Owner, with reputable insurers and shall ensure that at all times Council is noted as a principal in relation to all such policies with a principal's indemnity in favour of Council including a cross liability clause and waiver of subrogation, provided that policy provides cover for liability that arises independently of the Owner.
- 12.2 The Owner must provide to Council evidence of the policies required pursuant to this clause by way of certificates evidencing the currency of the policies prior to the commencement of this Agreement and annually thereafter. The Owner must provide certificates of currency each year when the policies are renewed and at any other times immediately upon request by Council. In this regard Council requires the Owner, at the Owner's cost, to take out and maintain public liability insurance to the value of twenty (20) million dollars.
- 12.3 The Owner must not allow any insurance to lapse or vary without the consent of Council and will notify Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.
- 12.4 The Owner agrees that in relation to the requirements of each of the policies taken out under this clause:
- (a) that despite any similar insurances of Council, the Owner's policies will be primary policies; and
 - (b) cover events during the policies' currency regardless of when claims are made.

13. Capacity and Liability of Owner

13.1 Interpretation

All provisions of this Agreement will have effect and be applied subject to this clause. For the purpose of this clause:

- (a) **"Assets"** includes all assets, property and rights of personal or any nature whatsoever.
- (b) **"Constitution"** means the constitution of the Trust created by trust deed dated 16 May 2000 (as amended).
- (c) **"Custodian"** means Trust Company Limited ACN 004 027 749 or such other party as is the custodian for the time being appointed by the Responsible Entity in relation to the Trust.
- (d) **"Obligations"** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as Owner under or in respect of this Agreement or any Agreement, agreement or other instrument collateral to this Agreement or given or entered into pursuant to this Agreement

whether express or implied by statute or other legal requirements or arising otherwise howsoever.

- (e) **“Responsible Entity”** means Stockland Trust Management Limited ACN 001 900 741 or such other party as is the responsible entity for the time being of the Trust as the term “responsible entity” is defined in the Corporations Act 2001.
- (f) **“Trust”** means Stockland Trust ACN 092 897 348.

13.2 Custodian's and Responsible Entity's capacity

- (a) The Custodian must carry out the obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Responsible Entity.
- (b) The Responsible Entity must (and will be entitled) to perform the obligations with the exception of those obligations referred to in preceding sub-clause (a) and must procure that the Custodian performs the obligations in preceding sub-clause (a).

13.3 Custodian's limitation of liability

- (a) The Custodian enters into this Agreement as agent of the Responsible Entity and as custodian of the Assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Responsible Entity's agent and is not liable under any circumstances to any party under this Agreement. This limitation of the Custodian's liability applies despite any other provisions of this Agreement and extends to all obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (b) The Custodian is not obliged to do or may refrain from doing anything under this Agreement (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in preceding sub-clause (a).
- (c) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

13.4 Responsible entity's limitation of liability

Any liability of the Responsible Entity arising in connection with the Agreement is limited to the extent that the Responsible Entity is able to be indemnified for that liability out of the Assets of the Trust under the Constitution. Council acknowledges and agrees that it may enforce its rights against the Responsible Entity with respect to the non-observance of the Responsible Entity's obligations under this Agreement only to the extent necessary to enforce Council's rights, powers and remedies against the Responsible Entity in respect of the Assets of the Trust by subrogation or otherwise.

The Responsible Entity warrants that it is actually entitled to be indemnified out of the Assets of the Trust under the Constitution.

However, despite anything in this clause, the Responsible Entity is liable to the extent that a liability under this document arises out of the Responsible Entity's own fraud, gross negligence, wilful default, breach of trust, or breach of duty which disentitles it from an indemnity out of the Assets of the Trust in relation to the relevant liability.

14. Assignment

- 14.1 The Owner must not assign or novate this Agreement to any other person without the written consent of Council. Council may withhold or grant consent in its absolute discretion and in granting any consent may impose such terms and conditions as it may determine. If consent is given by Council to any assignment such consent shall not discharge the Owner from any liability under or in respect of this Agreement.
- 14.2 If Council does not grant consent pursuant to clause 14.1 the Owner agrees not to transfer or assign its interest in the land without terminating this Agreement in accordance with clause 8.2.

15. Not used

16. General

16.1 Notices

Unless otherwise notified in writing, the address of each party for the purposes of giving notice, is:

Cumberland Council
16 Memorial Avenue
MERRYLANDS NSW 2160
To: General Manager
Attention: Stewart Rodham – Manager Health & Environmental Protection

The Trust Company Limited
c/- Stockland Trust Management Limited
Level 25
133 Castlereagh Street,
Sydney NSW 2000
Attn: Senior Manager, Group Legal – Commercial Property

16.2 Entire Agreement

This Agreement and any exhibit to it constitute the entire agreement of the parties in relation to the matters the subject of this Agreement and supersedes all prior arrangements, agreements and negotiations between the parties in relation to those matters.

16.3 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

16.4 Variations

This Agreement shall not be changed or modified in any way subsequent to its execution except by writing duly executed by all relevant parties. Items changed in accordance with 1.5 of this Agreement will be notified to the Owner.

16.5 Stamp duty and Legal Fees

Each party must pay their own legal costs of and incidental to the preparation and execution of this Agreement. The Owner must pay all stamp duty (including penalties and fines) payable upon or in connection with this Agreement.

16.6 Disputes

If a dispute arises under or pursuant to this Agreement, the Owner and the General Manager of Council or nominee of that General Manager are to meet within 14 days of either party having given to the other notice of that dispute with a view to resolving the dispute and, in the event of the dispute not being resolved, either party may give to the other notice of termination of this Agreement whereupon this Agreement shall be terminated but without prejudice to the rights of either party with respect to any antecedent breach.

16.7 Law

The law relating to this Agreement is the law relating to the State of New South Wales.

16.8 GST

16.8.1 In this clause 16.8 unless the context indicates a contrary intention:

- (a) **“Agreed Price”** means the amount a party is required to pay under any provision of this Agreement (except this clause 16.8) for a supply;
- (b) a reference to a supply is a supply under this Agreement; and
- (c) words and phrases used that are also used in the GST Legislation have the same meaning as in that Act.

16.8.2 Despite the other provisions of this Agreement, if a party is or becomes liable to pay GST in respect of any supply (“the Recipient”):

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount for GST, as reasonably calculated by the supplier of the supply at the same time and in the same way as the Recipient must pay the Agreed Price;
- (c) the supplier of the supply must issue a tax invoice to the Recipient in respect of that supply within 14 days after the supplier of the supply receives a payment in respect of that supply.

16.9 Remedies

The rights of a party conferred by this Agreement are cumulative and are not exclusive of any rights provided by law.

Schedule 1**Item 1**

The land comprised in Lot 11 in DP 1178684 and known as 191-201 Pitt Street, Merrylands NSW 2160.

Item 2

That part of the land described in Item 1 shown cross-hatched black on the plan (and referred to as the "PUBLIC CARPARKING EASEMENT" that is Annexure A to this Agreement.

Schedule 2

Resolution classifying the Free Parking Area Land as operational land.



Executed on behalf of The Trust Company)
Limited (ACN 004 027 749) by its attorney)

pursuant to power of attorney Book)
No. in the presence of:)

.....)
Signature of witness

.....
Name of witness

.....
By executing this document the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-270

Attachment 2

Location Map Lot 11 DP 1178684

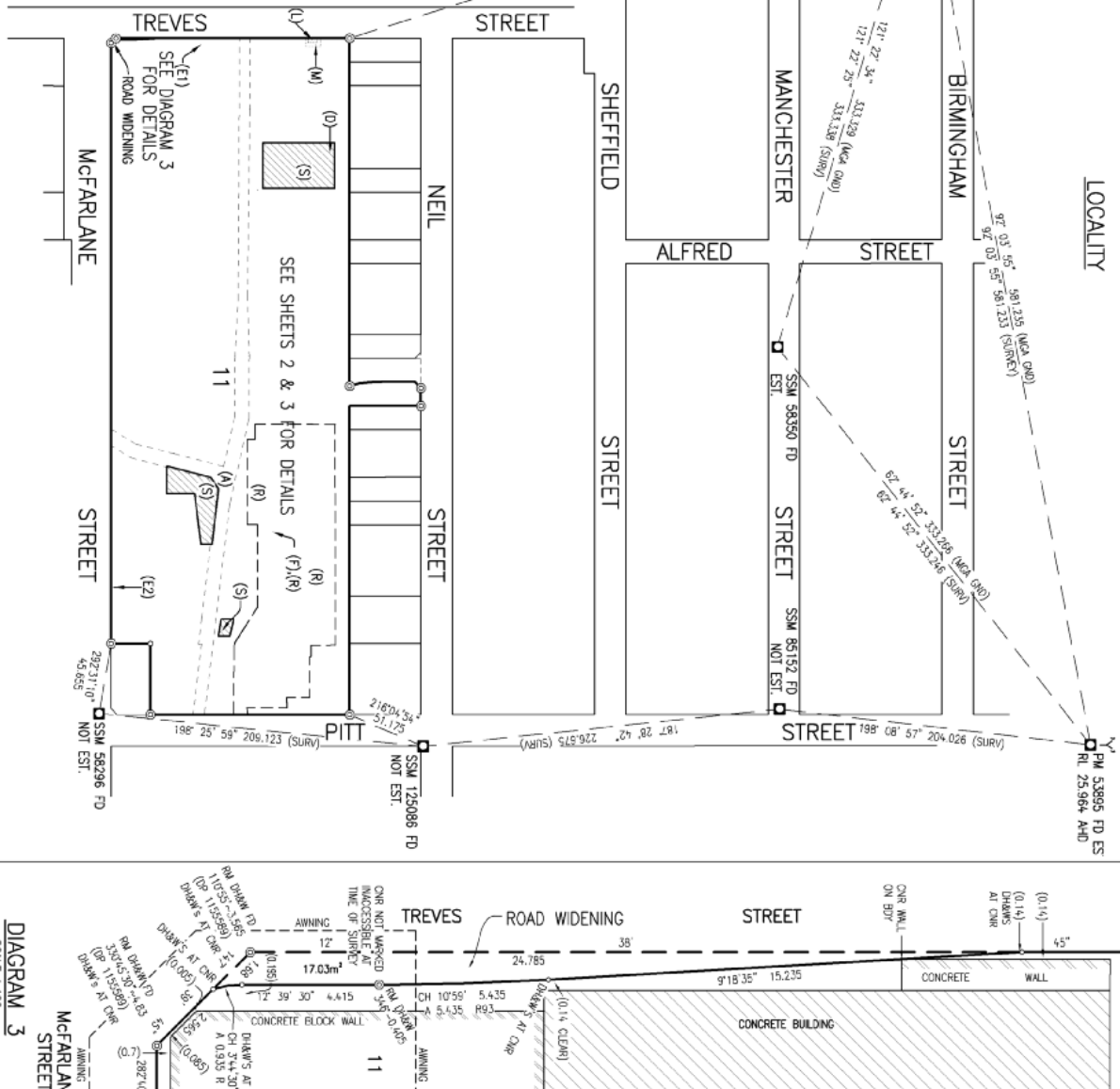


NOTE:
(S) - DENOTES APPROXIMATE POSITION OF STORMWATER DETENTION TANKS

SURVEYING REGULATION, 2006: CLAUSE 61(2)									
MGA CO-ORDINATES									
MARK	EAST	NORTH	ZONE	CLASS	ORDER	RL	CLASS	ORDER	
PM 53895	314,307.236	6,254,860.770	56	B	2	25.964	1B	12	SCMS
SSM 58279	313,726.567	6,254,881.711	56	C	U		U	U	SCMS
SSM 58296	314,131	6,254,754	56	U	U		U	U	SCMS
SSM 58350	314,070.956	6,254,708.162	56	C	U		U	U	SCMS
SSM 85152	314,244	6,254,673	56	U	U		U	U	SCMS
SSM 125086	314,214	6,254,442	56	U	U		U	U	SCMS
PM 33914	313,714.632	6,254,999.201	56	B	2	43.85	1B	12	SCMS

SOURCE: MGA COORDINATES ADAPTED FROM SCMS 21.10.2011
COMBINED SCALE FACTOR 1.000019

- (A) EASEMENT FOR STORMWATER CHANNEL 9.145 WIDE & VARIABLE WIDTH (29664433)
- (D) EASEMENT FOR DRAINAGE 1.22 WIDE (NDE L662256)
- (E1) EASEMENT FOR PANDOUT SUBSTATION 2.75 WIDE (NDE DP.1010290)
- (E2) EASEMENT FOR PANDOUT SUBSTATION 2.75 WIDE (NDE DP.1010290)
- (F) EASEMENT TO DRAIN WATER 3 WIDE (NDE DP 1155588)
- (L) EASEMENT FOR PANDOUT SUBSTATION 2.75 WIDE (AF20773)
- (M) RESTRICTION ON THE USE OF LAND (AF20774)
- (R) EASEMENT FOR CAR PARKING VARIABLE WIDTH LIMITED IN HEIGHT TO THE LEVEL PLANE RL19.5



Surveyor: MITCHELL KEITH AYRES
Date of Survey: 17.10.11
Surveyor's Ref: 070108 SUB

PLAN OF SUBDIVISION OF
LOT 1 DP 1155588, LOT 1 DP 545614 &
LOT 101 DP 731807

LGK
Locality: MERRYLANDS
Subdivision No: 7904-2012

REGISTERED
25.9.2012

DP1178684

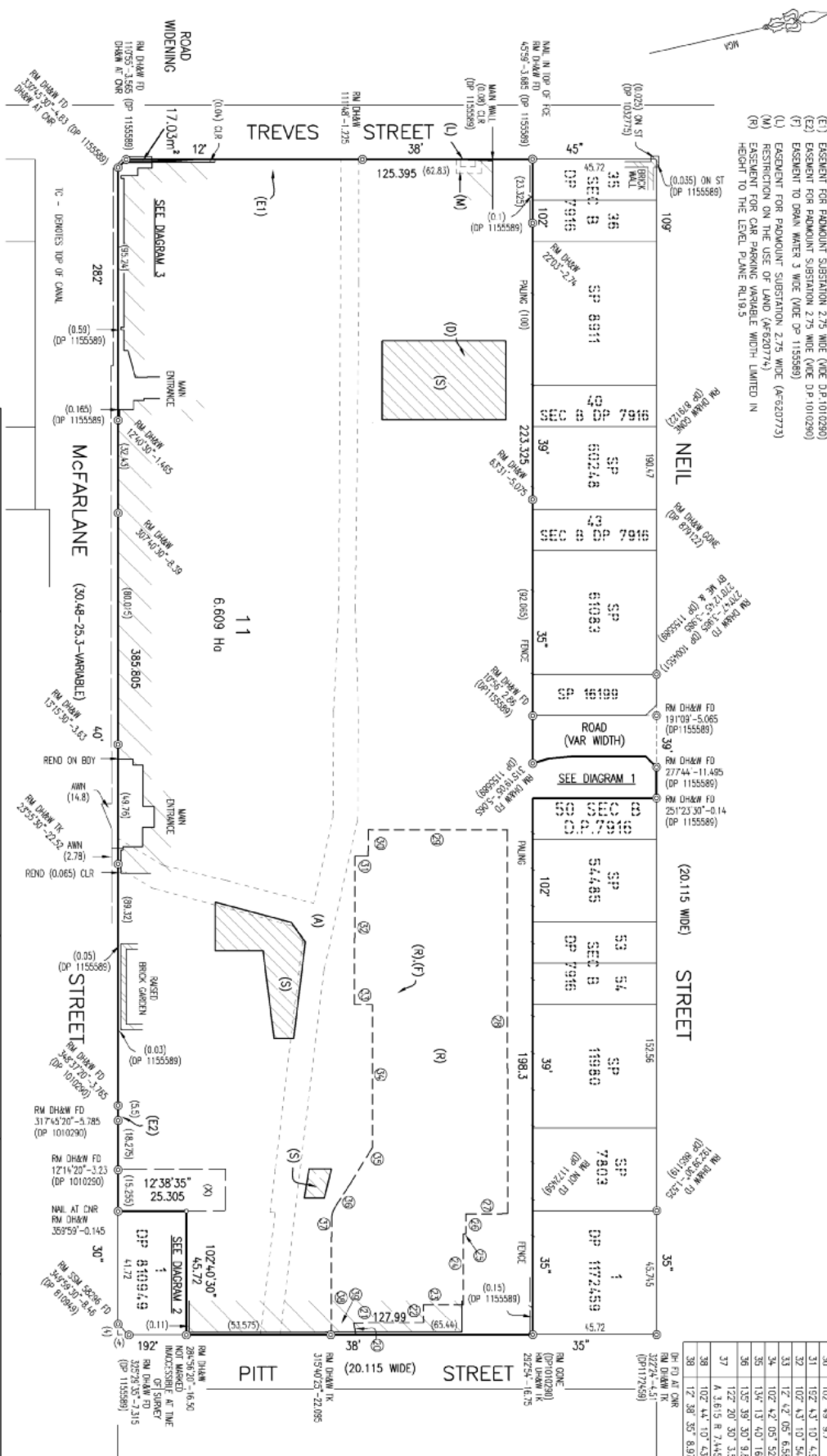
NOTE:
(S) - DENOTES APPROXIMATE POSITION OF STORMWATER DETENTION TANKS.

