



BUSINESS PAPER

ORDINARY MEETING OF COUNCIL

To be held at 6.00 pm on

Monday 10 August 2020

Council Chambers, Level 10,
Council Administration Building, 41 Burelli Street, Wollongong

Order of Business

- 1 Opening Meeting
- 2 Acknowledgement of Traditional Owners
- 3 Civic Prayer
- 4 Apologies and Applications for Leave of Absence by Councillors
- 5 Confirmation of Minutes of Ordinary Council Meeting
- 6 Confirmation of Minutes of Extraordinary Ordinary Council Meeting
- 7 Conflicts of Interest
- 8 Petitions and Presentations
- 9 Confirmation of Minutes of Council Committee Meeting
- 10 Public Access Forum
- 11 Call of the Agenda
- 12 Lord Mayoral Minute
- 13 Urgent Items
- 14 Reports to Council
- 15 Reports of Committees
- 16 Items Laid on the Table
- 17 Notices of Motions(s)/Questions with Notice
- 18 Notice of Rescission Motion
- 19 Confidential Business
- 20 Conclusion of Meeting

Members

Lord Mayor –
Councillor Gordon Bradbery AM (Chair)
Deputy Lord Mayor –
Councillor Tania Brown
Councillor Ann Martin
Councillor Cameron Walters
Councillor Cath Blakey
Councillor David Brown
Councillor Dom Figliomeni
Councillor Janice Kershaw
Councillor Jenelle Rimmer
Councillor John Dorahy
Councillor Leigh Colacino
Councillor Mithra Cox

QUORUM – 7 MEMBERS TO BE PRESENT

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MINUTES

ORDINARY MEETING OF COUNCIL

at 6.00 pm

Monday 20 July 2020

Present

Lord Mayor – Councillor Gordon Bradbery AM (in the Chair)

Deputy Lord Mayor – Councillor Tania Brown

Councillor Ann Martin

Councillor Cameron Walters

Councillor Cath Blakey

Councillor David Brown

Councillor Dom Figliomeni

Councillor Janice Kershaw

Councillor Jenelle Rimmer

Councillor John Dorahy

Councillor Leigh Colacino

Councillor Mithra Cox

In Attendance

General Manager

Director Infrastructure + Works, Connectivity Assets + Liveable City

Director Planning + Environment, Future City + Neighbourhoods

Director Corporate Services, Connected + Engaged City

Director Community Services, Creative + Innovative City

Manager Governance + Customer Service

Chief Financial Officer

Manager Property + Recreation

Manager City Strategy

Manager City Works (Acting)

Manager Project Delivery

Manager Open Space + Environmental Services

Manager Community Cultural + Economic Development

Greg Doyle

Andrew Carfield

Linda Davis

Renee Campbell

Kerry Hunt

Todd Hopwood

Brian Jenkins

Lucielle Power

Chris Stewart

Corey Stoneham

Glenn Whittaker

Joanne Page

Sue Savage

Note: Due to current government requirements around social distancing obligations due to the COVID-19 pandemic, all Councillors and staff attended the Meeting of Council via Skype. The Lord Mayor and General Manager were present in the Council Chambers for this meeting.

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CONFLICTS OF INTERESTS

Councillor Martin declared a non-pecuniary, non-significant conflict of interest in Item 3, Korrongulla Swamp, as she has a long-standing friendship with Mr Ian Wilson from Port Kembla Copper Property and some years ago raised the idea, as part of Tender Funerals with the Primbee community, of a possible green burial ground on the Korrongulla Site which did not proceed. Councillor Martin advised she would remain in the meeting and participate in the debate and voting on this item.

Councillor Blakey declared a significant, pecuniary conflict of interest in Item 1, Glennifer Brae Planning Proposal and Wollongong Botanic Garden Plan of Management, as her partner works in the manor house as a Conservatorium employee. Councillor Blakey advised that she would not participate in debate nor voting on the item.

Councillor Dorahy declared a non-pecuniary, non-significant perceived conflict of interest in Item 3, Korrongulla Swamp, as he is a Director of the Port Kembla Golf Club, part of the Aster Group as the subject property is nearby. Councillor Dorahy advised he would remain in the meeting and participate in the debate and voting on this item.

Councillor Figliomeni declared a non-pecuniary, non-significant conflict of interest in Item 3, Korrongulla Swamp, as he dealt with the property when he was CEO of the Port Kembla Port Corporation. Councillor Figliomeni advised he would remain in the meeting and participate in the debate and voting on this item.

CONFIRMATION OF MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON MONDAY, 29 JUNE 2020

404 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor T Brown seconded Councillor Figliomeni that the Minutes of the Ordinary Meeting of Council held on Monday, 29 June 2020 (a copy having been circulated to Councillors) be taken as read and confirmed.

PUBLIC ACCESS FORUM

ITEM	TITLE	NAME OF SPEAKER
4	FOGO – Implementation and Grant Funding	Belinda Baccharini For Recommendation

405 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that the speaker be thanked for her presentation and invited to table her notes.

CALL OF THE AGENDA

406 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that the staff recommendations for Items 2, then 5 to 9 inclusive, and 11 be adopted as a block.

DEPARTURE OF COUNCILLOR

Due to a disclosed conflict of interest, Councillor Blakey advised at 6:09pm that she would not participate in the debate nor voting on Item 1. Councillor Blakey re-joined the meeting at 6:30pm.

ITEM 1 - GLENIFFER BRAE PLANNING PROPOSAL AND WOLLONGONG BOTANIC GARDEN PLAN OF MANAGEMENT AND MASTER PLAN

407 COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that -

- 1 The Planning Proposal PP-2015/5 for the proposed Function Centre use of Gleniffer Brae site (Lot 3 DP 252694) be referred to the NSW Department of Planning, Industry and Environment for finalisation and the making of an LEP amendment, with an unresolved objection from the NSW Heritage Branch
- 2 The Wollongong Botanic Garden Plan of Management be adopted and finalised.
- 3 The endorsement of the Gleniffer Brae Conservation Management Plan by Heritage NSW continue to be progressed, to inform the Wollongong Botanic Garden Master Plan.
- 4 The Wollongong Botanic Garden Master Plan be reported to Council for consideration following the endorsement of the Gleniffer Brae Conservation Management Plan by Heritage NSW.
- 5 Council write to the State Government requesting they provide additional support to the heritage bodies with responsibilities in the planning system. This support can help them make timely decisions where they interact with councils' roles to make assessments or planning instruments.
- 6 The Wollongong Conservatorium of Music be assured of Council's continued support of their current lease arrangements.

Variation The variation moved by Councillor Martin (the addition of point 6) was accepted by the mover and seconder.

ITEM 2 - REVISED DRAFT PLANNING PROPOSAL FOR SHEAFFES ROAD SOUTH (INCLUDING 340 WEST DAPTO ROAD), KEMBLA GRANGE

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that -

- 1 The revised draft Planning Proposal be forwarded to the NSW Department of Planning, Industry and Environment for a revised Gateway determination.
- 2 Consultation occur with NSW Environment Energy and Science.
- 3 Landholders be informed of the revised Planning Proposal.
- 4 Following the issuing of a revised Gateway determination, the draft Planning Proposal be exhibited for a minimum period of 28 days.

ITEM 3 - KORRONGULLA SWAMP

408 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor Dorahy seconded Councillor Cox that -

- 1 Council not proceed further with the proposed land transfer negotiations for Korrongulla Swamp, Primbee (Lot 1 DP 653310 and Lot 2 DP 773067) due to -
 - a) Public and environmental health and safety risks associated with the lands and
 - b) It would not provide for appropriate community use and benefit.
- 2 Port Kembla Copper Properties be advised that Council is not willing to accept the lands.

An AMENDMENT was MOVED by Councillor Cox seconded Councillor Blakey that -

- 1 Council not proceed further with the proposed land transfer negotiations for Korrongulla Swamp, Primbee (Lot 1 DP 653310 and Lot 2 DP 773067) due to -
 - a) Public and environmental health and safety risks associated with the lands and
 - b) It would not provide for appropriate community use and benefit.
- 2 Port Kembla Copper Properties be advised that Council is not willing to accept the lands until such time as they have been remediated to a standard that is safe for community recreation.

The AMENDMENT was WITHDRAWN by the mover and seconder.

ITEM 4 - FOGO - IMPLEMENTATION AND GRANT FUNDING

409 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor Blakey seconded Councillor D Brown that -

- 1 Council introduce an enhanced organics collection service (FOGO) to households by incorporating food organics and increasing the service frequency to weekly commencing November 2020. The service frequency for the current fortnightly co-mingled recyclable service (yellow) and weekly residual waste service (red) will remain.
- 2 Council prepare a scope for a 12-month FOGO trial across Multi-unit Dwellings (MUDs), pending a successful grant application.
- 3 Council monitors and audit the success and cost of the FOGO program against forecast targets in accordance with the Department of Environment and Climate Change guidelines for conducting Household Kerbside Residual Waste Recycling and Garden Organics audit in NSW Local Government Areas and report back to Council on at least an annual basis following the program implementation.

Variation The variation moved by Councillor Figliomeni (the addition of point 3) was accepted by the mover and seconder.

ITEM 5 - WOLLONGONG CITY-WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2020

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that the draft Wollongong City-Wide Development Contributions Plan (2020) (Attachment 1), be endorsed for exhibition for a minimum period of 28 days.

ITEM 6 - PROPOSED ACQUISITION OF PART LOT 219 DP 1245191 FOR WONGAWILLI ROAD/WEST DAPTO ROAD/SHONE AVENUE INTERFACE INTERSECTION UPGRADE PROJECT

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that -

- 1 Council acquire by authority contained within Section 177 of the *Roads Act 1993*, part Lot 219 DP 1245191 for the purpose of road widening.
- 2 Compensation be paid to the owner in the amount of \$44,000 (GST exclusive).
- 3 Council be responsible for all costs including valuation, transfer and legal costs associated with the acquisition of the subject land.
- 4 Upon acquisition being finalised, the land be dedicated as public road pursuant to Section 10 of the *Roads Act 1993*.
- 5 Council grant authority for the use of the Common Seal of Council on all documents relevant to this matter, should it be required to give effect to this resolution.

ITEM 7 - PROPOSED CLASSIFICATION OF RECENTLY ACQUIRED WOLLONGONG CEMETERY LAND - LOT 4 SECTION 38 DP 759104 KENNY STREET, WOLLONGONG

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that -

- 1 Following acquisition pursuant to Council resolution dated 24 February 2020, Lot 4 Section 38 DP 759104 be classified as Operational Land in accordance with Section 31 of the *Local Government Act 1993*.
- 2 Council grant authority for the use of the Common Seal of Council on all documents relevant to this matter, should it be required to give effect to this resolution.

ITEM 8 - PROPOSED GRANT OF AN EASEMENT TO DRAIN WATER 1.0M WIDE OVER LOT 217 DP 25391

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that -

- 1 Pursuant to section 46(a1) of the *Local Government Act 1993*, Council resolves to grant an easement to drain water 1.0m wide over Council Community land known as Lot 217 DP 25391, in favour of Lot 105 DP 25391 No 35 Yellagong Street, West Wollongong, as shown crosshatched on the attachments to this report.
- 2 Council accept payment in the amount of \$2,200.00 (GST free) from the owner of Lot 105 DP 25391 No 35 Yellagong Street, West Wollongong as compensation for the grant of the easement.
- 3 Approval be granted to affix the Common Seal of Council to the survey plan, Section 88B Instrument and any other documentation required to give effect to this resolution.
- 4 The applicant be responsible for all costs relating to the easement including valuation, survey, plan registration and legal costs, and any other costs incurred in this matter.

ITEM 9 - TENDER T19/47 - ADMINISTRATION BUILDING EFFICIENCY UPGRADES

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that -

- 1 a In accordance with clause 178(1)(b) of the Local Government (General) Regulation 2005, Council decline to accept the tender received for the Administration Building Efficiency Upgrades and resolve to enter into negotiations with the tenderer or any other party with a view to entering into a contract in relation to the subject matter of the tender.
- b In accordance with clause 178(4) of the Local Government (General) Regulation 2005, the reason for Council hereby resolving to enter into negotiations with the tenderer or any other party and not inviting fresh tenders is that it is anticipated that a satisfactory outcome can be achieved with one of those parties who demonstrate a capacity and ability to undertake the works.
- 2 Council delegate to the General Manager the authority to undertake and finalise the negotiations, firstly with the tenderer, and, in the event of failure of negotiations with the tenderer, any other party, with a view to entering into a contract in relation to the subject matter of the tender.
- 3 Council grant authority for the use of the Common seal of Council on the contract and any other documentation, should it be required, to give effect to this resolution.

ITEM 10 - TENDER T20/08 - SUPPLY AND INSTALLATION OF A NEW FILTRATION SYSTEM AND ASSOCIATED WORKS - HELENSBURGH TODDLERS POOL

410 **COUNCIL'S RESOLUTION** - RESOLVED UNANIMOUSLY on the motion of Councillor Colacino seconded Councillor Rimmer that -

- 1 a In accordance with clause 178(1)(b) of the Local Government (General) Regulation 2005, Council decline to accept any of the tenders received for T20/08 - Supply and Installation of a new filtration system and associated works to Helensburgh Toddlers Pool.
- b In accordance with clause 178(4) of the Local Government (General) Regulation 2005, the reason for Council hereby resolving to decline all of the tenderers is that none of the tenders received were within the allocated budget for this project.
- 2 Pursuant to section 55(3)i of the Local Government Act 1993, a new tender not be invited for the contract for the Supply and Installation of a new filtration system and associated works to Helensburgh Toddlers Pool due to extenuating circumstances, being the time frame required for tendering for this contract would involve the construction works extending significantly into the summer swimming season, with consequential adverse impact on the community.
- 3 Council delegate to the General Manager the authority to undertake and finalise a formal quotation process, in accordance with Council's procurement policies and procedures with contractors with demonstrated experience and ability to undertake the works with a view to entering into a contract for the works.
- 4 Council delegate to the General Manager authority to enter into a contract with the contractor selected following the formal quotation process outlined above.
- 5 Council grant authority for the use of the Common Seal of Council on the contract and any other documentation, should it be required, to give effect to this resolution.
- 6 A report describing the outcome of the procurement process be submitted to the next available meeting following the successful engagement of the contractor.

ITEM 11 - CITY OF WOLLONGONG TRAFFIC COMMITTEE MINUTES OF MEETING HELD ON 24 JUNE 2020

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 406)

COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor T Brown that in accordance with powers delegated to Council, the Minutes and Recommendation related to Regulation of Traffic, of the City of Wollongong Traffic Committee held on 24 June 2020, be adopted.

THE MEETING CONCLUDED AT 7:13PM

Confirmed as a correct record of proceedings at the Ordinary Meeting of the Council of the City of Wollongong held on Monday 10 August 2020.

Chairperson

ITEM 1 WOLLONGONG HERITAGE GRANT FUND ALLOCATION 2020/2021

The Wollongong Heritage Grants program provides assistance for property owners to maintain significant local heritage items. The program was recently bolstered in terms of Council financial commitment and is also supported by the State Government – Heritage NSW. It is a key function of the Wollongong Heritage Reference Group to assess grant applications against funding guidelines and criteria.

This report provides Council with an update on the allocation of the 2020/2021 Wollongong Heritage Grant Fund. Funding for 2020/2021 has been allocated in accordance with Council's Financial Assistance Policy. Under this Policy details of the funding allocations are made public via a report to Council.

This report also provides a brief summary of the completed projects which were supported under the 2019/2020 grant program.

RECOMMENDATION

The Wollongong Heritage Grant Fund allocation for 2020/2021, which has been finalised in accordance with Council's Financial Assistance Policy be noted.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 2020/2021 Wollongong Heritage Grant Fund Project Summary and Funding Allocation
- 2 2019/2020 Heritage Fund Project Summaries and Funding Allocation

BACKGROUND

Council's Financial Assistance Policy provides for the Wollongong Local Heritage Grant Fund. This Council funded program is aimed at supporting owners of heritage items in maintaining and conserving their properties.

In 2019/20, Council increased the funding allocation to the Local Heritage Grant Fund from \$30,000 to \$60,000. This has created a dramatic increase in the number of grant applications and projects that were able to be funded through the program from previous financial years. In the 2018/2019 financial year, prior to the funding increase nine applications were received, this number more than doubled to 23 applications in the 2019/2020 financial year coinciding with the funding increase.

Council has also been successful in obtaining an additional \$5,500 in supplementary funding to support Council's contribution through the NSW Heritage Grant Fund for the last two financial years. Applications for Heritage funding are invited annually and assessed in accordance with the requirements of Council's Financial Assistance Policy.

The program provides a meaningful incentive for heritage owners to undertake maintenance and conservation works to their heritage properties. The fund has been operating for over 20 years and has supported many worthwhile projects.

The Financial Assistance Policy requires the funding allocation to be reported to Council for Council's information.

PROPOSAL

2020/2021 FINANCIAL YEAR SUMMARY

The 2020/2021 program was advertised broadly from February to April 2020 along with Council’s other Financial Assistance Programs. Letters were also sent to the owners of heritage items inviting applications for financial support toward planned conservation works. Due to the COVID-19 Pandemic the deadline was extended and applications accepted up until the end of April 2020.

A total of 12 applications were received. Following an initial assessment, 11 of the applications received were deemed eligible projects and were assessed in accordance with the scoring criteria by a sub-committee of the Wollongong Heritage Reference Group.

A summary of all applications received, including the allocation of funding, is provided as Attachment 1.

Council was able to support all eligible applications this financial year with the total project value exceeding \$142,000. Funding agreements have now been finalised and some projects have already progressed. The remaining projects will continue to be finalised throughout the 2020/2021 financial year, with project completion due for all projects by the end of May 2021.

2019/2020 FINANCIAL YEAR SUMMARY

In 2019, Council supported 16 projects and all works were completed and grants acquitted prior to 30 June 2020. A total of \$68,695 was expended by Council, supporting projects with a combined total project value of over \$205,000. Details of supported projects and works are provided in Attachment 2 to this report for Council’s information.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal “Objective 1.4 – We recognise and celebrate our heritage”. It specifically delivers on the following -

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2020-21
Strategy	4 Year Action	Operational Plan Actions
1.4.1 Programs and projects that achieve proactive heritage management, education and promotion are developed and implemented	1.4.1.1 Work in partnership with others to promote a diverse range of heritage education and promotion programs	1 Continue to deliver the Heritage Assistance Grant Program

RISK MANAGEMENT

The provision of funding to support eligible heritage conservation projects in accordance with Council’s Financial Assistance Policy presents minimal risk to Council, particularly given that payments are only made as a reimbursement of expenses following the satisfactory completion of eligible projects.

FINANCIAL IMPLICATIONS

Council’s \$60,000 expenditure is being supplemented by a NSW Heritage Grant allocation of \$6,500, meaning that the allocation of funding as proposed is in accordance with available budget allocations. It is noted that the proposed expenditure for the 2020/2021 financial year is anticipated to support works valued at over \$142,000 meaning that Council’s investment is resulting in significant flow on expenditure on positive conservation works and outcomes.

CONCLUSION

Council’s Wollongong Heritage Grant Fund continues to provide a meaningful contribution to heritage owners in providing financial support and assistance in the completion of conservation works. Council’s investment is being supplemented by State Government Funding and is supporting and resulting in significant flow on expenditure on Heritage Conservation Projects throughout the Local Government Area. Details on the allocation of expenditure for the 2020/2021 financial year and the completed projects for the 2019/2020 financial year have been provided for Council’s information.

ATTACHMENT 1

2020/2021 Wollongong Heritage Grant Fund Project Summary and Funding Allocation

Project No	Project Name	Project Description	Funding Allocation	Project Value
3	Wollongong Congregational Church, 33 Market Street Wollongong	Repair 10 sandstone windowsills	\$7250	\$14,533
7	Ivy Cliff, 16 Mitchell Road Woonona	Repainting exterior, repairs to window sills and verandah repairs and front fencing repairs.	\$7500	\$15,537
8	Berkeley Pioneer Cemetery Group	Headstone Conservation Works	\$4930	\$9,867
4	Mutual Life Assurance Building, Market Street Wollongong	Polish terrazzo granite entry flooring and general external cleaning and maintenance works.	\$10,000	\$35,850
11	Wye Lodge, 63 Smith Street Wollongong	Repair and paint front windows, paint columns.	\$1250	\$2519
5	Dobinson's Store, Mount Kembla	Roof Repairs	\$10,000	\$22,000
2	Group of Shops, 34 Moore Street Austinmer	Repointing of front façade Stage 2 and 3 (Completed 2020 with approval)	\$8490	\$16,984
9	Terrace, 56 Campbell Street, Wollongong	Replace iron handrails, replace verandah floorboards, replace gutters and downpipes, repair cracked render on façade and gutter replacement	\$5250	\$10,723
6	Woonona/Bulli School of Arts, Princes Highway Woonona	Restoration of rendered entry façade	\$4400	\$8800
10	House and Shop, 123 Military Road Port Kembla	Roof Repairs	\$2240	\$4494
1	Clifton School of Arts, Lawrence Hargrave Drive, Clifton	Replace 1990s plaque with Stainless steel etched plaque installed.	\$390	\$795
	<i>Daisybank House, Princes Highway Dapto</i>	<i>Allocated for General Maintenance Works</i>	<i>Up to \$3280</i>	<i>Minimum \$6560</i>
Ineligible: Already completed without necessary approvals	House and Shop, 123 Military Road	External Repainting	Nil	\$17,550
		TOTAL	\$65,500	\$142,057 *Eligible Projects Only

ATTACHMENT 2

2019/2020 Wollongong Heritage Grant Fund Summary of Completed Projects

Project No	Project Name	Project Description	Funding Paid	Project Value
1	Seacroft House, 457-459 Princes Highway, Fairy Meadow	Restoration works including repairs to roofing and cladding and front verandah	\$10,000	\$109,773
2	Bramble Hall, 45 Underwood Street, Corrimal	Repair external cladding and external repainting	\$9800	\$19,900
3	242 Princes Highway, Bulli	Exterior repainting and repair of timber weatherboards	\$6000	\$12,600
4	"Hillside" 12 Edward Street, Wollongong	Repair of front windows	\$5000	\$11,008
5	Terrace 48 Campbell Street, Wollongong	Exterior façade repainting and roof replacement	\$5000	\$32,026
6	Bellambi Station Masters Residence, 1 Bellambi Lane, Bellambi	Roof Repairs	\$5000	\$10,650
7	Northern Uniting Church, 191 Princes Highway Bulli	Replacement of external pavement and landscaping to prevent structural damage to external sandstone	\$10,0s00	\$20,669
8	Alice Villa, 117 Corrimal Street, Wollongong	Preparation of Conservation Management Plan	\$3500	\$7250
9	Berkeley Pioneer Cemetery, Investigator Drive Unanderra	Headstone conservation works	\$2800	\$5685
10	Woonona Bulli School of Arts, 479 Princes Highway, Bulli	Cleaning and repointing to northern external wall	\$2500	\$5500
11	Figtree 58, Redman Avenue, Thirroul	Figtree conservation works	\$1495	\$2990
12	Shop 34 Moore Street, Austinmer	Repointing of parapet and cleaning (Stage 1)	\$2500	\$5093
13	Clifton School of Arts, 338 Lawrence Hargrave Drive, Clifton	Replace downpipe and overflow system	\$1600	\$3240
14	Inness Fallen, 13 Kembla Street, Wollongong	Paint front verandah and repairs to front deck, as well as clean sandstone path	\$2000	\$6065

15	10 Fowler Street, Bulli	Repair and repainting of exterior window frames	\$1000	\$2180
16	Interbane, 8 Lawrence Hargrave Drive, Stanwell Park	Painting of external window sills on eastern side	\$500	\$1200
		TOTAL	\$68,695	\$205,661

ITEM 2 POLICY REVIEW - PLANNING AGREEMENTS

Planning Agreements are a legal mechanism under which a Council or other planning authority can facilitate land dedication, works-in-kind and/or monetary contributions for a developer to satisfy their obligations under the relevant Contributions Plan.