Surveyor: MITCHELL KEITH AYRES	PLAN OF SUBDIVISION OF
Date of Survey: 17.10.11	LOT 1 DP 545614 &
Surveyor's Ref: 070108 SUB	LOT 1 DP 1155589, LOT
	LOT 101 DP 731867

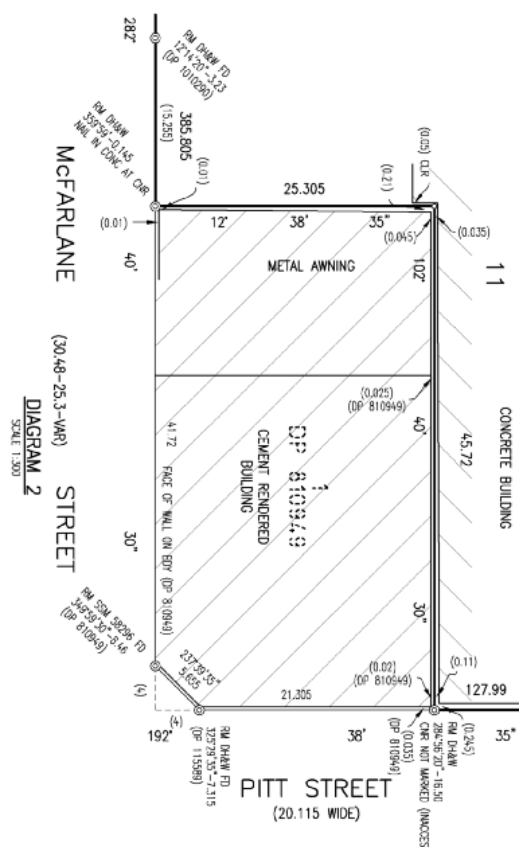
LGA: HOLROYD
Locality: MERRYLANDS
Subdivision No: 7904-2012

REGISTERED
25.9.201

DP1178684



WEEK	PERCENTAGE OF U.S. EXPORTS
20	27.5, 29.4, 48.5
21	26.1, 29.2, 58.5
22	26.7, 18.4, 6.3
23	12.36, 14.705
24	26.2, 39.35, 26.1
25	11.40, 20.0, 6.89
26	26.2, 44.40, 7.0
27	12.26, 35.15, 6.6
28	26.2, 37.10, 14.1
29	10.5, 49.9, 9.7
30	10.5, 49.9, 9.7
31	10.5, 49.9, 9.7
32	10.5, 49.9, 9.7
33	12.42, 0.5, 5.8
34	12.42, 0.5, 5.8
35	10.4, 4.2, 0.5, 5.9
36	13.4, 1.3, 4.0, 5.9
37	12.2, 39.30, 3.94
38	12.2, 39.30, 3.94
39	10.7, 4.4, 10.4, 4.4
40	12.38, 35.7, 6.974

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DEPOSITED PLAN ADMINISTRATION SHEET

Sheet 1 of 2 sheet(s)

SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.

PURSUANT TO SEC. 88B OF THE CONVEYANCING ACT 1919 IT IS INTENDED TO CREATE:

1. EASEMENT FOR CAR PARKING VARIABLE WIDTH LIMITED IN STRATUM (R)
2. RESTRICTION ON THE USE OF LAND (STORMWATER SYSTEM)
3. POSITIVE COVENANT (STORMWATER SYSTEM)

PURSUANT TO SEC. 88B OF THE CONVEYANCING ACT 1919 IT IS INTENDED TO RELEASE

1. EASEMENT FOR CARPARKING (C)
(DP1059275)

IT IS INTENDED TO DEDICATE THE LAND DESIGNATED AS ROAD WIDENING TO THE PUBLIC AS ROAD

Use PLAN FORM 6A
for additional certificates, signatures, seals and statements

Crown Lands NSW/Western Lands Office Approval

I.....in approving this plan certify
(Authorised Officer)
that all necessary approvals in regard to the allocation of the land shown herein have been given

Signature:.....
Date:.....
File Number:.....
Office:.....

Subdivision Certificate

I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to:

the proposed Easement set out herein
(insert 'subdivision' or 'new road')



* Authorised Person/General Manager/Accredited Certifier

Consent Authority: Holroyd City Council
Date of Endorsement: 9 August 2012
Accreditation no:
Subdivision Certificate no: 7904/2012
File no: 2005/471-48; 2007/1221

* Delete whichever is inapplicable.



DP1178684 S

Registered:  25.9.2012
Title System: TORRENS
Purpose: SUBDIVISION

PLAN OF SUBDIVISION OF
LOT 1 DP 1155589, LOT 1 DP 545614 &
LOT 101 DP 731807

LGA: HOLROYD
Locality: MERRYLANDS
Parish: ST JOHN
County: CUMBERLAND

Surveying and Spatial Information Regulation, 2006

I, MITCHELL KEITH AYRES
of DENNY LINKER & Co., Level 5, 17 Randle St., Surry Hills, 2010
a surveyor registered under the *Surveying and Spatial Information Act, 2002*, certify that the survey represented in this plan is accurate, has been made in accordance with the *Surveying and Spatial Information Regulation, 2006* and was completed on:
17 OCTOBER 2011

The survey relates to
LOT 11, ROAD WIDENING AND EASEMENTS
(specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)

Signature M.Ay Dated: 7/8/2012
Surveyor registered under the *Surveying and Spatial Information Act, 2002*

Datum Line: "X"-"Y"
Type: Urban/Rural

Plans used in the preparation of survey/compilation

D.P. 592799	D.P. 1004551	D.P. 244047	S.P.16199
D.P. 1061527	D.P. 879122	D.P. 604672	D.P. 1155589
D.P. 572498	D.P. 865119	D.P. 7916	
D.P. 1032775	D.P. 555539	D.P. 389747	
D.P. 1010290	D.P. 810949	D.P. 409746	

(if insufficient space use Plan Form 6A annexure sheet)

SURVEYORS REFERENCE: 070108 SUB



DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 2 of 2 sheet(s)
<p>PLAN OF SUBDIVISION OF LOT 1 DP 1155589, LOT 1 DP 545614 & LOT 101 DP 731807</p>	<div style="text-align: center; font-size: 24pt; font-weight: bold;">DP1178684</div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 20px;"> Registered: 25.9.2012 </div>	
<div style="display: flex; justify-content: space-between;"> Subdivision Certificate No: 7904/2012 Date of Endorsement: 9 August 2012 </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p style="font-size: 24pt; font-family: cursive;">Peers</p> <p>Signature of witness</p> <p>20E CLARE PEERS</p> <p>Name of witness</p> <p style="margin-top: 20px;">115, 20 BOND ST SYDNEY</p> </div> <div style="width: 50%;"> <p style="font-size: 10pt;">The Trust Company Limited ACN 004 827 749 by Its Attorney pursuant to Power of Attorney dated 12 July 2010 Book 4594 Registered No. 26 Who states that he/she has received no notice of revocation of the Power of Attorney.</p> <p>Attorney Name: </p> <p>Position: John Newby Head of Property and Infrastructure Custody Services</p> </div> </div> <div style="margin-top: 30px;"> <p>Executed on behalf of Stowland Development Pty Limited ACN 000 064 835 by its attorney PHILLIP ALLAN HEPBURN under Power of Attorney Book 4537 No 671 who states that he/she has received no notice of revocation of the Power of Attorney in the presence of:</p> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> Nellie Pomat Legal Services Assistant Level 25, 133 Castlereagh Street, Sydney Witness: </div> <div style="text-align: center;"> PHILLIP ALLAN HEPBURN COMPANY SECRETARY Attorney: </div> </div> <div style="margin-top: 30px;"> <p>EXECUTED by Acinom Pty Ltd ACN 112 748 099 in accordance with section 127 (1) of the Corporations Act 2001 (Cth):</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> Director Name: </div> <div style="text-align: center;"> <p>Sole Director/Secretary</p> <p>Name: KAY ELIZABETH JENKIN</p> </div> </div> </div>		
<p>SURVEYORS REFERENCE: 070108 SUB</p>		

**DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-270**

Attachment 3

**Office of Local Government - Free
Parking & Strata / Community
Parking Area Agreements -
Guidelines for Councils**



FREE PARKING AND STRATA / COMMUNITY PARKING AREA AGREEMENTS

GUIDELINES FOR COUNCILS



DECEMBER 2016

ACCESS TO SERVICES

The Office of Local Government is located at:

5 O'Keefe Avenue
NOWRA NSW 2541

Locked Bag 3015
NOWRA NSW 2541

Phone 02 4428 4100
Fax 02 4428 4199
TTY 02 4428 4209

Level 9, 6 – 10 O'Connell Street
SYDNEY NSW 2000

PO Box R1772
ROYAL EXCHANGE NSW 1225

Phone 02 9289 4000
Fax 02 9289 4099

Email olg@olg.nsw.gov.au
Website www.olg.nsw.gov.au

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ISBN 978-1-922001-58-0

Produced by the Office of Local Government



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1. INTRODUCTION

1.1 What is the purpose of these Guidelines?

The primary purpose of these Guidelines is to assist councils in the assessment of free parking area and strata/community parking area agreement applications submitted by landowners, owners corporations and community associations.

Sections 650(7) and 650A(8) of the *Local Government Act 1993* (the Act) require the Chief Executive of the Office of Local Government to establish Guidelines to be followed by councils with regard to parking area agreements. These Guidelines apply for that purpose.

A separate document prepared for the information of landowners, owners corporations and community associations, *Dealing with vehicle trespass and driveway obstruction*, clearly distinguishes the different roles and responsibilities of landowners and councils in regard to vehicle trespass, driveway obstruction and related vehicle and land use problems.

It is important that councils read both documents to obtain a clear and comprehensive understanding of the extent of their duties and responsibilities.

Some councils operate commercial parking stations as well as free parking areas. In order to ensure that there is no misunderstanding concerning the impact of the regulations on commercial parking stations, a section of these Guidelines is targeted at such stations.

1.2 Legislative context

Section 650(6) of the Act also allows landowners to apply to their local council to enter into free parking area agreement in respect of their land. Under these agreements the area is put under council control with the council enforcing parking restrictions on the land in the same way that parking restrictions may be enforceable in all councils' public free parking areas.

In November 2016, the *Strata Schemes Management Act 2015* commenced permitting councils to enter into agreements with strata and community schemes to enforce parking restrictions on private land. This legislation was incorporated into the Local Government Act as section 650A.

The owners corporation of a strata scheme under the *Strata Schemes Management Act 2015* or the association of a community, precinct or neighbourhood scheme under the *Community Land Management Act 1989* may enter into an agreement with the council so long as the agreement is approved by special resolution of the owners corporation or community association.

Under strata/community parking area agreements, part of the common property of the scheme is set aside for use as a parking area and the council exercises its enforcement functions in that area.

1.3 Reading these guidelines

The Guidelines apply to **both** free parking area agreements and strata/community parking area agreements, unless specifically stated.

Where the provisions apply to **both** types of areas, for ease of understanding, these guidelines refer to such areas collectively as “parking areas” (instead of individually as “free parking areas” or “strata/community parking areas”).

An agreement may be between a landowner and a council (in the case of free parking areas), or between an owners corporation or community association and a council (in the case of strata/community parking areas). However, for ease of understanding, the non-council party is generally referred to in these guidelines as the “owner”, unless specifically stated.

2. OVERVIEW OF THE PARKING AREA PROVISIONS

2.1 What is a parking area agreement?

There are two types of parking area agreement available under the Act:

- A. Section 650 (free parking area) agreements – A landowner may enter into an agreement with the local council (see Appendix 1 for an overview of the section 650 agreement application process).
- B. Section 650A (strata and community parking) agreements – The owners corporation of a strata scheme or the association of a community, precinct or neighbourhood scheme may enter into an agreement with the council so long as the agreement is approved by special resolution of the owners corporation or community association (see Appendix 2 for an overview of the section 650A agreement application process).

2.2 Effects of entering into a parking area agreement

A. Section 650 (free parking area) agreements

If a landowner enters into a free parking area agreement with a local council, the following outcomes will result:

- control of the land (but only that part of the land which is the subject of the agreement) passing to the council;
- the council making the land available for free parking by the public; and
- the council specifying conditions in respect of parking and that these conditions need to be notified by way of signs and notices erected on the land.

B. Section 650A (strata and community parking area) agreements

If an owners corporation or community association enters into a parking area agreement with a local council, the following outcomes will result:

- the council specifying conditions in respect of parking. It would be required that these conditions be notified by way of signs and notices erected on the land; and
- the regulation and enforcement of signed parking restrictions passing to the council. The owners corporation can still control parking, for example, by giving a lot owner exclusive use of part of the common property for their use for parking.

2.3 How flexible can parking area conditions be?

Parking area conditions are set out in signage erected in the area by the council. The matters which may be covered by the signs are listed within sections 650(2) and 650A(2) of the Act are the:

- (a) time during which the public may use the parking area;
- (b) maximum period for which a vehicle may be parked in the parking area (or in any part of the parking area); and
- (c) designation of a parking space within the parking area as a space for the sole use of persons with disabilities.

Section 651 of the Act also provides for the liability of vehicle owners for offences relating to compliance with any such signs.

When a parking area application is received a council will need to carefully assess what terms and conditions are proposed by the owner to be included in the signs to be erected in the proposed parking area.

The terms and conditions must generally comply with the requirements of sections 650(2) or 650A(2), as any outside this scope generally would not be enforceable. However, alternative approaches can be considered in some limited circumstances (see section 2.7 below).

While applications are likely to reflect the owners' preferences concerning the proposed hours of operation of the parking area and the time limitations that will apply to vehicles using the parking area etc, the council is accountable to the public and therefore will need to make a determination that incorporates a broad assessment of both private and public interest considerations.

It would be inappropriate for a council to allow a gross mismatch between the public and private needs. For example, in a free parking area, an application that proposed a 15 minute time limit on parking may be inappropriate in a location where motorists usually conduct transactions at nearby businesses which generally take at least an hour to complete.