Council has adopted a Development Contribution Plan for the West Dapto Urban Release Area and a separate City-Wide Contribution Plan. The funds levied by these Contribution Plans are used to delivery public facilities required to meet the demand created by land release and development.

The Planning Agreements Policy sets out Council's approach for the use of Planning Agreements in relation to planning proposals (land rezonings) or development applications. This review is considered minor in nature and responds to recent legislative changes and recommendations made by Council's internal auditor.

RECOMMENDATION

The draft Planning Agreements Policy be endorsed for exhibition, for a minimum period of 28 days.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

1 Draft Planning Agreements Policy

BACKGROUND

The Planning Agreements Policy (Policy) was prepared in accordance with the *Environmental Planning and Assessment Act 1979* and was adopted by Council on 26 July 2011. On 28 May 2018, Council adopted the current version of the Policy.

Planning Agreements are subject to an *acceptability test* to ensure the outcomes meet the general values and expectations of the public and protect the overall public interest. In this regard the negotiated outcome of any Planning Agreement is equal to or greater than the outcome facilitated through the relevant Contributions Plan. The Policy also sets out probity expectations to ensure negotiations are fair and transparent. Avoiding conflicts of interest, working within delegations and proper reporting are key probity elements outlined in the Policy.

The Policy and associated procedures were reviewed by Council's internal auditor in late 2019. The audit recommended the following actions for consideration:

2.1 Management will review the Policy with the view to:

- *Reviewing sections 3.2ii and 3.3ii to ensure consistency and an appropriate response to risk*
- *Include reference(s) to the Planning Agreement Checklist and any associated procedures*
- *Remove internal procedures and incorporate them into a separate procedure / checklist document.*

The audit also recommended internal management related actions including development of a checklist to assist staff navigate the complexity of the planning agreement process. This work has been completed. Given the operational nature of this work (ie internal resource documentation only) it has not been reported here.

PROPOSAL

The Policy sets out important aspects of the process including negotiation and probity, public exhibition, legal drafting and execution. The Policy has been reviewed by Council's Contribution Planning Team in

response to the recommendations received through the internal audit process. The following amendments to the Policy are proposed:

- Review of sections 3.2ii and 3.3ii to ensure consistency and an appropriate risk response
- Included references to the Planning Agreements Checklist
- Ensured harmony in listed procedures with the Planning Agreements Checklist

Additional changes made to the Policy are minor, and include:

- Removal of old clause references relating to the *Environmental Planning and Assessment Act 1979 (Act)*
- Inclusion of an excerpt of the Act outlining what can be included in a planning agreement
- Updating the GST Clause of the Planning Agreement Template
- Inclusion of a provision for applicants to provide feedback to be considered into continual process improvement
- Other minor changes to improve readability, removal of gendered term etc

All amendments to the revised Policy are highlighted in Attachment 1.

CONSULTATION AND COMMUNICATION

It is proposed that the draft revised Policy be placed on exhibition for a minimum period of 28 days. Following this the draft Policy will be presented to Council for adoption.

PLANNING AND POLICY IMPACT

The draft revised Planning Agreements Policy has been prepared in accordance with:

- the recommendations of the November 2019 Internal Audit Planning Agreements,
- Sections 7.4 to 7.10 of the Act,
- Clauses 25B – 25H of the *Environmental Planning and Assessment Regulation 2000* and
- Department of Planning and Environment's Development Contributions Practice Note (17 July 2005).

This report contributes to the delivery of Our Wollongong 2028 goal "We are a Connected and Engaged Community". It specifically delivers on core business activities as detailed in the Land Use Planning Service Plan 2020-21.

RISK MANAGEMENT

The Policy provides a framework under which Council officers with delegated authority negotiate planning agreements on behalf of Council. The outcomes of these negotiations, being a draft planning agreement, are reported to Council for consideration before being placed on exhibition to enable community comment. The Policy reinforces what should be considered, steps in the process including appropriate probity levels. The Policy framework including the internal checklist and requirements for public exhibition aim to reduce any risk associated with entering into these agreements.

CONCLUSION

The changes proposed for the Planning Agreements Policy are in line with the recommendations of the November 2019 Internal Audit - Planning Agreements or are minor in nature. It is recommended that the draft revised Planning Agreements Policy be placed on public exhibition for a minimum of 28 days to inform a future report to Council.



PLANNING AGREEMENTS COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

Section 7.4 (previously Section 93F) of the *Environmental Planning and Assessment Act 1979* enables Council to enter into a Planning Agreement with a developer through which a material public benefit such as monetary contributions, works and/or land dedications will be provided.

This Planning Agreements Policy sets out Council's approach to the use of planning agreements through negotiation when considering Planning Proposal requests (land re-zonings) or Development Applications in the Wollongong City Council Local Government Area.

This Policy is known as the Planning Agreements Policy ('Policy'). It sets out Wollongong City Council's policy and procedures relating to planning agreements under section 7.4 (previously section 93F) of the *Environmental Planning and Assessment Act 1979* (the Act).

Land and Development to Which this Policy Applies

This Policy applies to land and development within the Wollongong City Council Local Government Area.

POLICY INTENT

The main objectives of this policy are to –

- 1 To establish a fair, transparent and accountable framework governing the use of planning agreements by Council;
- 2 To enhance the range and extent of development contributions made by developers towards public facilities in Council's area;
- 3 To set out Council's specific policies and procedures relating to the use of planning agreements within Council's area;
- 4 To give all stakeholders in development involvement in determining the type, standard and location of public facilities and other public benefits;
- 5 To facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefits;
- 6 To enhance planning flexibility without compromising certainty;
- 7 To supplement Council's adopted Section 7.11 and Section 7.12 (previously Section 94 and Section 94A Section 94) Development Contributions Plans; and
- 8 To adopt innovative approaches to the delivery of facilities and services.

WOLLONGONG 2028 OBJECTIVES

Link the policy to Council's strategic plan and deliverables and document what outcomes it hopes to achieve. Give particular focus to any innovation or sustainability objectives the policy hopes to achieve.

POLICY

1.1 What Does the Planning Agreements Policy Set Out?

This Policy sets out Council's approach to the use of planning agreements through negotiation when considering planning proposal requests (rezoning) or Development Applications in the Wollongong City Council Local Government Area. It complements the policy approach set out in the Planning Agreements chapter of the Department of Planning and Environment's *Development Contributions Practice Notes – July 2005e* (19 July 2005).

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In particular, this Policy sets out:

- The circumstances in which the Wollongong City Council would ordinarily consider entering into a planning agreement;
- The matters ordinarily covered by a planning agreement;
- The form of development contributions ordinarily sought under a planning agreement;
- The kinds of public benefits ordinarily sought and, in relation to each kind of benefit, whether it involves a planning benefit;
- The method for determining the value of public benefits and whether that method involves standard charging;
- Whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate;
- When, how and where public benefits will be provided;
- The procedures for negotiating and entering into planning agreements; and
- Council's Policies on other matters relating to planning agreements, such as their review and modification, the discharging of the developer's obligations under agreements, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

1.2 Legal and Policy Context

The current legal and procedural framework for planning agreements is set by Part 7, Division 7.1, Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (the Act) and Part 4, Division 1A of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

The Act outlines that a planning agreement is to be used for or applied towards a public purpose. Clause 7.4(2) of the Act states that: *A public purpose includes (without limitation) any of the following –*

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,*
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,*
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,*
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,*
- (e) the monitoring of the planning impacts of development,*
- (f) the conservation or enhancement of the natural environment.*

The Practice Note issued by the Department of Planning and Environment sets out several tests for assessing whether planning obligations are appropriate. These include an *acceptability test* to ensure that planning agreements:

- Are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
- Provide for public benefits that bear a relationship to development that are not wholly unrelated to the development;
- Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- Provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
- Protect the community against planning harm.

1.3 Principles Underlying the Use of Planning Agreements

Council's use of planning agreements will be governed by the following principles:

- i Planning decisions will not and cannot be bought or sold through planning agreements.

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- ii Council will not allow planning agreements to improperly fetter the exercise of its functions under the Environmental Planning and Assessment Act and Regulation or any other act or law.
- iii Council will not use planning agreements for any purpose other than a proper planning purpose.
- iv Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.
- v Council will not seek benefits under a planning agreement that are wholly unrelated to particular development.
- vi Council will not take into consideration planning agreements that are wholly unrelated to an application, nor will Council give undue weight to a planning agreement.
- vii If Council has a commercial interest in the development proposal the subject of the agreement, Council will take appropriate steps to avoid and ensure no potential, perceived or actual conflict of interest between its role as a planning (consent) authority and its interest in the development.

1.4 What are the Mandatory Requirements of a Planning Agreement?

Section 7.4(3) (previously Section 93F(3)) of the Act requires planning agreements to provide the following:

- i A description of the land to which the agreement applies.
- ii A description of:
 - a the change to the environmental planning instrument to which the agreement applies; or
 - b the development to which the agreement applies.
- iii The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made.
- iv In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 (previously section 94, 94A) and/or 7.24 to the development.
- v If the agreement does not exclude the application of section 7.11 (previously section 94) to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11 (previously section 94).
- vi A mechanism for the resolution of disputes under the agreement.
- vii The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

The Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases, except as provided by law. However, Council has prepared a template agreement that will form the basis for a planning agreement and this will be used as the starting point for any agreement. The planning agreement template is attached at Appendix A.

Clause 25E(1) of the Regulation provides that an explanatory note must accompany a planning agreement. The explanatory note must:

- Summarise the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- Contain an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

The explanatory note template for a planning agreement is attached at Appendix B.

1.5 Terms and Definitions Used in this Policy

In this Policy, the following terms and definitions are used:

Act	means the <i>Environmental Planning and Assessment Act 1979</i>
Application	The Development Application or Planning Proposal to which the planning agreement is associated
Contributions Plan	means a Section 7.11 or Section 7.12 (previously Section 94 and Section 94A) Contributions Plan adopted by the Council
Council	means Wollongong City Council

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Department of Planning and Environment	Means the NSW Government's Department of Planning and Environment (previously known as the Department of Planning and Infrastructure, and the Department of Infrastructure Planning and Natural Resources)
Developer	is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (Section 7.4(11) (previously (s93F(11)))), or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person
Development Application	has the same meaning as in the Act
Development Contribution	means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the carrying out of works
Explanatory Note	means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement
Instrument Change	means a change to an environmental planning instrument to facilitate a development the subject of a planning agreement
Notification Policy	means the Wollongong Development Control Plan 2009 - Appendix 1 Public Notification and Advertising Procedures (or as amended)
Planning Authority	means Wollongong City Council
Planning Benefit	means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community
Public Facilities	means public infrastructure, facilities, amenities and services
Planning Obligation	means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution
Planning Proposal	means an application made to Council seeking to amend a Local Environmental Plan
Practice Note	means the <i>Development Contributions Practice Notes – July 2005</i> published by the Department of Infrastructure Planning and Natural Resources (now the Department of Planning and Environment) or as updated
Public	includes the general public or a section of the public
Public Benefit	is the benefit enjoyed by the public as a consequence of a development contribution
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i>

2 MATTERS COUNCIL WILL CONSIDER IN PLANNING AGREEMENTS

2.1 Matters that Council Will Consider in Negotiations

The matters that Council may consider in any negotiations regarding a planning agreement may include (but are not limited to) the following:

- i Whether the planning agreement(s) contributes to meeting the demands created by the development for new public infrastructure, amenities and services.
- ii Does the proposal from the developer meet the planning objectives of Council?
- iii If compensation is required for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration.