2.4 What should a council do if the owner seeks to apply additional conditions?

If an applicant submits a parking area agreement application that seeks to impose conditions outside the scope of sections 650(2) or 650A(2) of the Act, the council could disallow the application. However, the council should adopt a reasonable degree of flexibility and carefully evaluate the proposal and the reasons which underpin it.

It may be the case that the request is a valid one. For example, the applicant may wish to place a limitation on the gross weight of vehicles accessing the parking area in order to minimise noise or avoid damaging the land.

If necessary, council could use the provisions of section 632 "Acting contrary to notices erected by councils" to facilitate the implementation of special arrangements.

Section 632 signs would need to be erected in conjunction with section 650/650A signs (see section 2.3 of the Guidelines for further information).

It is important to note that enforcement action under section 632 will involve the council identifying and giving a penalty notice to the driver of the vehicle at the time of the offence (who may or may not be the owner of the vehicle).

In determining special requests, a council should have regard to balancing public and private interest considerations and its capacity to carry out enforcement in terms of section 632.

Note: In the case of section 650A (Strata and Community parking area) agreements, see also section 3.5.1 below regarding conditions imposed through Strata Scheme By-laws.

2.5 What are the signage requirements for parking areas?

The parking area provisions of the Act are enabled under sections 650(1) and 650A(1), which state that “the driver of a vehicle parked in a [parking area] otherwise than as permitted by a notice or sign erected by the council is guilty of an offence”.

Sections 650(2) and 650A(2) of the Act state that the terms of any such notice or sign may relate to any one or more of:

- (a) time during which the public may use the parking area;
- (b) maximum period for which a vehicle may be parked in the parking area (or in any part of the parking area); and
- (c) designation of a parking space within the parking area as a space for the sole use of persons with disabilities.¹

Therefore, a council that has entered into an agreement with an owner must erect signage to give the powers effect. As with all council notices and signs, the content of the signage should be developed with regard to the requirements of section 670 of the Act:

Note: Before entering into an agreement, it is important that the owner is made aware that the council may charge an appropriate fee for the installation and maintenance of such signs.

2.6 Can a council recover enforcement costs in parking agreements?

Yes, and it should. Parking agreements are commercial arrangements and applicants should be made aware that they are not cost-neutral.

In considering whether to enter into an agreement, a council must ensure that it is not unduly diverting its limited enforcement resources away from public parking areas. This is a particularly important consideration in the case of strata/community parking agreements where no additional free public parking will result.

¹ A forthcoming legislative amendment will give effect to council powers to issue PINs with respect to offences relating to disability parking spaces in strata and community parking areas.

It is therefore appropriate for a council to require a fee for service type arrangement for the servicing of a parking agreement. However, any such fees levied by councils should be done so in a fair and transparent way. The Act requires each council to set fees and charges through its annual budgeting process, which includes a mandatory public notification period.

3. PARKING AREA AGREEMENT APPLICATIONS

3.1 What criteria should be used by councils in assessing applications?

Where an owner cites vehicle trespass or related problems as the main reason for seeking to enter into a parking area agreement a council should apply the following criteria:

1. Has the owner already implemented all reasonable measures to deter vehicle related problems including the erect on of signs, fencing, gates and other barrier devices?
2. Is the council satisfied that there is a genuine need from a public policy perspective to assist the owner in deterring vehicle related problems via the proposed parking area agreement?

3A. In the case of a section 650 (free parking area) agreement

Does the landowner understand that the council will take control of the land and make it available for parking by the public free of charge, and is the landowner agreeable to this? **OR**

3B. In the case of a section 650A (strata and community parking area) agreement

Does the owners corporation or community association understand that parking enforcement will be applied equally and without discrimination against any person found to have breached the signage requirements applicable?

Note: In the case of a section 650 (free parking area) agreement only, the first two criteria may be dispensed with if the primary purpose of the application is the landowner's aim to either provide new or additional disabled parking spaces or to add to the overall stock of parking spaces under council control which will be generally accessible to the public free of charge.

3.2 Are there any additional criteria for strata/community agreements?

Yes. Prior to finalising an strata/community parking agreement a council will need to see evidence of the formal approval of the relevant owners corporation or community scheme association to enter into the agreement (as required under sections 650A(9) and 650A(10) of the Act).

It is not necessary for a council to require evidence of such an approval at the application stage. At this point, evidence of the majority of vote of the strata committee (or community organisation committee) to make an application to council for a parking area agreement should be obtained by the council.

However, if council approves the application and proceeds to enter into the agreement with the owners corporation/community association, then the formal approval must be obtained before any agreement can be finalised.

3.3 What matters should the council ensure are included within a parking area agreement?

The following items may be considered to provide a basic framework for an agreement. However, agreements are not limited to these terms.

The agreement should clearly stipulate:

- who are the principal parties to the agreement the land to which the agreement applies;
- the period of the agreement including the agreement commencement and conclusion dates;
- the implications for the owner of turning the land into a parking area;
- the right of the council to automatically vary an agreement to reflect changes in law;
- whether the council proposes to publicly notify the proposal and invite submissions, and who will pay the advertising costs, if any;
- the circumstances under which either of the principal parties may terminate the agreement and the procedure that is to be adhered to give effect to the termination;
- any renewal options and how these shall be exercised;
- the fees, charges and other costs that the owner will be liable to pay to the council;
- the signs, fencing, gates and any other structures, physical improvements to the land that might be carried out and who will be liable for the costs;
- the obligation to maintain any signs, fences, gates etc to the standard required by the council, and who will be liable for the costs;
- who is to be liable for any damages which may arise from persons parking in the parking area;
- that the council will not be liable for any costs, damages or liabilities incurred by the owner etc as a consequence of the early termination of an agreement by either party;
- that the owner is aware that all revenue from parking fines etc shall belong to the council under the Act; and
- that the council will retain complete discretion as to the performance of regulatory/law enforcement activities.

3.4 What additional issues may be included in a section 650A (strata/community scheme parking) agreement?

In addition to those conditions set out in section 2.8 above, councils may include the following provisions in any agreement established under section 650A.

A. Maintaining emergency access parking spaces

Councils must ensure that any dedicated parking space set aside in the area for the exclusive use of emergency services vehicles (e.g. ambulances or police vehicles), usually through the development approval process, are not impacted by any agreement.

B. Access to secured properties

It will be necessary for councils to negotiate with the owners corporation or community association, a method of access to any parking area that it is located within a secured area (e.g. behind a sliding security gate) to allow entry for enforcement purposes.

C. Notification of any changes in use to common property

While the owners corporation still retains the right to deal with the common property as provided under the *Strata Schemes Management Act 2015*, it must undertake to advise the Council within 24 hours of any approved change of use of common property that may affect the provision of parking control restrictions as set out in the agreement.

3.5 What matters are inappropriate for inclusion in an agreement?

Upon entering into a parking area agreement with a council, an owner effectively turns over the land (or a specified part of the common property) to council control. Ensuring compliance with parking restrictions then becomes a council law enforcement function.

Law enforcement functions are generally not matters that are open to landowner negotiation, and it is in the public interest that councils retain complete discretion as to how they will undertake their law enforcement activities.

Accordingly, it is neither necessary nor desirable for a council either to infer or to give specific undertakings in relation to law enforcement operations. In particular, a council should refrain from giving explicit undertakings regarding the frequency of its monitoring of compliance with parking conditions in any area subject to a parking area agreement.

If an owner seeks to impose conditions on a council in regard to its law enforcement functions the council should explain that this is beyond the owner's power. If the owner does not withdraw any such demand the council should decline the application.

3.5.1 *Special by-law powers of owners corporations*

Councils should note that owners corporations in strata schemes can pass specific by-laws to control parking. For example, an owners corporation may impose, through a by-law, wheel-clamping or tow away provisions to prevent vehicles parking in allocated parking spots.

Any extra conditions imposed through by-laws must be in-line with the *Strata Schemes Management Act 2015*. Under that legislation, an owners corporation must pass a resolution at a general meeting to impose the by-law.

Any by-laws applicable to parking in a strata scheme must be enforced by the relevant owners corporation. Councils have no powers to enforce such by-laws and they therefore must not be included in any parking agreement.

3.6 Are councils obligated to enter into a parking area agreement with a landowner, owners corporation or community association?

No. A council may approve or decline an application.

3.7 Do appeal rights exist against a council's decision?

In cases where an applicant is in disagreement with a decision made by a council in respect of an application the council should, if requested, review that decision. However, there are no appeal rights, either to the Land and Environment Court or any other body available to an owner against a council's decision.

3.8 Can a council initiate a proposal?

Yes. While sections 650(6) and 650A of the Act clarify that an owner can apply to their local council to enter into parking area agreements, the sections do not prevent a council from inviting applications from an owner. An invitation may proceed on the basis of the council submitting a draft agreement to an owner for consideration.

There may be a variety of circumstances in which a council may feel the need to take the initiative (e.g. in the case of a free parking area agreement, the provision of an adequate number of disabled parking spaces in an established shopping complex).

However, there is no authority for a council to force an owner to submit an application to enter into a parking area agreement. Nor is there any power for a council to impose an agreement against an owner's will.

If initiating a proposal, councils should ensure that owners fully understand the implications of entering into a parking area agreement (e.g. owners must pay for the signage and other associated costs).

In the case of strata/community parking area agreements, the council should ensure that the owners corporation or community association is also aware that the parking provisions and associated penalties will apply not only to visitors who disobey the signage but also to lot owners, residents and tenants.

3.9 Transparency and accountability

Agreements should generally be a matter of public record accessible in the same way as any other council documents.

Councils should not allow confidentiality clauses to be included in agreements unless there are extraordinary reasons to do so as these types of clauses may serve to create the impression that the council is seeking to suppress important information, or that it has shown bias in favour of a landowner.

3.10 Classification of land as Operational Land and inclusion in council's Asset Register

In the case of a section 650 (Free Parking Area agreement) only, if private land passes to council control under a parking area agreement the council will need to ensure that the requirements of the Act relating to the classification of the land (as operational land), and the inclusion of the land in the council's asset register are met.

These administrative requirements should be explained to the owner prior to an agreement being concluded.

3.11 Dispute resolution and termination of agreements

Parties are to meet within 14 days to attempt resolution of the dispute. Either party can terminate the agreement at any time without reason provided 28 days of notice is given in writing.

Termination of the agreement does not remove responsibility or expenses already agreed to or expenses relating to damages a party is responsible for.

3.12 Model Parking Area Agreement

Councils may devise their own pro-forma parking area agreements. A suggested basic framework which councils may wish to use to develop their own standard agreements is attached for information (see Attachment 1).

4. COMMERCIAL PARKING STATIONS

4.1 Commercial (pay-for-use) parking stations

The following information is intended for councils that operate commercial parking stations, and does not apply to parking areas operated by councils.

The information is equally applicable to private sector owned and operated commercial parking stations.

4.2 Policy objectives of the legislation

As indicated in the Introduction the principle policy objectives of the legislation are to resolve the very significant community concerns about the summary wheel clamping, tow away and impounding of vehicles by persons purporting to play a parking enforcement role for landowners and to assist landowners to implement more effective deterrents.

It has never been an objective of the legislation to re-define the fundamental contractual arrangements, agreements, terms or conditions which have traditionally been used within the commercial car parking industry.

4.3 Purpose Of Section 651C (2)(d)

Section 651C(2)(d) of the Act preserves the commercial arrangements that are an inherent feature of the commercial parking station industry.

4.4 Impact of legislation on commercial parking stations

The Act does not alter the conduct of business between car parking station proprietors and their customers whether they are casual or permanent customers, except to the extent that if any proprietors currently engage in wheel clamping they will need to introduce alternative vehicle immobilisation and/or detention methods.

4.5 Power to ban vehicle immobilisation devices via regulation

Commercial parking station operators should note that while section 651B of the Act makes provision for the Minister to prescribe other vehicle immobilisation devices by way of regulations in order to ban their use, there are currently no proposals to make regulations.

Accordingly, the only immobilisation devices currently banned are wheel clamps.

4.6 Conduct of commercial parking stations

As is already the case a commercial parking station proprietor will continue to be able to stipulate a range of terms and conditions for parking such as, for example:

- what the fees for parking are;
- that the fees will be payable before the vehicle is removed from the parking station when the parking station closes;

- that a vehicle parked contrary to a notice or causing an obstruction or danger to persons or property may be removed at the proprietor's discretion; and
- the restrictions or fees or charges for wanting a vehicle removed after the parking station has closed, etc.

4.7 Vehicles may be detained if prior notification of conditions given

In the situation where motorists have been informed by signs or notices etc by the car park proprietor that parking fees must be paid before a vehicle may be removed from the parking station, a proprietor acting within the terms and conditions who detains a vehicle until outstanding fees are paid would be within their rights to do so.

Monthly account holders who fail to pay are subject to the terms and conditions of their agreement with the proprietor and outstanding fees can be recovered as a civil debt by means of the usual court action. Alternatively, proprietors may prefer to detain the offending owner's vehicle if they have the opportunity to do so, as the Act does not remove this possible remedy.

4.8 Detention of a vehicle must not involve immobilisation by way of wheel clamping

The alternative vehicle detention measures that may be used by a parking station proprietor are essentially operational issues ultimately for their determination.

Proprietors who wish to continue the practice of detaining vehicles to recover outstanding fees and charges will need to consider a broad range of factors including:

- the design and construction of the car park;
- the terms of the agreement or arrangement that exists between the proprietor and the customer what may entail reasonable force in any particular circumstances; and
- commercial considerations including likely customer reaction etc to any policy which is adopted.

4.9 Acquisition of power to relocate vehicles within the parking station

It is understood that some proprietors wish to reserve the right to relocate vehicles for operational or commercial reasons (e.g. a vehicle is obstructing the entrance or driveways of the parking station or an unauthorised vehicle is parked in a reserved parking space).

The Act does not affect any current or future vehicle relocation arrangements. However, it would seem to be the case that a vehicle relocation power might only be derived by way of the agreement or arrangement that exists between the proprietor and a customer.

It might therefore be prudent that proprietors ensure that vehicle relocation clauses are clearly stated in signs notices, agreements or contracts etc so that the proprietor has the requisite authority to remove and relocate vehicles to another pre-determined and/or agreed location. It may be feasible to set up that location as a detention facility for vehicles that have fees and charges in arrears.

4.10 Transparency and business ethics

The key point is that commercial parking station proprietors should make the proposed means of detention of vehicles in arrears clearly known to all customers and ensure the inclusion of these details in written signs, notices, agreements or contracts etc.

The crucial factor that a parking station proprietor will need to focus on is what terms and conditions for parking are notified by signs etc to motorists which confer the lawful right to possess, control or detain the vehicle. This is the present situation and it is reiterated that the Act essentially retains the status quo except for the ban on wheel clamping.

4.11 Other options for dealing with vehicles obstructing driveways

The *Impounding Act 1993* may be applied if a vehicle which is abandoned or left unattended is causing an obstruction and, after necessary inquiries, the vehicle may be impounded by the council of the area.

In more serious situations, where an abandoned vehicle is in such a position as to obstruct the proper flow of traffic or to constitute a danger to the pedestrians either the council or the Police may order the immediate impounding of the vehicle under the Impounding Act or the Road Rules, as the case may be. Authorised impounding officers need to exercise caution by making inquiries before impounding a vehicle.

Provision also exists under legislation governing the State Emergency Service and Fire and Rescue NSW to remove vehicles and obstructions in particular circumstances.

The Impounding Act provisions are applicable to any land coming within the definition of "area of operations" contained in the Act. The definition is very broad and includes both privately owned residential and business premises.

ATTACHMENT 1- MODEL PARKING AREA AGREEMENT

PARKING AREA AGREEMENT**PARTIES**

The Parties to this agreement are the _____ Council and
(insert name of Council)

(insert name of Owner/ Owners Corporation / Community Association)

DEFINITIONS

"Council" means the (insert name).....Council

"Owner" means the (insert name Owner/ Owners Corporation / Community Association)

"Property/land" means the property or land agreed to in the **Schedule 1** hereunder.

PURPOSE

The purpose of this agreement is to place the land under Council control so that it is managed and operated as free parking area, and to make provision for certain consequential arrangements under section 650 / 650A of the *Local Government Act 1993* between the Owner and the Council to give effect to the agreement.

AGREEMENT

The Council and the Owner agree to enter this agreement on the basis of the following terms and conditions.

TERM

The agreement commences on and extends for a period ending 30 June 20.... or unless earlier determined by mutual agreement or in accordance with the termination and arbitration clause.

APPLICATION TO LAND

The Agreement applies to the land described in **Schedule 1**.

COUNCIL'S RESPONSIBILITIES AND EXCLUSIONS

The Council agrees to:

- manage and operate the land as a free parking area;
- specify the physical barriers, signs and notices required on the land;
- Install or arrange the installation of signs at the Owner's cost to meet Council's assessment of needs in respect of any included property;
- **(SECTION 650 – FREE PARKING AREA AGREEMENTS ONLY)** Specify the times which the free parking area will be accessible for use by the public.

The costs associated with council's involvement (to be paid by the Owner) will be:

- the cost of signs and their installation and any maintenance;
- the cost of any fencing, gates etc and their installation and maintenance; and
- administrative fees and charges (specify if any and what these will be).

OWNER'S RESPONSIBILITIES

The Owner agrees to:

- the Council having full discretion to contract out any of its relevant functions if it wishes to do so, except its law enforcement function;
- pay the Council any agreed fees, charges and or expenses incurred in respect of this agreement;
- allow the Council complete discretion as to the extent of surveillance which the Council is to cause to be exercised over the property; and
- meet the costs detailed by the Council.

ADDRESSES FOR SERVICE

The addresses of the respective parties for service of any documents are:

Council

Owner or Owner's agent

Officer Name _____ Name _____

Postal Address

DISPUTE RESOLUTION

Should any dispute arise under this agreement, the Owner and the Council, the Owner (or their representative) and the General Manager of the Council (or the nominee of that General Manager) are to meet within 14 days of notice of dispute with a view to resolving the dispute and in the event of their failing to resolve the dispute, the agreement will be terminated forthwith subject only to the owner being liable to meet any outstanding payments to the Council pro rata to the period during which the agreement has been in force.

LAW

The law relating to this agreement is the law relating to the State of New South Wales.

Signed for
and on behalf of the

_____ **Council**

this _____ day of 20 _____

Signed for
and on behalf of the Owner

this _____ day of 20 _____

Postal Address

NOTE: Council must attach a schedule ("Schedule 1") to this agreement, describing the land to which the agreement applies.

ATTACHMENT 2: OVERVIEW OF RELEVANT LEGISLATION

Section 650 – Free parking areas

(1) The driver of a vehicle parked in a free parking area otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) The terms of any such notice or sign may relate to any one or more of the following:

- (a) the time during which the public may use the free parking area;
- (b) the maximum period for which a vehicle may be parked in the free parking area (or in any part of the free parking area);
- (c) the designation of a parking space within the free parking area as a space for the sole use of persons with disabilities.

(3) For the purposes of this section, a vehicle parked otherwise than as permitted by such a notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

- (a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority; and
- (b) the conditions specified in the authority are being observed; and
- (c) the authority is in force.

(4) If spaces in which a vehicle may be parked in a free parking area are marked by the council (for example, by means of painted lines or by studs, pads or plates), a person must not cause a vehicle to be parked in a free parking area:

- (a) otherwise than in such a parking space; or
- (b) in a parking space in which another vehicle is parked; or
- (c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a free parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the area.

Maximum penalty: 5 penalty units.

(6) The owner of any private land may enter into an agreement with the council under which the land, or any part of the land, is set aside for use as a free parking area.

(7) It is the duty of the Departmental Chief Executive to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:

- (a) the circumstances in which a council may enter into such an agreement; and
- (b) the matters for which such an agreement must or must not make provision; and
- (c) the exercise by a council of any functions conferred on it by such an agreement.

650A Strata parking areas and community scheme parking areas

(1) The driver of a vehicle parked in a strata parking area or a community scheme parking area established under this section otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) The terms of the notice or sign may relate to any one or more of the following:

- (a) the time during which residents or visitors may use the parking area;
- (b) the maximum period for which a vehicle may be parked in the parking area (or in any part of the parking area);
- (c) the designation of a parking space within the free parking area as a space for the sole use of persons with disabilities.²

(3) For the purposes of this section, a vehicle parked otherwise than as permitted by any such notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

- (a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority; and
- (b) the conditions specified in the authority are being observed; and
- (c) the authority is in force.

(4) If spaces in which a vehicle may be parked in a strata parking area or community scheme parking area are marked by the council or the owners corporation or association (for example, by means of painted lines or by studs, pads or plates), a person must not cause a vehicle to be parked in the parking area:

- (a) otherwise than in such a parking space; or
- (b) in a parking space in which another vehicle is parked; or
- (c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a strata parking area or community scheme parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the parking area.

Maximum penalty: 5 penalty units.

(6) The owners corporation of a strata scheme under the *Strata Schemes Management Act 2015* may enter into an agreement with the council under which part of the common property of the scheme is set aside for use as a strata parking area and the council exercises functions under this section, including the erection of notices and signs.

(7) The association of a community, precinct or neighbourhood scheme under the *Community Land Management Act 1989* may enter into an agreement with the council under which part of the land within the scheme is set aside for use as a community scheme parking area and the council exercises functions under this section, including the erection of notices and signs.

² A forthcoming legislative amendment will give effect to council powers to issue PINs with respect to offences relating to disability parking spaces in strata and community parking areas.

(8) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6) or (7), including guidelines as to:

- (a) the circumstances in which a council may enter into an agreement; and
- (b) the matters for which an agreement must or must not make provision; and
- (c) the exercise by a council of any functions conferred on it by an agreement.

(9) An agreement for a strata parking area, and any other agreement conferring functions on a council in relation to a strata parking area, must be approved by special resolution of the owners corporation and must comply with any requirements for such schemes prescribed by regulations under the *Strata Schemes Management Act 2015*.

(10) An agreement for a community scheme parking area, and any other agreement conferring functions on a council in relation to a community scheme parking area, must be approved by special resolution of the association and must comply with any requirements for such schemes prescribed by regulations under the *Community Land Management Act 1989*.

Item No: C11/19-271

PROPOSED TEMPORARY ROAD CLOSURE - MERRYLANDS RSL REMEMBRANCE DAY

Responsible Division: Works & Infrastructure
Officer: Director Works & Infrastructure
File Number: T-28-01/06
Community Strategic Plan Goal: *A great place to live*

SUMMARY

Council has received a request on behalf of the Merrylands RSL sub-Branch for the approval of a temporary full road closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street for the Remembrance Day Event on Sunday, 10 November 2019.

As the request was received after the most recent Cumberland Traffic Committee meeting held in August, a report on the temporary full road closure was sent electronically to the voting members of the committee for consideration.

This report outlines consideration of the request and the recommendation of the Cumberland Traffic Committee.

RECOMMENDATION

That Council:

- 1. Approve the temporary closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street from 9:00AM to 12:30PM on Sunday, 10 November 2019, subject to concurrence from Roads and Maritime Services for the Traffic Management and Traffic Control Plans; and**
- 2. Notify potentially affected residents of the temporary road closure.**

REPORT

Council has received a request on behalf of the Merrylands RSL sub-Branch for the approval of a temporary full road closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street, Merrylands for the Remembrance Day Event on Sunday, 10 November 2019 from 9:00am to 12:30pm. Arcadia Street is a local road and carries low volumes of traffic.

Closure of the road is proposed to assist with planned events occurring in Merrylands Remembrance Park (48 Arthur Street) and the adjoining section of Arcadia Street, where some 150 guests are expected.

The road closures will be managed by the NSW Police Force and State Emergency Services and appropriate detours will be in place during the closure.

The map below shows the location of Arcadia Street, Merrylands and the road network within the vicinity.



The Traffic Control Plan submitted with the application is provided in Attachment 1, it should also be noted that any approval by way of this report is being recommended for the current year only.

Cumberland Traffic Committee Recommendation

The concurrences for the approval of the proposed closure have been received from all members of the Cumberland Traffic Committee with the exception of the Roads, Maritime Service (RMS).

COMMUNITY ENGAGEMENT

Should Council approve the road closure, notification to the affected residents will be undertaken.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

It is recommended that Council approve the temporary closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street from 9:00am to 12:30pm on Sunday, 10 November 2019, subject to concurrence from the RMS for the Traffic Management and Traffic Control Plans.

ATTACHMENTS

1. Arcadia Street Traffic Control Plan [↓](#) 
2. Report to Cumberland Traffic Committee [↓](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-271

Attachment 1
Arcadia Street Traffic Control
Plan

www.invarion.com

TCP - 'Remembrance Day' - Special Event
Sunday, 10th of November 2019, Sunday, 9th of November 2020,
Sunday, 7th of November 2021, Sunday, 6th of November 2022,
Sunday, 5th of November 2023, 09:00 - 12:00 hrs. *cl. G. Vassilev*

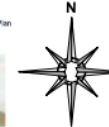
NOTES:

Drawn by Momtchil Vassilev, PWZTMP No: 0051720255

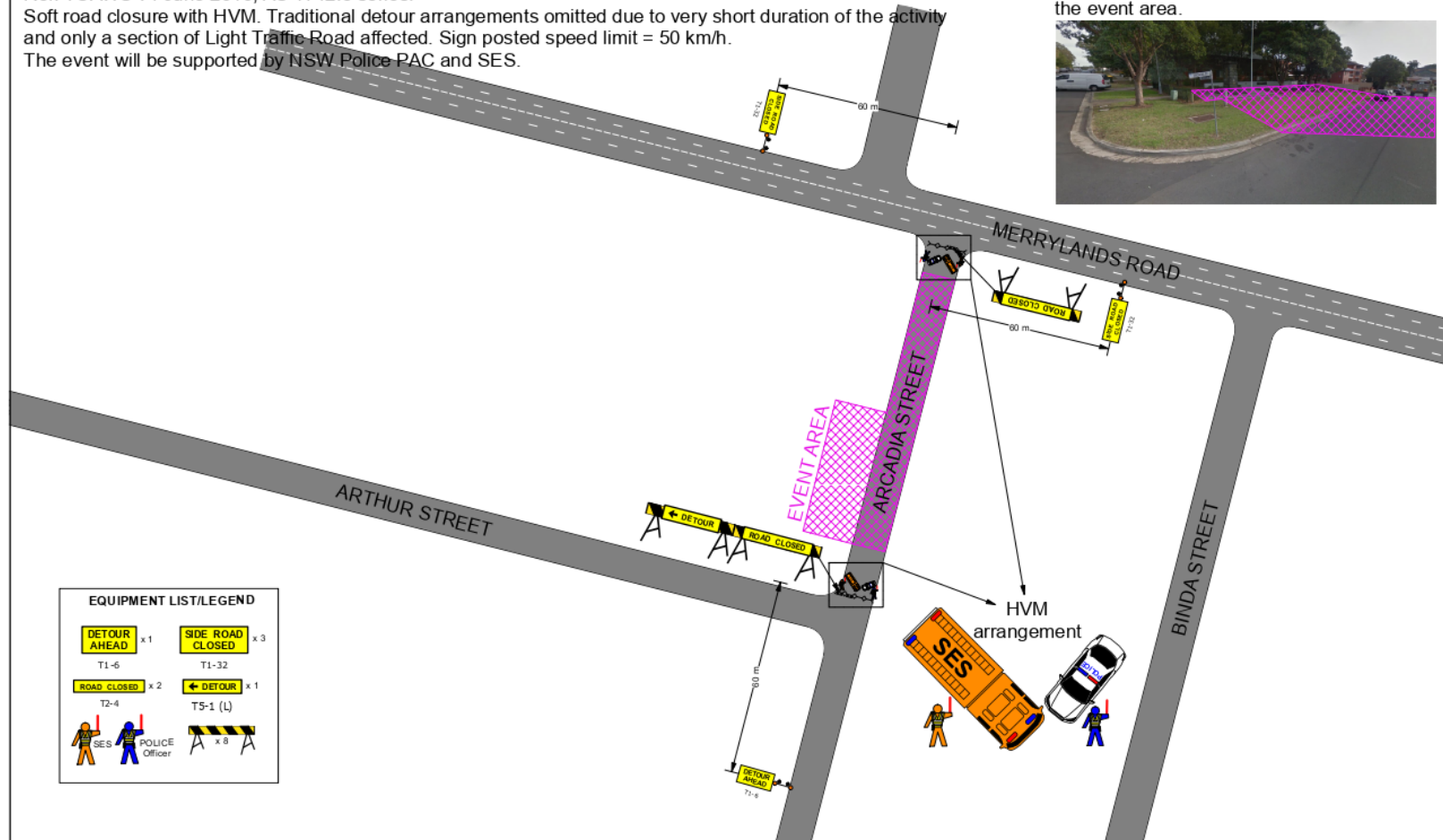
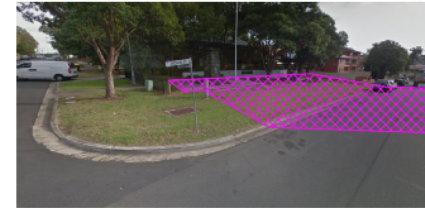
Drawing NTS. Some irrelevant details omitted for clarity. For A3 print. Location ref: UBD Map 210, 11G and 5F.
Ref: TCAWS v4 June 2010, AS 1742.3 series.

Soft road closure with HVM. Traditional detour arrangements omitted due to very short duration of the activity and only a section of Light Traffic Road affected. Sign posted speed limit = 50 km/h.

The event will be supported by NSW Police PAC and SES.



Street view image facing NW
(source - Google Maps) with overlay indicating the event area.



EQUIPMENT LIST/LEGEND			
	x 1		x 3
T1-6		T1-32	
	x 2		x 1
T2-4		T5-1 (L)	
			x 8

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-271

Attachment 2
Report to Cumberland Traffic
Committee

**CTC-19-192 ARCADIA STREET, BETWEEN MERRYLANDS ROAD & ARTHUR STREET
– PROPOSED TEMPORARY ROAD CLOSURE FOR REMEMBRANCE DAY**

State Electorate: Granville PAC: Cumberland
(File No. T-28-01/06)

Summary:

Council has received request from Merrylands RSL for approval of the temporary full road closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street for Remembrance Day Event on Sunday, 10 November 2019.

Report:

Council has received request from Merrylands RSL for approval of the temporary full road closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street for Remembrance Day Event on Sunday 10 November 2019 from 9:00AM to 12:30 PM.

Arcadia Street is a local road and carries low volumes of traffic.

NSW Police Force and State Emergency Services will manage the road closures and detours will be in place.

The plan below shows the location of Arcadia Street, Merrylands and road network in the vicinity.