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- iv Whether rectification of an existing deficiency in the provision of public facilities in Council's area is proposed
- v Whether the proposed works have already been identified through Councils infrastructure planning.
- vi Whether recurrent funding of public facilities is required or provided.
- vii The extent to which Council needs to monitor the planning impacts of development.
- viii Whether planning benefits for the wider community accrue from the planning agreement.

Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer via a planning agreement.

The most important factor in deciding what offers might be accepted is likely to be the size of the development, but other factors such as the location or type of development may be relevant. These will establish core information such as likely increases in population and demand for particular public facilities or services. This information will help Council to determine the application and negotiate the planning agreement.

2.2 What will Council require to be provided under Planning Agreements?

The Practice Note, sets out the acceptability tests for assessing whether planning obligations are appropriate in planning terms.

While Council will endeavour to standardise development contributions sought under planning agreements, this will not always be possible.

In some instances Council will prefer the collection of monetary contributions through a planning agreement as it provides greater flexibility for the allocation and the spending of such funds towards critical infrastructure. In other instances a better outcome will be achieved through the construction of public works by the developer.

2.3 Recurrent Costs

Council may request developers, through a planning agreement, to make development contributions towards the recurrent costs of public facilities. Where the public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity.

Where the public facility or public benefit is intended to serve the wider community, the planning agreement may only require the developer to make contributions towards the recurrent costs of the facility for a set period which will be negotiated according to the impact of the development.

If the funding of recurrent costs is required to be part of the planning agreement, the planning agreement will include the following matters:

- i The specific purpose of the recurrent funding;
- ii The nature and extent of the recurrent funding;
- iii The time period over which the funding shall be provided;
- iv Any mechanisms for the indexing of the recurrent funding;
- v The heads of consideration for any endowment fund or trust that may be required to be established to manage the recurrent funding;
- vi The provision of security such as bank guarantee or other form of security to secure the ongoing funding;
- vii Circumstances in which funding would be renegotiated or revoked; and
- viii Any other matter relevant to securing the public interest in the achievement of an ongoing public benefit.

2.4 Land Dedication in Planning Agreements

A planning agreement may make provision for the dedication of land.

In the case of land identified within a Contributions Plan, the estimated value of land that is identified in that Contributions Plan will be given due consideration. This consideration is essential as the initial estimated value contributed to determining the contribution rates. However, there are other matters that may impact on the agreed value of land.

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In all cases, the agreed value of the particular parcel of land will be generally negotiated as part of the planning agreement.

In this regard, Council will take into account the unique characteristics of the property and the circumstances of the dedication, which may include:

- i The extent, if any, to which any development potential attaching to that part of the land to be dedicated can be incorporated elsewhere within the development.
- ii Whether the land proposed to be dedicated has been identified by Council in any Development Control Plan, Contributions Plan or other Policy.
- iii The location, configuration, size, accessibility, topography and existing use of the land proposed to be dedicated.
- iv Whether the land is located in or adjacent to a riparian corridor or bush fire prone land.
- v Whether the land adjoins an existing area of open space and can be consolidated into that area.
- vi Whether the land will create or improve accessibility within the locality.
- vii Whether the land supports the habitat of threatened fauna or flora species or endangered ecological communities.
- viii Any factors which may affect the usability of the land such as soil characteristics, flood liability, potential soil contamination, public accessibility and safety, proximity to existing uses, the current use of the land, the cost of embellishment or construction of any proposed facility on the land etc.
- ix In the case of a material public benefit not anticipated by a Contributions Plan and proposed to be offset against monetary contributions, the impact on the achievement of works identified within any adopted Contributions Plan of Council.
- x The ongoing maintenance costs to Council after the improvement works are carried out on the land.
- xi Any other relevant matter, based on the circumstances of the case.

The planning agreement must specify the date at which the transfer of ownership will take place or the threshold that will trigger the requirement to transfer ownership of the land.

Following the execution of a planning agreement, the agreed value will be as per the planning agreement regardless of any subsequent change in land value including a change in value between the execution of the planning agreement and the transfer of land ownership.

If a planning agreement provides that a specified land dedication satisfies a required contribution or consent condition without specifying a land value that agreement will stand regardless of whether relative changes in land value or contribution rates alter the value of that agreement to either party, unless the planning agreement is formally amended by mutual agreement.

2.5 Monetary Contributions in Planning Agreements and Pooling of Contributions

A planning agreement may make provision for monetary contributions other than contributions under an adopted and in force Contributions Plan.

Where a planning agreement provides for monetary contributions, the following matters are to be addressed:

- i The amount of the monetary contribution;
- ii The purpose and extent of the monetary contribution;
- iii When such contributions are to be paid (by date or the threshold that will trigger the payment);
- iv In the case of staged payments, the nature of the staging or the dates at which time payments are to be made;
- v Any mechanisms for the indexing of the monetary contribution against inflation over time;
- vi Details of any security, such as a bank guarantee, that is to be provided in lieu of the monetary contribution until such time as it becomes due and payable;
- vii Any obligations on Council for the expenditure of the monetary contributions; and
- viii Any other matter relevant to securing the public interest in the management and expenditure of the monetary contributions.

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Where a proposed planning agreement provides for a monetary contribution by the developer, Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure to be provided in a fair and equitable way.

Monetary contributions required by a standard condition of consent in accordance with an adopted Contributions Plan will not be normally referenced in a planning agreement, except where the planning agreement must clarify the relationship of the planning agreement to any contributions which may be required as a consequence of granting a consent on land to which the planning agreement applies.

2.6 Capital Works in Kind and Planning Agreements

A planning agreement may make provision for a developer to carry out work on land to be dedicated to Council or already in the public domain. In such circumstances, the provision of quality work that is fit for purpose, is critical to Council.

On most occasions, a suitably qualified and experienced quantity surveyor will be required to verify all cost estimates submitted by the developer as part of the negotiation process. The planning agreement will specify the particulars of the work and the procedure for satisfying any requirements in carrying out of the work taking into account the unique characteristics of the property and the circumstances of the work, which may include:

- i Requirements and specifications for detailed design plans for future approval or specific references to endorsed plans;
- ii Public liability insurance during construction and during the defects liability period;
- iii Requirements for inspections by Council prior to and during the course of construction including the notice to be given in order to arrange such an inspection;
- iv Requirements for the commencement of handover proceedings;
- v Details of the defects liability period;
- vi Security such as bonds or bank guarantees to be held during the course of construction and during the defects liability period.
- vii Access for Council officers during the course of construction to ascertain progress or to assess asset value;
- viii In some cases, permitting Council to carry out the work itself and recover the costs of so doing from the security and/or the Developer; and
- ix Any other matter relevant to securing the public interest in the achievement of a quality public benefit.

2.7 Do Other Development Contributions Apply?

Council has no general policy on whether a planning agreement should exclude the application of section 7.11 or section 7.12 (~~previously section 94 and section 94A~~) of the Act to development to which the agreement relates. This is a matter for negotiations between Council and the developer having regard to the particular circumstances of the case.

However, where the application of section 7.11 (~~previously section 94~~) of the Act to development is not excluded by a planning agreement, Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section 7.11 (~~previously section 94~~).

2.8 Costs Associated with Planning Agreements

Council reserves its rights to require the developer to pay Council's full costs in executing the planning agreement, especially where the size or complexity of the planning agreement requires Council to engage an independent expert.

A planning agreement will specify that other costs related to the core purposes of the planning agreement such as architectural design plans and detailed landscape plans will be borne by the developer.

A planning agreement may also make provision for Council's costs for the monitoring and enforcing of the planning agreement to be borne by the developer.

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3 NEGOTIATION PROCEDURES AND PROBITY

3.1 General

Council's negotiation approach for planning agreements aims to be efficient, predictable, transparent and accountable. Council will seek to ensure that the final negotiation of planning agreements runs in parallel with planning proposals for instrument changes or development applications so as not to unduly delay any approval.

Where practical, Council is required to ensure that a planning agreement and explanatory note is publicly notified as part of and contemporaneously with, in the same manner as, the planning proposal for the instrument change or the development application to which it relates.

Council's preference is therefore to have the planning agreement discussed with it and documented before it is publicly notified as required by the Act and Regulation. It is also preferable that a planning agreement is discussed with Council before lodgement of the relevant application and that it accompanies the application on lodgement.

An internal Planning Agreements Checklist is used as a procedure to be followed during the negotiation, preparation and implementation of Planning Agreements to ensure compliance with the *Environmental Planning and Assessment Act 1979*, and the *Environmental Planning and Assessment Regulation 2000*.

3.2 Steps in the Negotiation Process

The negotiation of a planning agreement will generally involve the following key steps:

- i Prior to the lodgement of the relevant application by the developer, Council and the Developer (and any other relevant person) will decide whether to negotiate a planning agreement.
- ii At least two (2) Council officers with appropriate delegation will negotiate a planning agreement on behalf of Council in accordance with the Act, Regulation and this Policy. The two (2) Council officers appointed to undertake the planning agreement negotiations must be fully independent of the Planning Proposal or Development Application determination process. The two (2) Council officers must not represent or be associated with any Council business unit that has a commercial interest in the planning agreement outcome. Council staff with the key responsibility for determining applications will not play a role in the assessment of any commercial aspects of the agreement, but may be involved where advice is required on matters relating to the conditions of consent for a particular proposal. Note: All draft Planning Agreements and draft Planning Proposals are reported to Council for determination, and all Development Applications that include a draft Planning Agreement are reported to the Independent Hearing and Assessment Panel (IHAP) now known as Wollongong Local Planning Panel (LLP) for determination.
- iii Council will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of the negotiation process.
- iv The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place.
- v Once 'in principle' agreement has been reached the developer should submit a formal Letter of Offer to Council outlining the details of the planning agreement they are seeking to enter into.
- vi A draft planning agreement should then be prepared by either Council or the developer based on the template at Appendix A to this policy. The developer will be responsible for draft planning agreement must addressing the requirements of the draft planning agreement template, the agreed outcomes of negotiations and this Policy.
- vii The parties may undertake further negotiation on the specific terms of the proposed planning agreement as necessary.
- viii The draft Planning Agreement will be reported to Council and if supported, Council will publicly exhibit the draft planning agreement and explanatory note in accordance with the Act, Regulation and its Notification Policy
- viii Once each party has a real understanding of whether the proposed planning agreement meets the aims and objectives of this policy, the developer can then make the relevant application to Council at any stage during this process, however ideally the application will be accompanied either by a copy of the proposed agreement or by an offer to enter into such an agreement with specifics of the agreement set out in detail (Letter of Offer).

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~~viii—Once ‘in principle’ agreement has been reached, the draft Planning Agreement will be reported to Council and if supported, then Council will publicly exhibit the application, draft planning agreement and explanatory note in accordance with the Act, Regulation and its Notification Policy.~~

- ix Council will consider any submissions received following notification and raise them, where appropriate, for further discussions with the Developer. If required, amendments will be made to the planning agreement. The planning agreement may be reported back to Council or Council may delegate authority to the General Manager to ~~determine whether finalise and execute~~ the Planning Agreement should be finalised.
- x Council may then approve the application. If the application is a Development Application, a condition of consent will require execution of the planning agreement. If the application is a rezoning proposal, the planning agreement will need to be executed following any resolution to refer the making of a plan to the Department of Planning and Environment or Minister for Planning. In most cases, Council will require the planning agreement to be executed before the application is determined.

The parties may be required to undertake further negotiations and, hence, a number of the above steps may need to be repeated as a result of the public notification process or its formal consideration by Council in connection with the relevant application.

Note: The Minister for Planning may intervene in the procedures to be followed in negotiating a planning agreement and other standard requirements, pursuant to the provisions of section 7.9 ~~(previously section 93K)~~ of the Act.