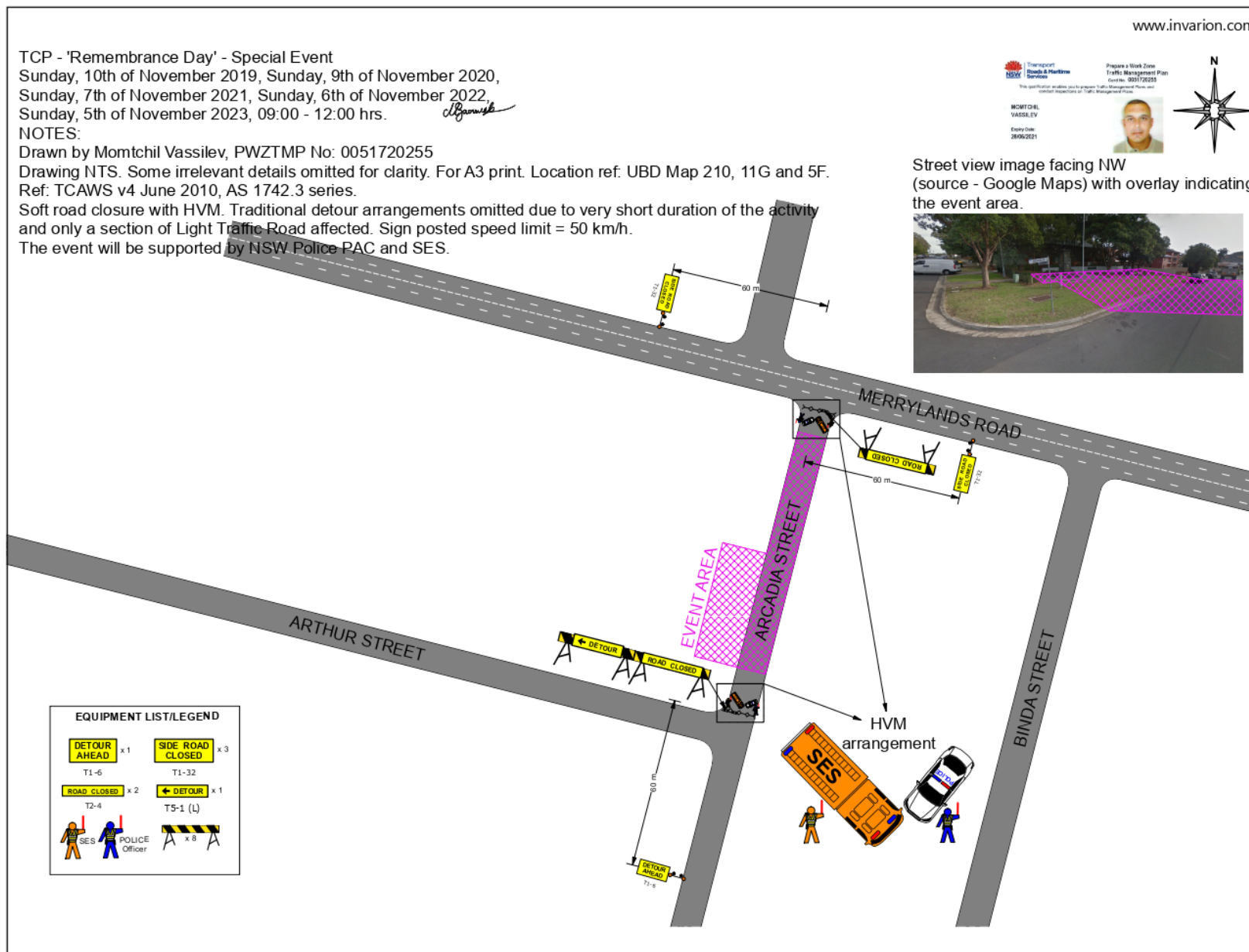
Comments:

Recommendation:

The Cumberland Traffic Committee recommends that Council approve the temporary closure of Arcadia Street, Merrylands between Merrylands Road and Arthur Street from 9:00 AM to 12:30PM on Sunday 10 November 2019 subject to concurrence from RMS for the Traffic Management and Traffic Control Plans.

Attachment:

1. Traffic Control Plan showing the road closure
2. Traffic Management Plan



Item No: C11/19-272

AUDIT, RISK & IMPROVEMENT COMMITTEE - CHAIRPERSONS ANNUAL REPORT 2018/19 AND EXTENSION OF INDEPENDENT MEMBERS

Responsible Division: Finance & Governance
Officer: Director Finance & Governance
File Number: HC-06-03-28
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

The Audit Risk and Improvement Committee (ARIC) Chair's report is prepared annually and is designed to provide Councillors with a summary of the responsibilities, work, operations and deliberations of the ARIC for the 2018/19 period. The report also informs Council of any significant issues and/or matters which were addressed or are currently being addressed by the Committee.

RECOMMENDATION

That Council:

- 1. Receive the Audit, Risk and Improvement Committee Annual Report.**
- 2. Adopt the Terms of Reference as attached for a further 2 year period.**
- 3. Endorse the re-appointment of the three Independent Members for a further 2 year term in accordance with the charter being: Stephen Horne, John Barbeler and Jim Taggart.**

REPORT

Chairpersons Annual Report

In accordance with s5.2 of the *Audit, Risk and Improvement Committee Charter*, the Chair of the Committee is required to provide an Annual Report to Council on the following key elements:

- Meetings held and member attendance
- Overview of the internal audit function
- Overview of the activities of the external auditor
- Overview of the Enterprise Risk Management function
- Overview of general corporate governance arrangements
- Key achievements

- Key action points
- Any other matter deemed to be of sufficient importance.

Membership and Meetings

The Cumberland Council Audit, Risk and Improvement Committee (ARIC) is an advisory committee of Council currently consisting of two (2) councillors and three (3) independent external members charged with providing assurance, oversight and advice to Council and the General Manager in relation to the governance, risk and internal control functions of Cumberland Council. An effective and productive ARIC is considered a vital part of good governance practice.

The current members of the ARIC are:

- Councillor Lisa Lake
- Councillor Michael Zaiter
- Stephen Horne (Independent Chair)
- John Barbeler (Independent Member)
- Dr Jim Taggart (Independent Member)

The participation of the member Councillors ensures that the Council's objectives and perspectives are considered when relevant matters are under consideration. Given the term of current members is expiring, this report recommends re-appointment of the Independent Members for a further 2 year period, in accordance with the Charter.

The ARIC met four times in relation to the 2018/19 reporting cycle as follows:

#	Date	Meeting
1	20 August 2018	Regular Meeting
2	12 November 2018	Regular Meeting
3	11 February 2019	Regular Meeting
4	13 May 2019	Regular Meeting

Attendance by members at meetings was as follows:

Member	Meetings attended
Mr Stephen Horne, Chair and Independent Member	4
Mr John Barbeler, Independent Member	4
Dr Jim Taggart, Independent Member	2
Councillor Lisa Lake	4
Councillor Michael Zaiter	1

A copy of the minutes of these meetings is attached to this report.

ARIC Scope

The objective of the Audit, Risk and Improvement Committee is to promote good corporate governance by the provision of independent objective assurance and assistance to the Council on:

- Compliance
- Risk Management
- Fraud Control
- Financial Management
- Governance
- Implementation of the Strategic Plan, Delivery Program and Strategies
- Service Reviews
- Collection of performance measurement data by the Council
- Any other matters prescribed by regulations.

At the same time as monitoring the above, some existing risks are evolving, for example, building cladding and some other new operational risks are emerging which require continual review and refinement of the audit plan. Another example includes the risks associated with the TechnologyOne project, which are monitored at each meeting of the ARIC via a standing agenda item.

Internal Audit

The Internal Audit function is a key function underpinning the governance functions of Council and provides integral support to the work of the ARIC.

Council's Internal Audit function is led by the Executive Manager Corporate Services. Internal Audit services have continued to be provided by an external specialist provider (BDO Australia). An Internal Audit Plan is established, reviewed by the Executive Team annually and is regularly monitored by the Committee. The Internal Audit Plan is a flexible plan that will be amended as required, based on risk and the needs of the organisation and the view of the Committee.

The internal audits undertaken during the 2018/19 financial year are attached under *Appendix 1*. The results of the audits are varied, however, overall the control environment within Council continues to improve.

Arising from each internal audit, a final audit report is prepared that contains various recommendations of improvement/corrective actions that are determined and agreed upon with the responsible Manager and/or Director, and ranked on a high, medium and low scale together with timelines for corrective action.

Recommendations made in internal audit reports are recorded and tracked by the Audit and Risk Management Team, with the aim of ensuring that management addresses improvement actions in a timely manner. Reports on management's progress in addressing audit actions are provided to the ARIC at each meeting for monitoring purposes.

To ensure that recommendations are addressed in a timely manner, a process has been implemented that allows the General Manager to approve extensions of up to 3

months on the due date of an internal audit recommendation. Any further extension can only be granted by the ARIC and must be reported to the ARIC prior to the due date being exceeded. The ARIC is satisfied both with this process and with the current focus that management places on implementing recommendations arising from internal audits as expediently as possible.

External Audit

The NSW Auditor-General has appointed Grant Thornton (GT) as their contract audit agent for the external financial audit of Cumberland Council. Representatives of the Audit Office and/or GT attend each meeting of the ARIC. The ARIC undertakes a general oversight role of Council's response to the external auditors and the issues and risks that are highlighted through that process.

The ARIC commended Council's Finance Team for an excellent effort on preparing a satisfactory set of financial statements. The ARIC reviewed the accounts, assumptions and notes to those accounts in detail, and Council achieved a good result. Issues raised in the audit were in line with common issues for all councils, such as asset management and asset valuations.

Enterprise Risk Management

The ARIC has continued to exercise broad oversight of risk management activities, which continue to become more complex and wide ranging.

The Committee impressed upon management the need to urgently address the review of risk management practices and the development of a single up to date Business Continuity Plan for the entire organisation; this significantly progressed during this period, with a comprehensive *Risk Management Guidelines* and *Business Continuity Plan* reported to the committee. Management have worked with Council to finalise a *Risk Management Policy*, which will importantly link the enterprise risk management framework with the strategic risk direction of the elected Council.

Council has taken significant steps to progressing these projects to deliver ultimately an integrated risk management system and culture across the new organisation. This is an ongoing task and will take some time. The ARIC received regular updates on the progress of these important projects throughout the year, and continues to place risk management as its highest priority.

A number of areas being improved have a common thread of requiring further development of Council's primary finance and information system, TechnologyOne. Council has reported some difficulty in obtaining the system improvement support desired to advance these improvements at the rate desired. The ARIC has been kept briefed on the developments, impediments and actions being taken.

Council also continued its fraud control preparedness efforts by continuing to complete projects as identified by using the Fraud Control Improvement Kit developed by the Audit Office of NSW. Council also adopted a revised *Fraud and Corruption Control Policy* during the period, closely aligned with the abovementioned toolkit.

Legislative Compliance

There are often changes to legislation (including regulations) that control the activities of Council. This is a risk area for any council as there can be up to 150 separate pieces of legislation that can impact the operations of Council. Council has employed a General Counsel during this reporting period, and the ARIC expects to be more involved and receive more reports in this area moving forward.

Council Performance and Improvement

The ARIC has been briefed on actions taken by Council to consult with the community in delivering the Community Satisfaction Survey.

ARIC also noted Council's performance against the benchmark indicators and ratios established by LG Professionals Councils Australasian Performance Excellence Program.

The ARIC also receives a range of reports and briefings from Council which relate to initiatives concerned with assessing and improving operational performance.

In addition, the Auditor-General also undertakes performance audits of both the NSW Local Government sector as a whole, and of individual councils. Those audits consider aspects of efficiency, effectiveness and economy. The ARIC receives briefings from Council on relevant aspects of those reports. Cumberland Council has been selected to participate in a performance audit in Procurement, along with other Councils. As Chairperson, I am kept up to date with this progress of this audit, which is likely to be tabled in Parliament in early 2020.

Committee Self-Assessment Process

In accordance with the ARIC charter, the Committee undertook a self-assessment process with the support of management, with the outcome reported to the September 2019 ARIC meeting. ARIC members (voting and non-voting) were invited to complete the online survey comprising of 32 questions. Overall, the results of the self-assessment survey were very positive, with an overall self-assessment rating of 82.1% effectiveness.

Audit, Risk and Improvement Committee Charter and Operations

The ARIC remains aware of the need to continually enhance the effectiveness of its operations. As part of this intent, the Chair of the Committee regularly attends briefings provided by the NSW Audit Office and the Office of Local Government to ensure that the Committee is aware of current and emerging issues.

The Chairman of the Committee also meets regularly with relevant Council staff to review the operations of the Committee and to collaborate on improvements to report quality information to the Committee. These meetings have proven particularly effective, with a range of new reports and initiatives being introduced as a consequence.

The Committee also holds regular in-camera meetings with the Internal Ombudsman, contracted internal audit provider and the external auditor, as well as the General Manager of Council.

The Committee considered the Charter at its recent meeting in September 2019. Given the Charter was adopted for a period of 2 years at the 18 October 2017 Council meeting, it is recommended that the Charter be re-adopted for a period of 2 years.

We have established the current ARIC Charter in anticipation of the expected approach to be proposed by the Office of Local Government, who has issued a draft discussion paper on a new Internal Audit and Risk Management Framework.

COMMUNITY ENGAGEMENT

There are no formal consultation processes for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council directly associated with this report. The operations of an effective Audit, Risk and Improvement Committee help provide assurance to the ARIC that all foreseeable governance, risk, probity as well as business improvement matters are appropriately identified and addressed.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The Audit, Risk and Improvement Committee has continued to make significant contributions to continuing improvements in internal control, fraud and corruption control, financial reporting and risk management. It also continues to meet its obligations as set out in the Committee Charter. The Charter imposes considerable responsibilities on the Committee which considers its contribution to good corporate governance within Council as a vital role.

Although this report has been submitted by me as the Chair of the Audit Committee, I would like to acknowledge the extensive, perceptive and effective contributions made by the other members of the Committee. The members of the Committee remain totally independent of management and ensure that they are free from conflicts of interest (with all declarations of external interests and relevant registers for Councillor Members maintained up to date).



While enjoying excellent relationships with key Council staff, members have drawn on a wide and varying range of experience and knowledge to participate in an enquiring, professional and robust manner through detailed and comprehensive questioning of

attendees to assess their strategic and operational understanding of the topic under discussion or review, the quality of their responses and their assessment and management of associated risks and opportunities. Their extensive experience, strategic insights and approach, and their knowledge of current audit, financial and risk management and governance issues and developments, provide significant value to the Committee's workings.

The Committee also acknowledges and appreciates the continuing excellent work undertaken by the Finance and Governance Directorate and the Executive Manager Corporate Services. The outcomes achieved and the improvements made in a variety of internal control areas reflect the dedicated efforts of Council staff.

The Committee remains strongly committed to working closely with the NSW Audit Office, and its contract audit agent, (Grant Thornton), Council's Executive Team, Councillors and other stakeholders to continue to improve the efficiency and effectiveness of Council's operations including identification, assessment and management of risks and to protection of the Council from fraud, loss and/or corruption.

ATTACHMENTS

1. Cumberland Council - Internal Auditors Annual Report 2018/19 [↓](#) 
2. Draft ARIC Charter - November 2019 [↓](#) 
3. ARIC Minutes 20 August 2018 (confidential)
4. ARIC Minutes 12 November 2018 (confidential)
5. ARIC Minutes 11 February 2019 (confidential)
6. ARIC Minutes 13 May 2019 (confidential)

**DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-272**

Attachment 1

**Cumberland Council - Internal
Auditors Annual Report 2018/19**

CUMBERLAND COUNCIL ("CC")

Annual Report on the Internal Audit Plans for the Year Ended 30 June 2019 and the Year Ending 30 June 2020.

July 2018

Distribution	
Party	Title
Charlie Ayoub	Executive Manager, Corporate Services
Sean Pascoe	Partner, BDO.
Steve Kent	Associate Director, BDO.



Summary of Internal Audits Completed

During 2018/19, we have completed five internal audits and summarise the findings from each of these internal audits below.

In addition, we have provided in Appendices A and B, Status Reports on the 2018/2019 and 2019/ 2020 Annual Internal Audit Plans.

1. Rates and charges (August 2018)

Our overall risk rating for this internal audit was **LOW** (Likelihood Rare, Consequences Minor). Risks are generally well managed and management have been proactive in developing policies and procedures.

Our key findings were as follows:

- Debt recovery processes were assessed as satisfactory, in general. However, one property owner; Al Noor Islamic Association has two properties with Rates and Charges outstanding of \$192,489 plus interest from 2017/18. The owners have claimed that both properties are non-rateable as they are places of public worship, although one is known as a café.

We have recommended it would be good management practice to visit the properties, as a priority, to determine what is rateable and what is not, as CC is at risk of not collecting a large amount, in addition to reputational risk as the CoP issued a Development Consent in July 2012 (DA 758/2011) for one of the properties as a place of public worship.

This matter was discussed with Rates management who advised that as the property was subject to LEC appeal pending the outcome, CC will need further legal advice to determine the effective date the property is exempt and the liability then owing. If Al Noor win the appeal to make the development legal, then they can only apply for an exemption from then (**MEDIUM RISK**); and

- Four other areas were noted, including Rates Reconciliation, review of Non-Rateable properties, system user access security and policies and procedures where controls can be enhanced. All these areas were assessed as (**LOW RISK**).

2. Property and facilities (August 2018)

Our overall risk rating for this internal audit was **HIGH** (Likelihood Unlikely, Consequences Major). Risks are generally well managed with exception of items noted below and management have been proactive in developing remedial actions for these.

Our key findings were as follows:

Property management generally

A high-level review of asset management processes indicated that the controls over the asset management processes were of appropriate design.

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

This report is intended solely for the information and internal use of Cumberland Council and is not intended and should not be used by any other person or entity.



Effectiveness testing was conducted by reviewing three Council Operational sites and one Council owned shopping arcade.

A physical inspection of the Granville swimming centre, the Guildford Swimming Centre and The Holroyd Centre, Merrylands was conducted in the presence of Cumberland Council staff. The focus was on building and plant maintenance.

This internal audit identified issues with an absence of bunding around the delivery point related to the pumping of bulk chemicals from the delivery tanker (truck) to the storage containers at the swimming centres; structural integrity of the Holroyd Centre; and, Health and Safety issues (predominantly fire protection) at the Holroyd Centre **(HIGH RISK)**.

Swimming Centres (two sites)

The swimming centre's buildings and plant were kept in good repair and the asset maintenance processes were deemed to be effective.

There was only one maintenance issue identified requiring management attention.

- There was no bunding around the delivery area of the bulk supply of chemicals at the Granville swimming centre. A bulk chemical supply (liquid chlorine) was delivered by tanker and the chemical pumped approximately 30 metres through a 50mm plastic pipe and into a (bundled) storage container.

The Holroyd Centre (Merrylands)

The Holroyd Centre building and plant were kept in good repair. However, a physical inspection identified the asset maintenance processes required enhancement to the design of the processes and subsequent effectiveness. It was recommended that management consider enhancing the current maintenance (including fire safety) processes to include a schedule of independent and pragmatic inspections. The inspections would be performed by someone other than the staff responsible for those assets (i.e. could be a peer review). In addition, management consider engaging a company which is independent to any remedial/rectification work done for the annual fire safety certification, such that the company does not certify its own work.

The physical inspection identified two significant types of issues requiring management attention.

The physical inspection identified issues with the structural integrity of the building and health and safety issues. These are summarised below:

Structural Integrity

- Management advised there were recent rectification works to address a subsidence of The Holroyd Centre building in the area around the centre hallway and towards the back of the building. This apparently had been fully addressed and completed within a month before our internal audit inspection.

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

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The internal audit identified a further large crack in the building walls in the vicinity of the recently completed rectification works. The crack extended for approximately 10 metres along the wall of the main hallway, extended to the outside stairways above the kitchen and along the outside of the building upper story (a further 10 metres). The subsidence resulted in the main double doored fire exits malfunctioning (stuck) and a 50mm gap between the main building structure and an adjoining brick structure.

A further review with senior management indicated further rectification may be extensive and costly.

Health & Safety

- In contrast to the high standard of maintenance of the Holroyd Centre, the physical inspection identified health and safety issues (mainly fire protection) which may require management attention.

Five other **LOW** risk rated issues were identified.

3. IT General Controls (February 2019)

The main focus of this internal audit was around the TechnologyOne Application, in particular change management and IT security. Our overall risk rating for this internal audit was **HIGH 1** (Likelihood - likely, Consequences - Moderate). Risks are generally well managed, and management has been proactive in developing remedial actions. It is to be noted that from this internal audit Council changed its risk rating scale.

Our key findings were as follows:

- We found no formalised vendor management framework in place to manage or govern the relationship with the key outsource partner, in this case Technology One (the company). Current informal arrangements are in place **(HIGH 1)**.
- A better practice IT internal controls framework (e.g., COSO internal controls governance and control framework) requires an operational IT risk assessment to be undertaken. The risks identified would drive what IT related controls are to be designed and implemented. We noted there was no IT operational risk assessment and risk register for IT security, computer operations, and change management areas. There exists a corporate-wide risk register with IT risks (High-level) and risk guidelines/framework **(HIGH 2)**.
- We noted that there was no discernible IT security governance framework in operation. Key security-related controls were not being performed and there was no mechanism to monitor that these security controls are being performed holistically. An IT Security Calendar should be developed and used to monitor all security related control activities **(HIGH 1)**.
- Consideration should be given to adopting the ISO-27001 Security Standard as a basis for developing a security governance framework (in ISO 27001 terms - Information Security Management System - ISMS). If Cumberland Council decides to adopt/implement ISO-27001, we consider that the approach should focus on the operating effectiveness of the framework and security controls before seeking certification **(HIGH 2)**.

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

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- We did not find any evidence of user access reviews at the Active Directory level by the IT team, and the OneCouncil level by the business. Financial delegations are built into the user's access profiles, and these have not been reviewed. Access reviews ensure only authorised persons have appropriate access to IT systems and that their access is commensurate with their duties (HIGH 1).
- There was an absence of any evidence of a Disaster Recovery Planning (DRP) document, DRP testing, penetration testing, and vulnerability scanning during the period of the internal audit (HIGH 1).

4. Procurement (April 2019)

Our overall risk rating is HIGH 2 (Likelihood Almost Certain, Consequences Major). Management have been proactive in developing remedial actions related to updating the Procurement Operating Procedure.

Our key findings were as follows:

Procurement Operating Procedure (2019 version)

The Council's Procurement Operating Procedures (POP) have been significantly revised and implemented during the period of this internal audit. We have reviewed the procedures and observed the uptake of the new procedures across Council. It is our view that the procedures are well articulated, address the risks associated with procurement in Local Government, appear to have a relatively good uptake by management and may be considered as a "best practice" model.

The challenge for Council in the short to medium term is to progress to full compliance with the new POP, given the diversity in experiences and practices, gained from the pre-amalgamated councils, of the current staff in procurement procedures.

The risk associated with not progressing to full compliance in this area is assessed as HIGH 1.

Procedures when dealing with Prescribed Entities

Some entities have been 'prescribed' by the NSW State Parliament to carry out group tenders on behalf of NSW local government. 'Prescribed' means entities, such as Local Government Procurement (LGP) and Procurement Australia (PA) are named in the Local Government (General) Regulation 2005 (NSW) and as such, a council does not need to go to tender if that council buys from a contract already set up by LGP/PA. Councils can therefore procure goods or services from LGP/PA contracts for values greater than \$150,000 (inclusive of GST), without the need to tender themselves. Generally, for almost all of the LGP/PA contracts councils can procure up to any value.

The above entities are generally referred to as "Prescribed Entities".



It was noted that the Council's POPs have been recently (November/December 2018) and significantly revised. As a consequence, this necessitated BDO reviewing both the old version and the new version to When testing against the POP version operating at the time of the procurement transactions.

With regard to Prescribed Entities, both versions of the POP did not adequately address the generally accepted arrangements which should be undertaken when dealing with Prescribed Entities.

It should be noted that the pricing in Prescribed Entities (refer Local Government Procurement panels) contracts/agreements are generally ceiling prices and have not necessarily been reviewed for value for money. As a consequence, the Prescribed Entity processes rely upon local councils obtaining quotes at the time of procurement, irrespective of the value (not fully addressed in either version of the POP).

The risk associated with not obtaining value for money is assessed as **MODERATE 2**.

Compliance with Procurement Operating Procedures

Compliance testing with the POP indicated Council's compliance with some fundamental requirements of the POP, were not occurring.

Procurements practices related to road maintenance, vehicles, office supplies, facility maintenance and construction were reviewed.

The following specific issues were identified:

- Asphalt - Competitive quotes were not obtained (i.e. minimum 3 x quotes) nor otherwise appropriately authorised.
- Trucks - There was no business case or Exemption from Procurement Process Authorisation Form to support the restriction of brands to Hino and Isuzu. Better practice would be for Council to ratify the rationale for the homogeneity of the truck fleet.
- Truck body - Competitive quotes were not obtained.
- An Exemption from Procurement Process Authorisation Form was completed (i.e. exemption from 3 quotes requirement), but not subsequently authorised by the Director.
- Authority to Procure form was completed but not sent to Procurement / approved.
- Procurement Decision Record was completed but not signed / authorised.

The risk associated with non-compliance with POP was assessed as **HIGH 1**.



Section 55 Non - Compliance - Smash Repairs

We identified arrangements in place with one supplier (smash repairs) that may not pass scrutiny under Section 55 of the Local Government Act 1993 and which requires management attention.

- The spend related to smash repairs was estimated to be \$1.1M over three years.
- Smash repairs to motor vehicles were provided predominantly by one supplier.
- The choice of supplier was not via a tendering process or by use of a Prescribed Entities contract.
- There was no formal and appropriately approved contract in place.

A short list of potential suppliers was chosen by Council staff on the basis of obtaining a list of the insurer's (Vero) "recommended repairers". The insurer's list had seven recommended repairers in close proximity to the Cumberland Council area. Two of the repairers were within the Cumberland Council local government boundaries and five were not.

Predominantly, smash repairs were allocated to one repairer that was located outside of the Cumberland Council LGA and were not shared or otherwise (evenly) distributed with other "recommended repairers".

There is a risk of "Local community concern reaching state media".

The risk associated with non-compliance with Section 55 of the Local Government Act 1993 was assessed as **HIGH 2**.

5. IT Harmonisation (June 2019)

Our overall risk rating for this internal audit was **HIGH 2** (Likelihood - Likely, Consequences - Moderate). We sighted evidence of planning and initial execution. However, after the first 12 to 15 months of the harmonisation project, we were not provided with evidence that senior management actively monitored the progress of the Information Technology harmonisation process.

Our key findings were as follows:

- We found there was no evidence of an Information Technology Steering Committee overseeing the Information Technology harmonisation, unlike the key 360 Project. *Prima Facie*, it appears to be left to the CIO to manage and brief senior people (**HIGH 2**).
- An internal review should be undertaken, to identify what action items have not been completed and new plans developed to identify priorities, funding, resources and timelines. We found no documentary evidence of any monitoring or execution after the initial first year of the harmonisation project (**HIGH 2**).



Appendix A - CC Internal Audit Plan for the year ending 30 June 2019 - Status Report

Item No	Internal Audit Area	Supporting Comments	Risk Rating - Inherent	2018/19	Status
	INTERNAL AUDITS				
1.	Procurement/purchasing, including tendering	Follow-up audit to address policy and procedures currently being enhanced. Last audited in 2016, but still recognised as a Very High rated risk area across Council as Auburn had centralised and Holroyd decentralised Procurement.	VH	3	Completed. Two H1, one H1 and two M2 rated findings.
2.	Fraud and corruption risk assessment, including Code of Conduct	Should be undertaken every 3 years.	VH	6	CC Management requested deferment to complete actions from NSW Audit Office toolkit. This will be undertaken in 2019/2020
3.	Business Continuity management, including Business Continuity Planning (BCP), Disaster Recovery Planning (DRP) and Crisis Management Planning (CMP)	This has been redeveloped with outside assistance and is recognised as a Very High risk rated area across Council. It is still in the process of being imbedded in the organisation.	VH	9	CC Management requested a deferment to enable the new framework to be implemented and imbedded. Will complete internal audit in 2019 / 2020.
4.	Risk management framework including policy, framework, plan, and registers	Detailed review should be undertaken at least every 3 years. The framework documentation has been redrafted with expert assistance.	VH	10	This internal audit has been scoped and is in progress.
5.	TechnologyOne / FinanceOne implementation - pre / post implementation reviews.	Phase 1 and Phase 2 reviews of system modules prior/post "Go Live" across Council.	VH	5	The Phase 2 review was deferred until 2019 / 2020 at CC Management's request due to a change in

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

This report is intended solely for the information and internal use of Cumberland Council and is not intended and should not be used by any other person or entity.



Item No	Internal Audit Area	Supporting Comments	Risk Rating - Inherent	2018/19	Status
					strategy as to the system modules that were to be implemented. Replaced in 2018 / 2019 with an internal audit of Children's Services (Internal audit No 32)
6.	Review of IT harmonisation across Council.	This would be undertaken as a health check and include the level of integration and rationalisation of key IT elements across Council. This would be followed up with a more broader review of the IT environment.	H	11	Completed - Two H2 rated findings.
7.	IT security	This would include policies , procedures and cover applications, infrastructure, network etc.	H	12	Completed This internal audit was replaced with an IT general controls review focused on change management and security for the TechnologyOne. Five H1 and two H2 rated findings.
8.	Project management/Capital works	This would involve a review of the project management methodology used by Council and its application for a selection of projects across Council, including Capital Works.	H	13	Completed- waiting on management responses.
9.	HR management, including resource/ workforce planning, recruitment, retention, performance management, training and succession planning	This is a composite internal audit and could be undertaken as a health check with a broad scope.	H	14	Scope completed focusing on recruitment, employee lifecycle and termination processes. To be

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

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Item No	Internal Audit Area	Supporting Comments	Risk Rating - Inherent	2018/19	Status
					commenced in the W/C 22 July 2019.
10.	Children's services	This was specifically requested by the Director Community Development and replaces the deferred TechnologyOne Phase 2 Pre -implementation review	N/A	N/A	Scoped completed and in progress.
OTHER INTERNAL AUDIT ACTIVITIES					
	Follow up review of the implementation of previous years' internal audit recommendations.	Best practice internal audit that should be conducted each year (annually or six monthly).	N/A	X	Undertaken by CC.
	Attendance at and reporting to the Audit, Risk and Improvement Committee.	Covers the standard reporting requirements for the Committee.	N/A	X	On-going
	DRIVES system - compulsory	Compulsory compliance internal audit that needs to be undertaken each year for RMS.	L	X	Undertaken by CC

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

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Appendix B - CC Internal Audit Plan for the year ending 30 June 2020 - Status Report

Item No	Internal Audit Area	Supporting Comments	Risk Rating - Inherent	2019 / 2020	Status
	INTERNAL AUDITS				
1.	Complaints management	Will include capture and actioning process , together with customer services and management of VIP complaints.	H	15	
2.	TechnologyOne / FinanceOne implementation - pre / post implementation reviews.	Carried forward from 2018/2019. Replaces healthcheck of overall IT environment, given that this has been subject to a number of internal audits during 2018/2019.	VH	5	Will be undertaken in October / November 2019.
3.	Voluntary planning agreements	Considered to be a Moderate risk area based on our experience with other councils.	H	18	
4.	Recording and distribution of zoning information, rezoning applications and planning certificates.	Considered to be High risk area based on our experience with other large councils in regard to the recording, communication and checking of information.	H	19	
5.	Legislative compliance framework	Considered to be a Moderate risk area by Council.	H	20	
6.	Payroll and leave	We have undertaken a number of leave management internal audits recently following concerns about potential fraud. This internal audit lends itself to the use of data analytics to increase the level of coverage and assurance. We have done similar composite internal audits for other councils.	M	21	
7.	Regulatory services and compliance	This will include investigation processes.	M	22	
8.	Fraud and corruption review	This will involve the reviewing of Council's completion of the Audit Offices Fraud Control Improvement	VH	6	Brought forward from 2018/2019

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

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Item No	Internal Audit Area	Supporting Comments	Risk Rating - Inherent	2019 / 2020	Status
		Toolkit and the implementation of the related better practices.			
9.	Business continuity management	With expertise assistance, Council has developed and has been implementing a business continuity management framework. We will undertake a health check of the implementation of the BCM framework for compliance with better practice.	VH	9	Brought forward from 2018/2019
	OTHER INTERNAL AUDIT ACTIVITIES				
	Follow up review of the implementation of previous years' internal audit recommendations.	Best practice internal audit that should be conducted each year (annually or six monthly).	N/A	X	To be undertaken by CC.
	Attendance at and reporting to the Audit, Risk and Improvement Committee.	Covers the standard reporting requirements for the Committee.	N/A	X	On-going
	DRIVES system - compulsory	Compulsory compliance internal audit that needs to be undertaken each year for RMS.	L	X	To be undertaken by CC.