3.3 Probity

Probity is important to Council and it will ensure that the negotiation of any planning agreements is fair, transparent and is directed at achieving public benefits in an appropriate manner, free of corruption.

In this regard, Council will:

- Inform any applicant about Council values and business ethics – specifically, about ethical behaviour appropriate to business dealings as set out in Council’s Code of Business Ethics Policy.
- Endeavour to ensure that its communities understand the system and Council’s role – specifically, how the planning agreements system operates and how Council will deal with developments objectively.
- Notify planning agreements to ensure they are open and transparent – specifically, achieving public awareness of the matters contained in a planning agreement(s) and the potential benefits of an agreement.
- Ensure appropriate delegations and separation of responsibilities in considering Planning Proposals or Development Applications that involve planning agreements – specifically, the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.
- Ensure that modifications to approved development, where appropriate, are subject to the same scrutiny as the original Development Application.
- Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- Take every step to ensure that conflicts of interest are ameliorated to the greatest extent possible – specifically, independent assessment by third parties where Council has a commercial interest (ie landowner or developer) and not entering into any contractual arrangement which purport to guarantee outcomes that are subject to separate regulatory processes.

The following procedures that will be implemented to address the above probity matters:

- i Two (2) Council officers with appropriate delegated authority will negotiate a planning agreement on behalf of Council in accordance with this Policy.
- ii If Council has a commercial interest in the subject development project or the property of the subject planning agreement, Council staff with the key responsibility for determining applications will not play ~~an active~~ role in the assessment of any commercial aspects of the agreement, ~~except but may be involved where~~ advice is required on matters relating to the conditions of consent for a particular proposal.

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- iii Where Council has a commercial interest in the subject planning agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development. In this case, Council will ensure that the Council officer who is assessing the application to which the planning agreement relates is not the same person who negotiated the terms of the planning agreement on behalf of Council.
- iv Council may, at its discretion, involve an independent person(s), particularly where Council has a commercial interest in the matter or where the size or complexity of the project requires an independent person(s) with specialist skills to participate in the negotiations or any aspect of the negotiations.
- v Council will ensure that all negotiations with a developer and their consultants are sufficiently documented.
- vi An internal Planning Agreements Checklist is used to provide the procedure to be followed during negotiation, preparation and implementation of Planning Agreements to ensure compliance. The checklist may differ slightly depending on the nature of the Planning Agreement being negotiated.

4 PUBLIC EXHIBITION OF A PLANNING AGREEMENT

4.1 Public Exhibition of Planning Agreements

In accordance with section 7.5(1) (~~previously section 93G(1)~~) of the Act, a planning agreement must be publicly exhibited and available for public inspection for a minimum period of 28 days. Where **practical possible**, this will occur as part of and at the same time as notification of the Application. Where this is not ~~practical possible~~ notification will occur ~~as soon as possible~~ after **Council has endorsed the draft Planning Agreement the notification of the Application.**

4.2 Re-Notification of Planning Agreements

Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or the application, or their formal consideration by Council, or for any other reason.

4.3 Submissions on Planning Agreements

Any person may make a written submission on the draft planning agreement.

Council encourages written submissions on draft planning agreements, so Council can better understand local needs. Written submissions on draft planning agreements may also help Council to refine any planning obligations or outcomes set out in the planning agreement.

All submissions regarding planning agreements will be assessed on their merit by Council in accordance with the requirements of the Act.

5 EXECUTION AND COMMENCEMENT OF A PLANNING AGREEMENT

5.1 Preparation of the Planning Agreement

Council uses a standard form of planning agreement in which every planning agreement should be based. This standard form reflects the procedures set out in this document (refer to planning agreement template at Appendix A). The planning agreement must also include a plain English explanatory note (refer to explanatory note template at Appendix B).

Council will require a planning agreement to make provision for payment by the developer of Council's costs of and incidental to negotiating, preparing and entering into the agreement.

5.2 When is a Planning Agreement **Required to be Entered Into?**

A planning agreement is entered into when it is signed by all of the parties. Council will usually require a planning agreement to be entered into before a Planning Proposal is finalised, or as a condition of granting development consent to the development to which the agreement relates. In most cases an executed planning agreement will be required before the application is finalised. However, a planning agreement can

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be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation.

5.3 Contract Administration Plan

A contract administration plan may be developed for the day to day management of a planning agreement. The requirement for a contract administration plan will be at the discretion of the relevant Divisional Manager or Middle Manager and/or the General Counsel.

The contract administration plan is a plan specific to the individual contract and contains all the key information about how the contract will be managed. The contract administration plan will be consistent with the provisions of clause 2.6 in Council's Contract Administration Management Procedures (Internal Management Policy).

The contract administration plan may provide for the following matters:

- i The design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer.
- ii The manner in which a work is to be handed over to Council.
- iii The manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

5.4 Monitoring and Review of a Planning Agreement

Council will continuously monitor the performance of the developer's obligations under a planning agreement and ensure all obligations are met. In accordance with section 7.5(5) (previously section 93G(5)) of the Act, Council will include in its annual report particulars of compliance with and the effect of planning agreements during the year.

5.5 Roles and Responsibilities of Council Staff in dealing with a Planning Agreement/Contract Administration Plan

- i Contract Manager

The contract manager is any Council staff member who oversees the day to day management of the contracted works or services under the planning agreement. The contract manager is Council's representative.

The contract manager is responsible for ensuring the contracted goods or services in the planning agreement are provided in accordance with the specifications and terms of the planning agreement. This is achieved if the developer fulfils obligations and accepts its liabilities under the planning agreement. The contract manager should endeavour to have a positive working relationship with the developer, in order to ensure that the goods or services are provided in accordance with the specifications and terms of the planning agreement (and the contract administration plan, if applicable).

To this end, the contract manager oversees the daily activities associated with the performance of the planning agreement (and the contract administration plan, if applicable). The activities of the contract manager include:

- Represent Council's interests when dealing with the developer/contractor.
- Promote ethical conduct, honesty and transparency in all dealings.
- Review, monitor, manage and report contract risks to the relevant manager.
- Maintain effective communication with the developer/contractor.
- Process and approve variations within delegations (otherwise obtain appropriate approval/endorsement from more senior staff).
- Document continuous improvement practices for future contracting purposes.
- Maintain appropriate records, document management and reporting.
- Monitor contract performance and undertake contract performance reviews.
- Resolve disputes or assist with dispute resolution.
- Act in accordance with the terms of the planning agreement (and contract administration plan, if applicable).

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ii The Developer

The developer is responsible for the provision of the development contributions in accordance with the planning agreement. The developer is responsible to fulfil all their obligations and accepts its liabilities under the planning agreement.

iii Land Use Planning Team

The Land Use Planning Manager and/or a Strategic Project Officer - Development Contributions will be responsible for the regular review of the milestones contained in the planning agreement (and the contract administration plan, if applicable).

The Land Use Planning Manager or a Strategic Project Officer - Development Contributions will also review the operative provisions contained in the planning agreement (and the contract administration plan, if applicable) against the relevant development consent.

iv Development Application and Certification Division

The relevant middle manager or senior/development project officer in the Development Assessment and Certification Division will provide assistance to the Land Use Planning Manager and/or the Strategic Project Officer - Development Contributions and/or the General Counsel with respect to specific conditions of development consent and/or in the initial drafting of the specifications and terms for the goods or services to be provided for in the planning agreement (and/or the contract administration plan, if applicable).

The Development Engineering team within the Development Assessment and Certification Division may also be required to provide assistance in the initial drafting of the specifications and terms of the goods or services to be provided for in the planning agreement (and the contract administration plan, if applicable).

The Development Engineering team may also provide technical advice to the Land Use Planning Manager or Strategic Project Officer - Development Contributions as to performance of any goods or works delivered by the developer with respect to the specifications and terms covered in the relevant planning agreement.

5.6 Modification or Discharge of Obligations

Council may agree to a provision in a planning agreement permitting the developer's obligations under the agreement to be modified or discharged in the following circumstances:

- i The developer's obligations have been fully carried out in accordance with the agreement;
- ii The development consent to which the agreement relates has lapsed;
- iii The development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate;
- iv The performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties;
- v The developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms;
- vi Council and the developer otherwise agree to the modification or discharge of the agreement; or
- vii The Minister has determined in writing to the parties not to support the planning proposal.

In most cases, the planning agreement itself will provide opportunity for appropriate review or modification.

5.7 Assignment and Dealings by the Developer

Council will not permit the assignment of any or all of the developer's rights or obligations under the agreement, nor will Council permit any dealing in relation to any part or the whole of the land the subject of the agreement unless:

- i The developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement;
- ii If the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, such documents provide for an agreement by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party;

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- iii The party is not in breach of this Agreement; and
- iv Appropriate security and registration of the planning agreement is also in place.

This does not affect the operation of any of other requirements of the agreement.

5.8 Provision of Security under a Planning Agreement

Council will generally require a planning agreement to make provision for security to cover the developer's obligations under the agreement. The form of security will generally be an unconditional bank guarantee from an Australian Bank in favour of Council reflecting the developer's obligations under the Agreement, the risk to Council and on terms otherwise acceptable to Council.

5.9 Planning Agreements and Conditions of Development Consent

Section 7.7(3) ~~(previously section 93I(3))~~ of the Act authorises a consent authority to require a planning agreement to be entered into as a condition of development consent, where the required planning agreement is in the terms of an offer made by the developer in connection with the Application.

The conditions of development consent will require the planning agreement to be executed before the consent is acted on and will require that all operative provisions be complied with by specific timeframes.

5.10 Notations on Planning Certificates under Section 10.7(2) ~~(previously Section 149(2))~~ of the Act

Council may also make notation under section 10.7(5) ~~(previously section 149(5))~~ of the Act about a planning agreement on any certificate issued under section 10.7(2) ~~(previously section 149(2))~~ of the Act relating to the land to which the planning agreement relates, whether or not the planning agreement has been registered on the title of the land.

5.11 Registration of Planning Agreements

Section 7.6 ~~(previously section 93H)~~ of the Act permits a planning agreement to be registered on the title of the land to which the planning agreement relates if each person with an interest in the land agrees to its registration.

In this regard, Council will require a planning agreement to contain a provision requiring the developer to agree to the registration of the agreement on the title of the land. The cost of the registration of the planning agreement will be borne by the developer.

5.12 Dispute Resolution

Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute, save where urgent interlocutory action is required.

5.13 Variation to Development Standards

Variation to applicable development standards under clause 4.6 in *Wollongong Local Environmental Plan 2009* as part of a planning agreement or application will not be permitted unless Council is of the opinion that the tests within the clause are satisfied independent of the planning agreement.

5.14 How will Council Value Public Benefits under a Planning Agreement?

If the benefit under a planning agreement is the provision of land for a public purpose, Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the Developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land.

If the benefit under a planning agreement is the carrying out of works for a public purpose, Council will generally seek to value the benefit on the basis of the estimated value of the completed works on the basis of a cost estimate prepared by a registered quantity surveyor.

In either case, the cost of the valuation of the benefits is to be at no cost to Council.

5.15 Refunds or Credit Off-Sets

Council will not generally agree to any planning agreement providing for the surplus value under a planning agreement being refunded to the developer or a credit off-set against development contributions required to be made by the developer in respect of other development in the area, except where it is part of an approved staged development.

However, for all works or land dedications agreed to generate a credit to reduce the monetary contributions payable under the planning agreement, the following mechanism will apply:

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- i Any credit will be calculated based on the actual cost of works or the agreed cost estimate, whichever is the lesser.
- ii The agreed cost estimate can be amended by submission of a variation request which will be reviewed and certified by a registered Quantity Surveyor.
- iii The actual cost of works is required to be evidenced and verified by a registered Quantity Surveyor.
- iv The Quantity Surveyor to act on the project will be chosen by Council from a list of three (3) recommended by the applicant all of whom are members of Panels for the NSW Department of Commerce or Local Government Procurement.
- v The Quantity Surveyor costs are to be borne by the applicant.