Cumberland Council - Annual Report on the Internal Audit Plan for the Year Ending 30 June 2019 - July 2019

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DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-272

Attachment 2
Draft ARIC Charter - November
2019



AUDIT, RISK AND IMPROVEMENT COMMITTEE CHARTER

1. Objective

The objective of the Audit, Risk and Improvement Committee is to promote good corporate governance by the provision of independent objective assurance and assistance to the Council on:

- Compliance
- Risk Management
- Fraud Control
- Financial Management
- Governance
- Implementation of the Strategic Plan, Delivery Program and Strategies
- Service Reviews
- Collection of performance measurement data by the Council; and
- Any other matters prescribed by regulations.

2. Authority

The Council authorises the Audit, Risk and Improvement Committee, within the scope of its role and responsibilities to:

- a. Obtain any information it needs from any employee or external party (subject to their legal obligations to protect information).
- b. Discuss any matters with the General Manager, External Auditor or other external parties (subject to confidentiality considerations).
- c. Request the attendance of any employee at Committee meetings.
- d. Liaise with the General Manager to obtain external legal or other professional advice considered necessary to meet its responsibilities.
- e. Regularly assess the adequacy & effectiveness of Council's processes and controls for managing its activities and risks.

3. Committee Membership

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to the operations of Council. At least one member of the Committee shall have accounting or related financial Management experience with understanding of accounting and Auditing standards in a public sector environment.

3.1 Member (voting)

Adopted: 18 October 2017

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Cumberland Council Audit, Risk & Improvement Committee Charter

- a. **Independent External Members** (not a member of the Council). Three Independent External Members, each appointed for a two year term*, after which they will be eligible for extension or re-appointment following a formal review of their performance. The maximum number of terms that an Independent External Member can serve on the Committee is three consecutive 2 year terms (six years).
- b. The position of **Chairman of the Committee** will be selected from the Independent External Members, as elected by the voting members of the Committee and referred to Council for appointment.
- c. **Two Councillors** appointed by Council. This shall not be the Mayor given the workload and level of commitments anticipated for the Mayor of Cumberland Council. Other councillors are encouraged by way of open invitation to attend the Committee meetings as observers.

3.2 Non Member/Advisors (non-voting)

- General Manager
- Director Finance and Governance
- Executive Manager Corporate Services
- Audit and Risk Management Coordinator
- Internal Audit Service Provider
- Representative of the External Auditor

3.3 Invitees (non-voting) for specific Agenda items

- Officers as requested to attend by the Committee

4. Role and Responsibilities

The Committee has no executive powers, except those expressly provided by the Council and the focus of the Committee should only be on matters of significance and materiality.

In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the Local Government Act.

Internal Audit Guidelines issued by the Department of Premier and Cabinet shall be referred to from time to time as a means of determining procedures appropriate for the internal audit process at Cumberland Council.

The responsibilities of the Committee, which may be revised or expanded from time to time, are as follows, however the Committee may, at any time, consider any other matter it deems of sufficient importance to do so. In addition, at any time an individual Committee member may request a meeting with the Chair of the Committee.

4.1 Compliance

- a. Oversight of Council's governance compliance arrangements in general.
- b. Review the effectiveness of Council's system for monitoring compliance with relevant laws, regulations and government policies.

Cumberland Council Audit, Risk & Improvement Committee Charter

- c. Consider if legal and compliance risks have been adequately addressed in Council's risk management and general management arrangements.

4.2 Risk Management

- a. Review whether management has in place a current and comprehensive Risk Management Framework, and associated procedures for effective identification and management of business and financial risks, including fraud.
- b. Review whether a sound and effective approach has been followed in developing Strategic Risk Management plans for major projects or undertakings.
- c. Review the impact of the Risk Management Framework on its control environment and insurance arrangements.
- d. Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.

4.3 Control Framework

- a. Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors.
- b. Review whether management has in place relevant policies and procedures and these are periodically reviewed and updated.
- c. Progressively review whether appropriate processes are in place to assess whether policies and procedures are complied with.
- d. Review whether appropriate policies and procedures are in place for the management and exercise of delegations.
- e. Review whether management has taken steps to embed a culture which is committed to ethical and lawful behaviour.

4.4 External Accountability

- a. Satisfy itself that the Annual Financial Reports and the Annual Report comply with applicable Australian Accounting Standards and supported by appropriate Management sign-off on the statements and the adequacy of internal controls.
- b. Review the External Audit opinion, including whether appropriate action has been taken in response to Audit recommendations and adjustments.
- c. Consider contentious financial reporting matters in conjunction with Council's management and External Auditors.
- d. Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements.
- e. Satisfy itself there are appropriate mechanisms in place to review and implement, where appropriate, relevant State Government reports and recommendations.
- f. Satisfy itself there is a performance management framework linked to organisational objectives and outcomes.

4.5 Internal Audit

- a. Act as a forum for communication between the Council, the General Manager, Internal Audit and External Audit.
- b. Ensure that Internal Audit coverage and the Internal Audit Plan address the identified major risk areas of Council, and approve the plan.
- c. Consider the adequacy of Internal Audit resources to carry out its responsibilities, including completion of the approved Internal Audit Plan.

Cumberland Council Audit, Risk & Improvement Committee Charter

- d. Make recommendations to commission internal audits of any kind, whether to be conducted by the internal audit service provider or otherwise.
- e. Review all Audit reports and consider significant issues identified in audit reports and action taken on issues raised, including identification and dissemination of better practices.
- f. Monitor the implementation of Internal Audit recommendations by management.
- g. Periodically review the Audit, Risk and Improvement Committee Charter to ensure that all structures, authority, access and reporting arrangements remain in place and are adequate;
- h. Participate in the selection of internal audit service providers, as required;
- i. Periodically review the performance of Internal Audit.

4.6 External Audit

- a. Act as a forum for communication between Council, the General Manager, Internal Audit and External Audit.
- b. Review the proposed external audit scope and approach with particular respect to elimination of duplication with Internal Audit.
- c. Provide input and feedback on the financial statement and performance audit coverage proposed by external audit, and provide feedback on the external audit services provided.
- d. Review all external plans and reports in respect of planned or completed external audits, and monitor the implementation of audit recommendations by management.
- e. Consider significant issues and disagreements raised in relevant External Audit reports and better practice guides, and ensure appropriate action is taken.

4.7 Business Improvement

- a. Review management's approach and implementation of a continuous improvement culture.
- b. Monitor business improvement initiatives, programmes, projects etc, including:
 - Organisational reviews
 - Service delivery reviews
 - Strategic plans
 - Development of performance criteria and the collection of data for performance reporting against those criteria.
- c. Review the annual performance of Council against its documented key performance criteria.
- d. Review Council's community survey results and provide advice to the General Manager on the adequacy of Council's performance.
- e. Identify and recommend to the General Manager activities, processes systems that may benefit from review.

4.8 Responsibilities of Members

- a. Members are expected to:
 - Act honestly and in good faith
 - Meet the requirements as set out in this Charter
 - Abide by Council's Code of Conduct in performance of their duties on the Committee
 - Understand the relevant legislative and regulatory requirements appropriate to Council.
 - Contribute the time required to study and understand the business paper provided.
 - Apply good analytical skills, objectivity and good judgment.

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Cumberland Council Audit, Risk & Improvement Committee Charter

- Express opinions frankly, ask specific questions that target the fundamental core of issues and pursue independent lines of enquiry.

5. Reporting

- 5.1 At the first Committee Meeting after 30 June each year, or sooner if practicable, Internal Audit will provide to the Committee a report of:
- a. The performance of the Internal Auditor for the financial year against agreed key performance indicators.
 - b. The approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.
- 5.2 The Chair of the Committee will provide a consolidated Audit, Risk and Improvement Committee Annual Report to Council. The key elements of this report will include:
- a. Meetings held and member attendance
 - b. Overview of the internal audit function
 - c. Overview of the activities of the external auditor
 - d. Overview of the Enterprise Risk Management function
 - e. Overview of general corporate governance arrangements
 - f. Key achievements
 - g. Key action points
 - h. Any other matter deemed to be of sufficient importance.

6. Administrative arrangements**6.1 Meetings**

- a. The Committee will meet at least four times per year, with one of these meetings to include review and endorsement of the Annual Audited Financial reports and External Audit opinion. The need for any additional meetings will be decided by the Chair of the Committee in consultation with the General Manager, though other Committee members may make requests to the Chair for additional meetings.
- b. A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Audit Committee Charter.

6.2 Attendance at Meetings and Quorums

- a. A quorum will consist of a majority of voting Committee members.
- b. Attendance at Committee meetings will be in accordance with part 3 – Committee Membership of this Charter

6.3 Secretariat

- a. Council will provide secretariat support to the Committee. The Secretariat will ensure the agenda for each meeting and supporting papers are circulated, at least one week before the meeting, and ensure minutes of the meetings are prepared and maintained. Minutes shall be approved by the Chair and circulated to each member within three weeks of the meeting being held. The approved draft minutes will be reported to Council quarterly.

Cumberland Council Audit, Risk & Improvement Committee Charter

6.4 Conflicts of Interest

- a. In accordance with Council's Code of Conduct, all Council officials including Committee members must declare any conflicts of interest at the start of each meeting or before discussion of a relevant agenda item or topic. Details of any conflicts of interest should be appropriately minuted. Committee members may make an annual, written declaration of any conflicts of interest.
- b. Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist. The final arbiter of such a decision is the Chair of the Committee.

6.5 Induction

- a. New members will receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

6.6 Assessment Arrangements

- a. The Chair of the Committee will initiate a review of the performance of the Committee at least once every two years. The review will be conducted on a self-assessment basis (unless otherwise determined by the Chair), with appropriate input from management and any other relevant stakeholders, as determined by the Chair.

6.7 Review of Audit, Risk & Improvement Committee Charter

- a. The Audit Risk & Improvement Committee will review this Charter at the commencement of each Council term. The Committee will approve any changes to this Charter and refer the Audit Charter to Council for adoption.

6.8 Payment of Fees to External Independent Members

- a. The General Manager will determine the payment of the Audit Committee independent members based on NSW Government prequalification scheme conditions for Audit Committee Independent Chairs and Members and similarly sized organisations.

Item No: C11/19-273

MINUTES OF THE 10 SEPTEMBER 2019 CUMBERLAND HERITAGE COMMITTEE MEETING AND CUMBERLAND LOCAL HERITAGE AWARDS 2019

Responsible Division: Environment & Planning
Officer: Director Environment & Planning
File Number: SC481
Community Strategic Plan Goal: *A resilient built environment*

SUMMARY

This report provides the minutes of the meeting of the Cumberland Heritage Committee held on 10 September 2019. The report also informs Council of the winners of Cumberland Local Heritage Awards 2019.

RECOMMENDATION

That Council:

- 1. Adopt the minutes of the Cumberland Heritage Committee held on 10 September 2019; and**
- 2. Note the Cumberland Local Heritage Award 2019 winners and highly commended prize recipients.**

REPORT

Background

The third Cumberland Heritage Committee (Committee) meeting for 2019 was held on 10 September 2019 at the Holroyd Centre, Merrylands. A number of agenda items were discussed at the meeting, including the display of Cumberland Council's art and cultural items in the Council Chambers and the Cumberland Heritage Committee Term for 2020-2021.

In accordance with the Terms of Reference for the Committee, the minutes of the meeting have been documented and endorsed by the Convenor, and are hereby reported to Council (Attachment 1).

Cumberland Local Heritage Awards

Cumberland Council ran the Cumberland Local Heritage Awards in 2019 in accordance with the Cumberland Local Heritage Awards Guidelines. Entries to the Heritage Awards were open from 1 May 2019 to 14 June 2019. The Heritage

Committee judged the award entries and nominated the winners and highly commended awardees during the Committee Meeting held on 2 July 2019.

List of Categories, Winners and Highly Commended - Local Heritage Awards

Categories	Description	Winners	Highly Commended Awards
Category 1	Best Maintained Heritage Property (Eligibility – owners of heritage listed properties)	Baby Health Centre, 8-12 Miller Street, Merrylands	
Category 2	Restoration and Development (Including Adaptive Reuse) (Eligibility – owners of heritage listed properties)	Baby Health Centre, 8-12 Miller Street, Merrylands	
Category 3	HistoResearch: researching our local history (Eligibility – high school students, individuals and groups)	Holroyd Local History Research	
Category 4	Keeper of the Stone: Children's Heritage Award Division 1 (Kindergarten to Year 2)	Ezel Hirlakoglu, Kindergarten, Amity College	<ul style="list-style-type: none"> • Emily Ramirez, Grade 2, St Peter Chanel Primary School • Tasneem Soueid, Grade 1, Amity College • Daniel Broz, Grade 2, St Peter Chanel Primary School
	Division 2 (Year 3 and Year 4)	<p>Aleia Jaure, Grade 3, Sacred Heart Primary School</p> <p>Aleia Jaure will care for the Cumberland Heritage Stone for 12 months.</p>	<ul style="list-style-type: none"> • Nasslei Dimla, Grade 3, Sacred Heart Primary School • Mena Nebhan, Grade 4, Amity College • Haidar Muhammad,

Categories	Description	Winners	Highly Commended Awards
			Grade 4, Amity College
Category 5	Writing Competition (Eligibility – Years 5 to 6)	Rahed Nasseri, Grade 5, Amity College	<ul style="list-style-type: none"> • Mohammed Elmourad, Grade 6, Amity College
Category 6	Artwork Competition (Eligibility – Years Kindergarten to Year 6 and Years 7 to 12)	Group Entry – Kindergarten to Year 6 <ul style="list-style-type: none"> • Tuhi Kabir, Kindergarten, Westmead Christian Grammar School • Michael Chrysanthou, Kindergarten, Westmead Christian Grammar School • Rishik Apparla, Kindergarten, Westmead Christian Grammar School • Janelle Adejoi Yeboah, Kindergarten, Westmead Christian Grammar School 	

Cumberland Local Heritage Awards Presentation Ceremony

A Presentation Ceremony was held on 10 September 2019 for the Cumberland Local Heritage Awards (Awards). The Awards winners/recipients and their families were invited to a reception at the Holroyd Centre. In addition to the Heritage Awards winners/recipients, the reception was also attended by members of the Committee and Councillors.

COMMUNITY ENGAGEMENT

In accordance with the terms of reference for the Heritage Committee, nominations for membership of the Cumberland Heritage Committee for 2020-2021 opened on 4 October 2019 and closed on 1 November 2019. A report on the nominations will be brought back to Council after the nominations have been reviewed.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.


FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The third meeting of the Cumberland Heritage Committee was held on 10 September 2019. The minutes of the meeting have been attached.

ATTACHMENTS

1. Minutes – Cumberland Heritage Committee Meeting on 10 September 2019 (endorsed by Convener) [↓](#) 

DOCUMENTS
ASSOCIATED WITH
REPORT C11/19-273

Attachment 1

Minutes – Cumberland Heritage
Committee Meeting on 10
September 2019 (endorsed by
Convener)

Minutes of the Cumberland Heritage Committee Meeting

The Holroyd Centre, 17 Miller Street, Merrylands.

Tuesday, 10 September 2019.

Meeting Start time: 6.30 pm

Attendance

Heritage Committee Community Members

Name	In Attendance (Yes/No)
Edmund Beebe (EB)	Yes
Reno Magro (RM)	No – Apologies provided
Filomena Molinaro (FM)	No – Apologies provided
Josephine Moncrieff (JM)	No – No Apologies
Julie Nixon (JN)	No – Apologies provided
Janaki Paudel (JP)	No – No Apologies
Cecilia Peralta (CP)	Yes
Greg Skelly (GS)	No – Apologies provided
Kerryn Stanton (KS)	Yes
Dorothy Warwick (DW)	Yes
David Williams	No

Councillors

Name	In Attendance (Yes/No)
Clr. Garrard	No
Clr. Lake (Chair)	Yes
Clr. Campbell	Yes

Council Staff

Name	In Attendance (Yes/No)
Monica Cologna (MC)	Yes
Neelam Pradhananga (NP)	Yes

Council Heritage Advisor

Name	In Attendance (Yes/No)
Ron Edgar – FORM Architects (RE)	Yes

Guests

Name	In Attendance (Yes/No)
Jason Mooney, Team Leader Development Compliance	Yes
Jane Elias, Local Studies Librarian	Yes

Clr. Lake was appointed as the Chair.

Item 1: Attendance and Apologies

Apologies were received from RM, FM, JN and GS.

Item 2 Confirmation of minutes of meeting held on 2 July 2019

The Cumberland Heritage Committee (Committee) confirmed the minutes of the meeting held on 2 July 2019.

Item 3 Update on the Lidcombe Police Station by Jason Mooney, Team Leader Development Compliance

The Committee asked whether Council could require the owner to repair the wall (corner is damaged on the northern end). JM advised that the owner is undertaking some on-site stormwater detention works required by Council and once that is completed, the owner will repair the wall. The owner has also boarded up the cell wall. JM circulated photos of this.

Council's Compliance team had issued an order to repair the gutters and asked the owner to use like-for-like materials. The owner has repaired down pipes and guttering, fascia boards and barge boards; bedded and pointed loosened tiles; ensured like-for-like with the terracotta tiles, pointing, etc. When the gutters were replaced however, a lighter colour green was used, which is considered acceptable.

JM also clarified to the Committee what the Compliance team can and can't do. He noted that Compliance team can only issue orders under the Environmental Planning and Assessment Act 1979 when there is significant dilapidation (normally an engineer would be engaged) that could potentially result in a safety issue and/or could cause harm to the public. He also noted that orders can't be issued for general wear and tear to a heritage property. For instance, if there is anti-social behaviour as a result of broken glass, Council can require the building to be secured.

RE commented that conditions of consent may be the best way to ensure protection of the site, i.e., requiring restoration works to be completed prior to issue of an occupation certificate for the remainder of the site.

Action Item 1: Council officers to pass on the advice of issuing conditions of consent that ensure protection of the Lidcombe Police Station (by requiring restoration works to be completed prior to issue of an occupation certificate for the remainder of the site) to Council's Development and Building team.

Item 4 Brief presentation by Jane Elias, Local Studies Librarian on list of books on Cumberland's built heritage

JE went through key references in the library's collection. She noted the two key books on Holroyd. No professional history of Auburn done to date, noted the Liberty Plains Book. Highlighted a number of reference books on Granville. Also no official history of Granville since 1919.

Clr. Lake thanked Jane for the resource list she and her librarians have compiled, and noted how useful the resources are.

Action Item 2: Council staff to work with Library staff to work out how best to put the Overview of the Local Studies Collection document on either Council's or the library's website.

Item 5 Update on action items from previous meeting on 11 June 2019 and 2 July 2019

Update on the display of historic items of the previous councils

MC provided the Committee an update on the work undertaken by the Gallery and Cultural Services team to date and the need to identify a funding source to realise the works.

Clr. Lake would like to see some photos up and some items placed in the cabinets in the Merrylands Foyer, and noted that this should be relatively inexpensive to implement.

Action Item 3: Provide this feedback to the Gallery and Cultural Services team.

Wentworthville Railway Station Wheel and Plaque

Action Item 4: If an update is not received from the Minister for Transport and Roads on the letter Council sent seeking an update (posted on 20 August 2019), send a follow up letter.

Item 6 Consideration of report by the Auburn Heritage Sub-Committee on the former Lidcombe Post Office

The orders that Council officers can issue were noted. Concern expressed by local residents about the letter 'M' that has become lodged.

Action Item 5: Discuss with the Compliance team about encouraging the owner to fix the missing letter.

Item 7 Update on the display of historic items of the previous councils

Dealt with previously under Item 5.

Item 8 Updating and publishing Liberty Plains

Carried over from previous meetings. Clr. Campbell contacted Terry Kass to attend the meeting but he was unavailable. Mr. Kass to be invited to the next Committee meeting.

Action Item 6: Invite Mr. Kass to the next Committee meeting on 26 November 2019.

Item 9 Cumberland Heritage Committee Term 2020-2021

MC updated the Committee about opening nominations for the Cumberland Heritage Committee Term 2020-2021.

Action Item 7: Inform the Committee when nominations will open.

Item 10 Request for National Heritage Listing – Lower Prospect Canal Reserve

MC provided the Committee an update on how Council staff are seeking technical advice from heritage consultants on the following:

- Whether there is merit in nominating the Lower Prospect Canal Reserve on the National Heritage List and the likelihood of its listing. If there is merit, the estimated time and cost of preparing an application for National Heritage Listing, and the identification (listing) of all documentation that would be required (to be prepared) to support that listing application.
- Whether a Conservation Management Plan (CMP) is required for National Heritage Listing and if so, the estimated time and cost of preparing a CMP?

Item 11 8 Factory Street, Granville

MC provided the Committee an update on the dilapidated state of 8 Factory Street, Granville which is a locally listed heritage listed property. Concerns have been raised about potential public safety due to the very poor condition of the building. MC advised that Council is liaising with the Compliance team to determine next options.

Item 12 Other matters**Cumberland Local Heritage Awards Ceremony**

The Committee provided feedback on the Cumberland Local Heritage Awards (Awards) Ceremony held on 10 September from 5.30pm to 6.30pm. Two suggestions were noted:

- Winner of Category 3: HistoResearch could give a 2-5 minute talk on their research at the Awards Ceremony.
- Winner of the Categories 1 and 2 of the Awards could speak about the works they undertook and any challenges they faced.

Motions by the Auburn Heritage Sub-Committee

The Auburn Heritage Sub-Committee submitted three motions for consideration by the Committee.

Motion 1: That Council take steps to issue an interim heritage order on 'Jamieson's stone cottage' at 17 Nottingham Road, Lidcombe, with a view to protect it from demolition, and to provide potential local heritage listing.

Clr. Lake raised concerns about the potential breach of the Code of Conduct relating to matters currently under development assessment. The Committee noted the advice provided by Council officers that this matter would have been looked into as part of the development assessment process. Council officers also noted that a submission on this property was received for Stage 2 of the Cumberland Heritage Study, and this property is under consideration for potential heritage listing.

Motion 2: That Council take steps to issue an interim heritage order on 9 Mary Street, Auburn with a view to protect it from planned demolition, and to allow research into local significance to be included in current Heritage Study Stage 2 for potential local heritage listing.

Due to the potential breach of the Code of Conduct, Council staff to check if 9 Mary Street is still under development assessment or a determination has been made. Council officers noted that an Interim Heritage Order (IHO) cannot be made on an item on which consent has been issued and is still in force.

Action Item 8: Notify Kerry Stanton and Cllr. Campbell whether 9 Mary Street is still under development assessment or a determination has been made.

Motion 3: *That Cumberland Heritage Committee include in Cumberland Heritage Study Stage 2 the establishment of conservation zones in the former Auburn LGA town centres (Auburn, Regents Park, Berala and Lidcombe). This would preserve the early 20th century traditional main street facades and provide for restoration opportunities.*

Town centre precincts of:

- South Parade, Auburn Road, Queens Road, Harrow Road (Auburn)
- Auburn Road, Amy Street (Regents Park)
- Woodburn Road (Berala)
- Church Street, John Street, Joseph Street, Railway Street (Lidcombe)

MC noted that the nomination period for Stage 2 of the Cumberland Heritage Study has closed, however, nomination forms could be accepted if submitted by 13 September 2019.

Action Item 9: Kerry Stanton to complete the nomination forms for the town centre precincts by COB 13 September 2019.

Action Item 10: Kerry Stanton to provide any additional information on these town centre precincts by COB 20 September 2019.

Update on the LSPS, LEP and Heritage Study

MC provided an update on the Local Strategic Planning Statement (LSPS), the Cumberland Local Environmental Plan (LEP) and the Cumberland Heritage Study, as requested by the Committee.

Plaque at the entrance of 100 Kenyons Road, Merrylands West

DW noted that the plaque (possibly aluminium) at entry to 100 Kenyons Road requires potential cleaning or replacement. It was noted that the plaque was a condition of consent of the housing estate development.

Action Item 11: Council to write to the owner of the housing estate encouraging the cleaning of the plaque.

Works at Linnwood

DW noted that some works are required at Linnwood and she requires specialist heritage advice. MC advised that she will be informed as to who the best contact person would be.

Action Item 12: Advise DW of the contact person at Council to provide specialist heritage advice on whether works proposed at Linnwood requires the lodgement of a development application.

Zoning as a tool to conserve heritage

EB noted that zoning and current DAs should be laid over a map of potential heritage items to ensure their compatibility. He requested a list of the recommended potential heritage items for listing resulting from Stage 2 of the Cumberland Heritage Study to be circulated to the Committee as soon as possible.

Action Item 13: Circulate a list of the recommended potential heritage items for listing resulting from Stage 2 of the Cumberland Heritage Study to the Committee as soon as possible.

Item 13: Next Meeting

The next meeting for the Cumberland Heritage Committee will take place from 6.00pm to 8.00pm on **Tuesday, 26 November 2019** at the Committee Rooms 1 and 2, 16 Memorial Avenue, Merrylands.

The agenda and any reports for consideration will be emailed to the Committee closer to the date.

The meeting closed at 8.40 pm.

Item No: C11/19-274

NOTICE OF MOTION - UPGRADE OF THE MONA STREET, CLYDE STREET AND REDFERN STREET INTERSECTIONS

Councillor: Ned Attie and Joseph Rahme
File Number: SC483

SUMMARY

Pursuant to Notice, Councillors Attie and Rahme submitted the following Motion.

NOTICE OF MOTION

That Council:

- 1. Provide a report into options for the upgrade of the Mona Street, Clyde Street and Redfern Street Intersections in an attempt to alleviate the congestion and provide better traffic flow; and**
- 2. Take into consideration:**
 - a. Possible changes to signage and parking restrictions in Mona Street (both north and south sides if required) during morning and afternoon peak periods;**
 - b. Widening of Clyde Street between Mona and Redfern Streets;**
 - c. Dedicated left turn lane from Clyde Street into Redfern Street;**
 - d. Dedicated left and right turn lanes from Clyde Street into Mona Street;**
 - e. Possible dual lane right turn from Mona Street into Clyde Street; and**
 - f. Possible changes to parking restrictions and signage in Redfern and Hudson Streets.**

RESOURCING IMPLICATIONS

This report can be prepared utilising existing Council resources.

GENERAL MANAGER ADVICE

Council staff will investigate this issue further and provide a report back to Council for consideration.

ATTACHMENTS

Nil

Item No: RES11/19-4

NOTICE OF RESCISSION - COUNCIL COMMITTEES

Councillor/s: Lisa Lake, George Campbell, Greg Cummings
Glenn Elmore, Ola Hamed, Kun Huang and Suman
Saha
File Number: SC483

NOTICE OF RESCISSION

Pursuant to Notice, Councillors Lake, Campbell, Cummings, Elmore, Hamed, Huang and Saha move the following Resolution of Council 16/10/19 (Item C10/19-255) be rescinded:

That Council:

1. Combine the Access Committee and Community Safety Committee to form the Access and Safety Committee;
2. Abolish the following Committees:
 - a. Arts Advisory Committee;
 - b. Culturally & Linguistically Diverse (CALD) Advisory Committee;
 - c. Library Committee; and
 - d. Companion Animals Advisory Committee.
3. Amend the terms of reference for remaining committees with the exception of Civic Risk Mutual, Civic Risk Metro (Which remain as the Mayor or nominee & General Manager) and Wentworthville Community Garden Committee (Which will become 1 Ward Councillor) to have a maximum of 2 Councillors as representatives.

Signed:

Councillor Lisa Lake
Councillor George Campbell
Councillor Greg Cummings
Councillor Glenn Elmore
Councillor Ola Hamed
Councillor Kun Huang
Councillor Suman Saha

ATTACHMENTS

Nil

Item No: C11/19-275

QUESTIONS ON NOTICE – SUBMITTED BY COUNCILLOR SAHA

Responsible Division: General Manager
File Number: HC-06-03-42

QUESTIONS:

1. That the council has extremely low long-term debt and a solid quick ratio, would it be possible to make use of this by investing in productivity-increasing initiatives that will help improve our future revenue base or reduce future expenses?
2. Some significant drops in expenses for a few important areas, e.g. Libraries, Community facilities asking to ensure that these are due to genuine savings and not cuts to useful services. (refer to page 64)
3. Income from Childcare is up significantly, what is the reason for this (e.g. rise in fees, new centres etc) and is it in the community's best interest (it might also justify demand for additional centres)? (Refer to page 68)
4. What caused an increase in waste tipping fees of \$2.57m.

ANSWERS:

1. Council has available debt capacity available to allow future loans. It is possible to consider debt as part of the funding mix for future investments. Council will consider the priorities of projects as part of the budget process.
2. The financial statements were prepared to include income subsidies from rates. As a result the information included in note 2 was not consistent with the actual expenditure. There has not been a significant drop in total expenditure of these services.
3. The apparent increases in Childcare arose as there was \$3.8m transferred from Operating Grants to user fees due to changes in the way income is received. Total income attributed to children serves was \$12.796m in 2019 compared to \$12.686m in 2018.
4. The increase of \$2.57M in tipping fees in the 2019 financial year as compared to the 2018 financial year was due to a number of factors including:
 - Additional charges incurred in accordance with the Clyde Waste Transfer Terminal Community Agreement between Veolia and Council for disposal of waste at the Clyde Transfer Station. As Council is tipping additional waste at the facility, and the facility is receiving less waste from other entities, the

percentage of Council waste has increased. As a result Council received a smaller contribution from Veolia and paid more to dispose of its waste. This lead to an additional cost difference of approximately \$995,000 to Council.

- Council collected and disposed of an additional 6,264 tonnes of rubbish, recycling and green waste during the 2019 financial year, directly increasing the tipping costs incurred by Council.
- Changes in the International recycling market industry meant Council no longer received a recycling rebate and instead had to pay to send recycling to Visy for processing. Previously council received on average \$25/tonne rebate. We now pay an additional \$25/ per tonne. (\$50/ per tonne turnaround).

ATTACHMENTS

Nil