5.16 Planning Agreement Register

Council is required to keep a register of planning agreements applying to land within the Wollongong City Council Local Government Area. The planning agreement register will provide a short description of the planning agreement including the date the agreement was entered into, the names of the parties and the land to which it applies (clause 25F(2) of the Regulation).

The planning agreement register will be available for public inspection (free of charge) at Council's Customer Service Centre, during normal office hours. It is also available on Council's website.

5.17 Review and Feedback

Toward the end of the Planning Agreement process, feedback will be sought from the applicant in regard to the planning agreement process and may be used to improve procedures.

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APPENDIX A

Planning Agreement Template

PLANNING AGREEMENT

Wollongong City Council

and

[List]



WOLLONGONG CITY COUNCIL
41 Burelli Street, Wollongong NSW 2500
Locked Bag 8821, Wollongong DC NSW 2500
Tel: 02 4227 7111
Fax: 02 4227 7277
Web: www.wollongong.nsw.gov.au
ABN: 63 139 525 939 – GST Registered

PLANNING AGREEMENTS

COUNCIL POLICY

DATE [DATE]

PARTIES **WOLLONGONG CITY COUNCIL** of 41 Burelli Street, Wollongong in the State of New South Wales (**Council**)
[LIST NAME AND ADDRESS OF DEVELOPER] (**Developer**)

BACKGROUND

- 1 The Developer is the registered proprietor of the Land.
- 2 The Developer has made a [Planning Proposal/Development Application] with Council.
- 3 The Developer has offered to provide the Contributions if the Development is undertaken.

OPERATIVE PROVISIONS

1 DEFINITIONS

The following definitions apply unless the context otherwise requires:

- Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- Acquisition Act** means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- Assign** as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
- Authority** means (as appropriate) any:
 - 1 federal, state or local government;
 - 2 department of any federal, state or local government;
 - 3 any court or administrative tribunal; or
 - 4 statutory corporation or regulatory body.
- Bank Guarantee** means the bank guarantee(s) from an Australian bank required to be provided to Council by the Developer under this agreement.
- Claim** against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
- Complete, Completed, Completion** means completed in accordance with the requirements of this document.
- Contribution Value** means:
 - with respect to Designated Land, the amount specified in [Insert in the column headed "contribution value" for each item of Designated Land; and
 - with respect to each Item of Work, the Development Cost of that Item of Work determined in accordance with clause 5.
- Contributions** means the provision of the Works, the making of the Monetary Contributions and the dedication of the Designated Lands by the Developer in accordance with this document.

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Contributions Plan	means the [Insert], or such other replacement plan adopted by Council from time to time.
Council	means Wollongong City Council
Defects Liability Period	means two (2) years.
Designated Land	means that part of the Land identified on the plan attached as Schedule 3.
Developer	means [Insert]
Development	means [Insert].
Development Application	means a Development Application lodged by the Developer with Council for the Development Consent.
Development Consent	means a development consent issued under the Act with respect to the Development.
Development Cost	means in relation to an Item of Work: <ul style="list-style-type: none"> • the construction costs of that item; • any costs incurred under a building contract in relation to that item; or • any costs or expenses payable to an Authority in relation to that item.
Encumbrance	means an interest or power: <ul style="list-style-type: none"> • reserved in or over an interest in any asset; • created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or • by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
EPA	means the NSW Environment Protection Authority.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.
Item of Work	means an individual item of the Works as set out in Schedule 3.
Land	means the whole of the land contained in [Insert].
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Maintenance Liability Period	means two (2) years.
Monetary Contributions	means the monetary contributions set out in Schedule 4.
Occupation Certificate	means an occupation certificate as defined in section 6.4(c) of the Act.

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Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Planning Proposal	means an application made to Council seeking to amend a Local Environmental Plan
Quantity Surveyor	selected and appointed by Council from a list of Quantity Surveyors recommended by the Developer all of whom must be members of Panels for the NSW Department of Commerce or Local Government Procurement.
Residential Lot	means a single lot created on the registration of a plan of subdivision as part of the Development intended to not be further subdivided and to be used for the purpose of the construction of one (1) or more residential dwellings.
Subdivision Certificate	means a subdivision certificate as defined in section 6.4(d) of the Act.
Works	means the works specified or described in Schedule 3.
WSUD Infrastructure	Means water sensitive urban design infrastructure associated with the Works on dedicated lands in Schedule 3 being the range of measures that are designed to avoid or minimise the environmental impacts of urbanisation in terms of the demand for water and the potential pollution threat to natural waterways.

2 DEFINITIONS

The following rules of interpretation apply unless the context requires otherwise:

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in, or annexure or schedule to, this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

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meaning not limited	the words 'include', 'including', 'for example' or 'such as' are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other.

3 DEFINITIONS

3.1 Planning Agreement

This document is a planning agreement:

- i Within the meaning set out in section 7.4 of the Act; and
- ii Governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.2 Application

This document applies to both the Land and the Development.

3.3 Operation of document

- i Subject to paragraph (ii), this document operates from the date it is executed by both parties.
- ii The following clauses of this document will only operate if and when Council grants Development Consent.

4 APPLICATION OF SECTION 7.11 AND SECTION 7.12

4.1 Application

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Contributions that are to be carried out or provided pursuant to this document.

5 SATISFACTION OF CONTRIBUTION CONDITION

5.1 Determination of Development Cost

- i Upon completion of any Item of Work the Developer must provide Council with a certificate from a Quantity Surveyor in favour of both Council and the Developer as to the Development Cost of the relevant Item of Work.
- ii The determination of the Quantity Surveyor as to the Development Cost of an Item of Work is conclusive and binding on the parties except in the case of manifest error.

5.2 Calculating Contribution Values

The parties acknowledge that for where an Item of Work is identified in Schedule 3 as having a Contribution Value, the following mechanism will apply:

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- i The amount of the Contribution Value will be calculated based on the actual cost of an Item of Work or the agreed cost estimate, whichever is the lesser.
- ii The agreed cost estimate can be amended by submission of a variation request which will be reviewed and certified by the Quantity Surveyor.
- iii The actual cost of Works is required to be evidenced and verified by a registered Quantity Surveyor.
- iv The Quantity Surveyor costs are to be borne by the Developer.

5.3 Credit for Contribution Values

- i Once determined in accordance with clause 5.2, the Contribution Value of an Item of Work will generate a credit equal to the amount of that Contribution Value.
- ii The Developer, by letter in writing to Council, may then elect to use any credit generated under paragraph 5.2 to reduce any:
 - a monetary Section 7.11 or Section 7.12 contribution required pursuant to a condition of Development Consent; or
 - b monetary contribution required to be made under this document.

6 REGISTRATION OF THIS DOCUMENT

6.1 Registration

This document must be registered on the title of the Land pursuant to section 7.6 of the Act.

6.2 Obligations of the Developer

The Developer must:

- i do all things necessary to allow the registration of this document to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- ii pay any reasonable costs incurred by Council in undertaking that registration.

6.3 Removal from Title of the Land

- i Council will do all things necessary to allow the Developer to remove the registration of this document from the title of the Land where the Developer has:
 - a provided all Monetary Contributions;
 - b Completed the Works; and
 - c Dedicated the Designated Land.
- ii The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

7 PROVISION OF CONTRIBUTIONS

7.1 Designated Land

- i The Developer must dedicate the Designated Lands to Council:
 - a free of any trusts, estates, interests, covenants and Encumbrances;
 - b by the times specified in Schedule 2; and
 - c at no cost to Council.
- ii The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with paragraph (i), including any costs incurred by Council in relation to that dedication.
- iii Council must do all things reasonably necessary to enable the Developer to comply with paragraph (i).

7.2 Works

The Developer, at its cost, must:

- i if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;

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- ii carry out and complete each Item of Work by the time specified in Schedule 3; and
- iii carry out and complete the Works:
 - a in accordance with the requirements of, or consents issued, by any Authority;
 - b in accordance with the reasonable requirements of Council and any applicable Development Consent; and
 - c in a proper and **workmanlike competent** manner complying with current industry practice and standards, including applicable Australian standards.

7.3 Monetary Contributions

The Developer must make the Monetary Contributions to Council in accordance with Schedule 5.

7.4 Indexation

- i The amount of each Monetary Contribution will be indexed in accordance with the following formula:

$$\frac{A = B \times C}{D}$$

where:

- A** = the indexed amount;
 - B** = the relevant amount as set out in this agreement;
 - C** = the Index most recently published before the date that the relevant item is provided, completed or paid as the case may be; and
 - D** = the Index current as at the date the Planning Agreement comes into effect.
- If **A** is less than **B** then the amount of the relevant amount will not change.

- ii For the purposes of paragraph (i):
 - a each component of the Monetary Contribution is indexed as at the date it is paid; and
 - b the Index means the *Consumer Price Index (All Groups) for Sydney* or such other index which replaces it from time to time.

8 COMPLETION OF WORKS

8.1 Issue of Completion Notice

If the Developer considers that an Item of Work is Complete it must serve a notice on Council within fourteen (14) days of Completion of that item which:

- i is in writing; and
- ii specifies the date on which the Developer believes the Works were Completed.

8.2 Notice by Council

Within the earlier of:

- i seven (7) days of inspecting the Item of Work set out in a Completion Notice; and
- ii fourteen (14) days from the receipt of the Completion Notice;

Council must provide notice in writing to the Developer that the relevant Item of Work:

- iii has been Completed; or
- iv has not been Completed, in which case the notice must also detail:
 - a those aspects of the Item of Work which have not been Completed; and
 - b the work Council requires the Developer to carry out in order to rectify those deficiencies.

8.3 Deemed Completion

If Council does not provide the Developer with notice within the time specified in clause 8.2, the Item of Work subject of a Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

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8.4 Effect of Council Notice

- i Where Council serves notice on the Developer pursuant to clause 8.2, the Developer must:
 - a rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by Council); or
 - b serve a notice on Council that it disputes the matters set out in the notice.
- ii Where the Developer:
 - a serves notice on Council in accordance with paragraph 8.4(i)(b) the dispute resolution provisions of this document apply; or
 - b rectifies the Works in accordance with paragraph 8.4(i)(a) it must serve upon Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

8.5 New Completion Notice

The provisions of clauses 8.1 to 8.4 (inclusive) apply to any New Completion Notice issued by the Developer.

9 DEFECTS LIABILITY

9.1 Defects Notice

- i Where any Item of Work is Complete but that item contains a defect which:
 - a adversely affects the ordinary use and/or enjoyment of that item; or
 - b will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect;

(**Defect**) Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Work but only during the Defects Liability Period.
- ii A Defects Notice must contain the following information:
 - a the nature and extent of the Defect;
 - b the work Council requires the Developer to carry out in order to rectify the Defect; and
 - c the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than fourteen (14) days).

9.2 Developer to Rectify Defects

- i The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in that notice.
- ii The Developer must follow the procedure set out in clause 8 in respect of the completion of the rectification of any Defect as if a reference in that clause to an Item of Work is a reference to the relevant Defect.

9.3 Access to Designated Land

If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under this clause 8 or 9 after the relevant land has been dedicated or transferred to Council, Council will grant a fee free licence to the Developer:

- i with respect to so much of the relevant Designated Land; and
- ii for such period;

that is reasonably necessary to allow the Developer to properly discharge those obligations.

9.4 Right of Council to Step-in

Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer seven (7) days written notice of its intention to do so.

9.5 Consequence of Step-in

If Council elects to exercise the step-in rights granted to it under clause 9.4 then:

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- i Council may:
 - a enter upon any part of the Land reasonably required to exercise those step-in rights; and
 - b rectify the relevant Defects in accordance with the Defects Notice;
- ii the Developer must not impede or interfere with Council in exercising those rights; and
- iii Council may claim any costs incurred by it in doing so from the Developer as a liquidated debt.

9.6 Costs of Council

Where Council exercises its step-in rights under clause 9.5, it may:

- i call upon the Bank Guarantees provided by the Developer pursuant to clause 14 to meet any costs for which the Developer is liable under clause 0; and
- ii recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by Council in rectifying the Defects.

10 MAINTENANCE OF STORMWATER QUALITY

10.1 Maintenance

- i The Developer must commence stormwater quality monitoring at [agreed point in time], at which time the Maintenance Liability Period will commence.
- ii Prior to the handover of the WSUD Infrastructure to Council, the Developer must undertake sufficient water sampling and analysis to prove statistically that the WSUD treatment train is functional and achieving the targeted improvement in water quality.

10.2 Security During Maintenance Liability Period

Upon the commencement of the Maintenance Liability Period the Developer must provide Council with a Bank Guarantee for an amount equal to [Security amount to be inserted].

10.3 Council May Call on Bank Guarantee

- i If the Developer does not comply with the terms of this clause, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within twenty (20) business days from the date of that notice.
- ii If the Developer fails to comply with a notice issued under paragraph (i) above, Council, without limiting any other avenues available to it, may call on the relevant Bank Guarantee to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

10.4 Return of the Bank Guarantee

Council must return the remaining Bank Guarantee provided under this clause (if any) to the Developer at the expiration of the Maintenance Liability Period for the WSUD Infrastructure.

10.5 Indemnity

The Developer indemnifies Council against any Claim to the extent that the Claim arises as a direct result of a breach of this clause by the Developer.

11 WARRANTIES AND INDEMNITIES

11.1 Warranties

The Developer warrants to Council that:

- i it is able to fully comply with its obligations under this document;
- ii it has full capacity to enter into this document; and
- iii there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

11.2 Indemnity

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The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works, but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

12 CONTAMINATION

12.1 Definitions

For the purpose of this clause:

Contamination: means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- result in an Authority issuing a notice, direction or order under an Environmental Law; or
- which would constitute a violation of any Environmental Law.

Contaminated: means subject to Contamination.

Environmental Law: means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

12.2 Warranty and Indemnity

The Developer warrants that:

- i as far as it is aware, and other than as disclosed in writing to Council prior to the formation of this document, the Designated Land is not Contaminated; and
- ii in relation to any notices or orders issued pursuant to the Contaminated Land Management Act 1997, and the requirements of the EPA and any other relevant Authority, the Developer indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on or under the Designated Land as at the date of dedication or transfer of the Designated Land to Council in accordance with this document.

13 DETERMINATION OF THIS DOCUMENT

13.1 Determination

This document will determine upon the Developer satisfying all of its obligations under the document.

13.2 Effect of Determination

Upon the determination of this document Council will do all things necessary to allow the Developer to remove this document from the title of the whole or any part of the Land as quickly as possible.

14 SECURITY

14.1 Prohibition

Neither party may Assign their rights under this document without the prior written consent of the other party.

14.2 Assignment of Land

The Developer must not Assign its interest in the Land, other than a single residential lot approved pursuant to a Development Consent and created by the registration of a plan of subdivision, unless:

- i Council consents to the Assignment; and
- ii the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this document with respect to the relevant part of the Land being Assigned.

14.3 Compulsory Acquisition of the Designated Land

- i The Developer consents to the compulsory acquisition of the Designated Land:
 - a in accordance with the Acquisition Act; and
 - b on the terms set out in this clause 14.

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- ii Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect to the dedication of that land under this document.
- iii If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - a the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - b Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- iv The parties agree that the provisions of this clause 14 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of section 30 of the Acquisition Act.

14.4 Delivery to Council of Bank Guarantee

Prior to the issue of a Construction Certificate for the Development, the Developer must deliver to Council an unconditional bank guarantee from an Australian bank (Bank Guarantee):

- i in a form acceptable to Council;
- ii for an amount equal to the sum of the Security Values for the Works; and
- iii without an expiry date.

14.5 Council May Call on Bank Guarantee

- i If the Developer does not comply with the terms of this document with respect to the provision of the Works, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within seven (7) days from the date of that notice.
- ii If the Developer fails to comply with a notice issued under paragraph (i) to the reasonable satisfaction of Council, Council may, without limiting any other avenues available to it, call on the relevant Bank Guarantee to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

14.6 Top Up of Bank Guarantee

Within fourteen (14) days of being requested to do so by Council the Developer must ensure that the amount secured by any Bank Guarantee is returned to the relevant level set out in clause 14.4.

14.7 Security during Defects Liability Period

- i Upon the completion of an Item of Work and the commencement of the Defects Liability Period, Council must return any Bank Guarantees held by it with respect to the relevant Item of Work.
- ii In exchange, the Developer must provide Council with one (1) or more Bank Guarantees in a form acceptable to Council for an amount equal to five per cent (5%) of the sum of the Security Value for that Item of Work.

14.8 Return of Bank Guarantee

Council must return the remaining Bank Guarantees (if any) to the Developer within 30 days from the expiration of the Defects Liability Period for the last Item of Work that is Completed.

14.9 Bank Guarantee Not Required for Certain Contributions

A Bank Guarantee under this clause 14 is not required to be provided with respect to the Contribution Value of the Designated Lands.

15 DISPUTE RESOLUTION

15.1 Notice of Dispute

- i If a dispute between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
 - a is in writing;
 - b adequately identifies and provides details of the Dispute;
 - c stipulates what the First Party believes will resolve the Dispute; and

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- d designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- ii The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

15.2 Conduct Pending Resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

15.3 Further Steps Required before Proceedings

Subject to clause 15.12 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 15.1 is served.

15.4 Disputes for Mediation or Expert Determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 15.5 or expert resolution under clause 15.6.

15.5 Disputes for Mediation

- i If the parties agree in accordance with clause 15.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- ii If the mediation referred to in paragraph (i) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 15.6.

15.6 Choice of Expert

- i If the Dispute is to be determined by expert determination, this clause 15.6 applies.
- ii The Dispute must be determined by an independent expert in the relevant field:
 - a agreed between and appointed jointly by the parties; or
 - b in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- iii If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- iv The expert appointed to determine a Dispute:
 - a must have a technical understanding of the issues in dispute;
 - b must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - c must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- v The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

15.7 Directions to Expert

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- i In reaching a determination in respect of a dispute under clause 15.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- ii The expert must:
 - a act as an expert and not as an arbitrator;
 - b not accept verbal submissions unless both parties are present;
 - c on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - d take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - e not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - f issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - g issue a final certificate stating the expert's determination (together with written reasons); and
 - h act with expedition with a view to issuing the final certificate as soon as practicable.
- iii The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
 - a a short statement of facts;
 - b a description of the Dispute; and
 - c any other documents, records or information which the expert requests.

15.8 Expert May Convene Meetings

- i The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- ii The parties agree that a meeting under paragraph (i) is not a hearing and is not an arbitration.

15.9 Other Courses of Action

If:

- i the parties cannot agree in accordance with clause 15.3 to refer the matter to mediation or determination by an expert; or
- ii the mediation referred to in clause 15.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation;

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

15.10 Final Determination of Expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

15.11 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

15.12 Remedies Available under the Act

This clause 15 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

15.13 Urgent Relief

This clause 15 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

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16 POSITION OF COUNCIL

16.1 Consent Authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

16.2 Document does not Fetter Discretion

This document is not intended to operate to fetter:

- i the power of Council to make any Law; or
- ii the exercise by Council of any statutory power or discretion (**Discretion**).

16.3 Severance of Provisions

- i No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document 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 16 is substantially satisfied;
 - b in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - c to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- ii Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

16.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

17 CONFIDENTIALITY

17.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

18 GST

18.1 Definitions

In this clause 18 the terms 'Taxable Supply', 'GST', 'Tax Invoice' and 'Input Tax Credit' have the meaning given to them in the GST Law.

18.2 Non-monetary Supplies

- i The parties agree that any non-monetary supplies made by one party to the other pursuant to this agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- ii In the event that one party reasonably believes that the non-monetary supply it makes to the other is a Taxable Supply then the parties agree to negotiate in good faith to agree to the GST inclusive market value of that Taxable Supply as follows:
 - a The party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive market value and will disclose the amount of GST included in the GST inclusive market value.

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~~b — The recipient of the Taxable Supply will pay to the other party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.~~

~~iii — In the event that both parties reasonably believe that each make a non-monetary Taxable Supply to the other, any GST payable by one party to the other will be off-set against each other and any net difference will be paid by the party with the greater obligation.~~

18.3 Supply Expressed in Terms of Money

~~i — If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this document and the supply was not expressed to include GST, then:~~

~~a — the recipient of the supply must pay an amount equal to the GST on that supply to the other party;~~

~~b — the party making the supply will issue a Tax Invoice to the other party; and~~

~~c — the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.~~

18.4 Expenses and Costs Incurred

~~i — If any expenses or costs incurred by one party are required to be reimbursed by the other party under this document, then the amount of the reimbursement will be calculated as follows:~~

~~a — The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.~~

~~b — This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.~~

~~c — The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.~~

18.5 Survival of Clause

~~This clause 18 continues to apply after the expiration or termination of this agreement.~~

18.1 Definitions

~~Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.~~

18.2 Intention of the parties

~~Without limiting any other provision of this clause 18, the parties intend that:~~

~~i Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this document; and~~

~~ii no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.~~

18.3 Reimbursement

~~Any payment or reimbursement required to be made under this document that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.~~

18.4 Consideration GST exclusive

~~Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 18.~~

18.5 Additional amounts for GST

~~Subject to clause 18.7, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this document.~~

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- i any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount);
- ii the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- iii the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid.

18.6 Variation

- i If the GST Amount properly payable in relation to a supply (as determined in accordance with clauses 18.5 and 18.7), varies from the additional amount paid by the Recipient under clause 18.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 18.6 is deemed to be a payment, credit or refund of the GST Amount payable under clause 18.5.
- ii The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this document as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

18.7 Non-monetary consideration

- i To the extent that the consideration provided for the Supplier's taxable supply to which clause 18.5 applies is a taxable supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 18.5 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- ii The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 18.5 (or the time at which such GST Amount would have been payable in accordance with clause 18.5 but for the operation of clause 18.7(i)).

18.8 No merger

This clause will not merge on completion or termination of this document.

19 ACCESS TO LAND

19.1 Application of Clause

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this document (**Necessary Access**).

19.2 Terms of Licence

The terms of Schedule 2 apply to any Necessary Access.

20 LEGAL COSTS

Each party must pay their own legal costs and disbursements with respect to the preparation, negotiation, formation and implementation of this document.

21 ADMINISTRATIVE PROVISIONS

21.1 Notices

- i Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - a delivered to that person's address;
 - b sent by pre-paid mail to that person's address; or
 - c sent by email to that person's email address.
- ii A notice given to a person in accordance with this clause is treated as having been given and received:
 - a if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;

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- b if sent by pre-paid mail, on the third Business Day after posting; and
 - c if sent by email to a person's email address and a conformation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
- iii For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

21.2 Entire Agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

21.4 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

21.5 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

21.6 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- i the revocation or suspension of the power of attorney by the grantor; or
- ii the death of the grantor.

21.7 Governing Law

The law in force in the State of New South Wales governs this document. The parties:

- i submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- ii may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

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COUNCIL POLICY

EXECUTED AS AN AGREEMENT

EXECUTED by and on behalf of **WOLLONGONG CITY COUNCIL** by its Authorised Officer:

Signature of Authorised Person

Signature of Witness

[Print] Name of Authorised Officer

[Print] Name of Witness

Office Held

Date

Date

EXECUTED by _____
in accordance with section 127(1) of the Corporations Act by authority of its directors.

Director/Secretary Signature

Signature of Witness

[Print] Name of Director/Secretary

[Print] Name of Director

Date

Date

PLANNING AGREEMENTS

COUNCIL POLICY

SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or Development Application – (Section 7.4(1)) The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	
<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	Refer to clause 4.1 of the Planning Agreement.
<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	Refer to clause 4.1 of the Planning Agreement.
<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	Refer to clause 4.2 of the Planning Agreement.
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p>	Refer to clause 15 of the Planning Agreement.
<p>Enforcement of this agreement (Section 7.4(3)(g))</p>	Refer to clauses 6 and 14 of the Planning Agreement.
<p>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</p>	Refer to clause 16 of the Planning Agreement.

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COUNCIL POLICY

SCHEDULE 2: TERMS OF LICENCE

1 DEFINITIONS

For the purposes of this Schedule 2:

- i the **Land** is the land being accessed under the Licence;
- ii the **Licence** means the licence of the Land to which this Schedule applies;
- ii the **Licensee** is the party accessing the Land; and
- iii the **Licensor** is the owner of the Land.

2 LICENCE

2.1 Personal Rights

- i The Licence is personal to the Licensee.
- ii The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- iii The Licensor may refuse the granting of consent under paragraph (ii) without reason and at its absolute discretion.

2.2 Leasehold Interest

- i This deed does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
 - a the Licence does not confer exclusive possession of the Land on the Licensee;
 - b the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - (i) entry onto the Land; and/or
 - (ii) the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee;
- ii the Licensee does not have any right to quiet enjoyment of the Land; and
- iii the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

3 COMPLIANCE WITH AUTHORITIES

3.1 No Warranty as to Suitability for Use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

3.2 Compliance with the Terms of the Consents

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

3.3 Compliance with Directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

3.4 Obtaining Further Consents

- i If the Licensee requires further consents to conduct activities on the Land it must:
 - a make such applications itself; and
 - b bear all costs incurred by it in relation to obtaining the relevant consent.
- ii The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

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4 LIMITATION OF THE LICENSOR'S LIABILITY

4.1 Insurances

- i The Licensee must effect and keep current and in force the following policies of insurance:
 - a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - (i) personal injury or death of any person; and
 - (ii) loss or damage to property;
 - b Workers compensation insurance under the *Workers Compensation Act 1987* covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
 - c A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
 - d A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.
- ii The policies referred to in paragraphs (i)(a), (i)(c) and (i)(d) must note the interest of the Licensor as principal.

4.2 Inspection of Insurance

- i The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- ii The licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

4.3 Cancellation of Insurance

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

4.4 Risk

The Licensee uses and occupies the Land at its own risk.

4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and/or occupation of the Land.

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APPENDIX B

Explanatory Note Template (Clause 1.6)

Explanatory Note

(Clause 25E of the Environmental Planning and Assessment Regulation 2000)

[Note: To be completed upon finalisation of Planning Agreement]

Draft Planning Agreement

Under section 7.4 of the Environmental Planning and Assessment Act 1979

- 1 **Parties**
Wollongong City Council
(Developer)
- 2 **Description of Subject Land**
- 3 **Description of Proposed Change to Environmental Planning Instrument/Development Application**
- 4 **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**
- 5 **Assessment of the Merits of the Draft Planning Agreement**
The Planning Purposes Served by the Draft Planning Agreement
- 6 **How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979**

How the Draft Planning Agreement Promotes the Public Interest

- (a) How the Draft Planning Agreement Promotes the Principles for Local Government
- (b) Whether the Draft Planning Agreement Conforms with Council's Capital Works Program

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

Other Matters

Signed and Dated by All Parties

PLANNING AGREEMENTS

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APPENDIX C

Works for Planning Agreements (Clause 2.2)

Possible requirements:

The following is a list of possible requirements that Council may have for planning agreements. They are not exhaustive and developers are encouraged to discuss these or other requirements that may be included in a planning agreement.

Local community facilities (including education, community health and well-being, childcare provision and civic improvements)

[**Note:** Specify the facilities required]

The environment (including compensation for loss or damage, monitoring the impacts of development)

[**Note:** Specify the facilities required]

Transport improvements

[**Note:** Specify the facilities required]

Providing planning benefits to the wider community (eg affordable housing, training and skills provision)

[**Note:** Specify the facilities required]

PLANNING AGREEMENTS

COUNCIL POLICY

LEGISLATIVE REQUIREMENTS

Document any instruments of Legislation (Acts, Regulations etc) that need to be followed as part of the policy.

REVIEW

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

REPORTING

Are there any reporting requirements? I.e.: Annual Report requirements, external reporting to other agencies etc. required under this policy.

ROLES AND RESPONSIBILITIES

Document what roles are responsible for implementation of actions under this policy. Do not detail the steps / procedures staff will undertake, just specify the officer details and the outcomes they are responsible for.

RELATED PROCEDURES

Document title of related procedures and their location. Do not document the procedure here. Procedures are related to task orientated areas and are not to be included in the policy. Procedures may require EMC approval in accordance with the Policy Framework.

APPROVAL AND REVIEW		
Responsible Division	City Strategy	
Date/s adopted	<i>EMC</i> [updated by policy owner]	<i>Council</i> [To be inserted by Governance]
Date/s of previous adoptions	12 May 2014, 26 July 2011	
Date of next review	[Not more than two years from last adoption]	

ITEM 3 DETERMINATION OF NUMBER OF COUNCILLORS FOR 2021-2024 TERM OF OFFICE

This report recommends that Council retain the current number of Councillors (being 13, one of whom is the Lord Mayor) for the 2021-2024 term of office.

RECOMMENDATION

In accordance with section 224(2) of the *Local Government Act 1993*, Council determine the number of Councillors for the 2021-2024 term of office to be 13 (one of whom is the Lord Mayor).

REPORT AUTHORISATIONS

Report of: Todd Hopwood, Manager Governance and Customer Service
Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

The *Local Government Act 1993* (the Act) requires Council to determine the number of Councillors for the 2021-2024 term of office not less than 12 months before the next ordinary election ie. before 4 September 2020. The Act requires the number of Councillors to be at least 5 and not more than 15 (one of whom is the Lord Mayor).

At its meeting on 18 November 2019, Council reviewed and endorsed revised ward boundaries to take effect at the next general election. The boundary adjustments were required to ensure a balanced number of people living within each ward.

PROPOSAL

The number of Councillors for the 2021-2024 term of office is submitted for Council's determination in accordance with section 224(2) of the *Local Government Act 1993*. It is proposed the number of Councillors for the 2021-2024 term of office remain the same as the current term.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal "We are a connected and engaged community".

It specifically delivers on core business activities as detailed in the Governance and Customer Service Business Plan 2020-21.

CONCLUSION

Council is required by the *Local Government Act 1993* to determine the number of Councillors for the 2021-2024 term of office and it is recommended that the current number of Councillors be retained.

ITEM 4 COUNCIL ACCELERATED ASSESSMENT PROGRAM - DEVELOPMENT APPLICATIONS

In June 2020, the Secretary of the Department of Planning, Industry and Environment (DPIE) wrote to Council extending an invitation to participate in the Local Accelerated Assessment Program. This program is intended to unlock the benefits of an improved planning system and access the potential to create jobs and stimulate the local economy in response to the impacts of the COVID-19 pandemic.

Council officers have expressed a preliminary interest in working with DPIE to develop a pilot Local Accelerated Assessment Program that is appropriate for Wollongong and that will trial a range of initiatives to bring about long-term improvement to development assessment systems and processes.

Proceeding to develop a Wollongong Council Accelerated Assessment Program will require consideration of a range of matters including:

- development of appropriate criteria
- governance and probity
- process framework that provides clarity and confidence to proponents and the community
- alignment with Panel processes
- access to the State's new "One Stop Shop"
- documentation and evaluation.

RECOMMENDATION

- 1 Endorsement be given to Council's participation in the Council Accelerated Assessment Program for significant local employment generating development applications.
- 2 Council investigate the development of two steams involving:
 - a Working with the Southern Regional Planning Panel and Wollongong Local Planning Panel to finalise the assessment and determination of long-standing development applications.
 - b Establishing end-to-end procedures that will streamline the assessment and determination process for eligible development applications.

REPORT AUTHORISATIONS

Report of: Mark Riordan, Manager Development Assessment and Certification
Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

In April 2020, the Minister for Planning and Public Spaces, the Hon Rob Stokes MP, announced the Planning System Acceleration Program which is designed to support NSW's immediate and long-term economic recovery from the COVID-19 crisis.

Under the Program, qualifying projects that require State planning approval are able to undergo a "fast-tracked assessment process". To qualify, a project must already be in the system, it must be able to demonstrate public benefit through new public open spaces or affordable housing, it must demonstrate an ability to create jobs both during construction and once complete, and it must be able to commence construction within six months if it is a development application, or proceed to the development application phase within six months if it is a rezoning.

To date, four tranches of projects have been announced, however, no applications within the Wollongong LGA have met the criteria for inclusion in an accelerated tranche.

In June 2020, the Secretary of Department of Planning, Industry and Environment wrote to councils seeking expressions of interest to develop a Council Accelerated Assessment Program to build off the critical role local government plays in the NSW planning system to stimulate local and regional economic activity.

Wollongong has a demonstrated track record as an innovator in planning systems, having participated in the best practice assessment guide, standard conditions review, standard DCP review as well as being an early adopter of the planning portal and being the only LGA outside of Metro Sydney to have a Local Planning Panel.

In line with our culture of innovation, Council staff provided an initial response that welcomed the opportunity to have further discussions about what a Local Acceleration Program might look like for Wollongong and how it may be able to use the pilot program to bring about long-term systems and process improvement in partnership with DPIE.

PROPOSAL

Wollongong City Council is already a high performer in terms of development application statistics relative to comparable councils. Council also has a range of initiatives in place that help proponents navigating the planning system such as the Small Business Support Team. Notwithstanding this, staff are always open to system and process improvement.

Council's Development Assessment and Certification team intend to develop a Wollongong Council Accelerated Assessment Program which incorporates two streams.

Stream One would mirror the model used by the State Government in its "Fast-tracked assessments process".

This is an end of assessment process and would involve reviewing existing development applications in the system to identify opportunities to complete final assessment reports for consideration of the relevant Planning Panel within a specified period. Typically, projects identified under this Stream will have completed the substantive planning work and are post the exhibition and community consultation phase.

Eligible development applications would be announced through tranches like the State process.

This component of the program would apply to existing development applications that meet the criteria and have the potential to translate to development activity within a reasonable timeframe. Given this focus, Stream One would have a finite lifespan and would be retired once application backlogs are cleared.

Stream Two would be a bolder initiative to consider and trial changes to end-to-end systems and procedures to streamline the assessment process for complex and significant employment generating development applications.

Development of a program to support this Stream would be undertaken over the next two months and would require consideration of a range of matters including:

- Appropriate criteria tailored for Wollongong
- Governance and probity
- Process framework that provides clarity and confidence to proponents and the community. This may include:
 - establishing pre-DA process requirements
 - clarifying expectations about the quality of development applications that are submitted
 - rapid preliminary assessment
 - multi-disciplinary assessment team for each project

- tightening of additional information opportunities
- Review of Panel processes, including preliminary briefings and proactive meeting schedules
- Access to the State’s new “One Stop Shop” to resolve agency issues
- Documentation and evaluation.

This Stream has the potential to incorporate permanent changes to development assessment processes for significant proposals.

All development applications to be processed under a Wollongong Council Accelerated Assessment Program will be subject to the same level of assessment as they are under the current process and will comply with the requirements of the Environmental Planning and Assessment Act.

Both streams will be developed having regard to the suite of resources to be made available by the NSW Government. These resources will include program controls, eligibility criteria, probity principles and templates.

CONSULTATION AND COMMUNICATION

All development applications to be processed under the Wollongong Local Accelerated Assessment Program will be subject to the same level of assessment and opportunity for consultation as they do under the current process.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 Goal “Objective 1.3 - The sustainability of our urban environment is improved”. It specifically delivers on the following -

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2020-21
Strategy	4 Year Action	Operational Plan Actions
1.3.1 Manage land uses to strengthen urban areas and improve connectivity to train stations and key transport routes	1.3.1.1 Impacts from development on the environment are assessed, monitored and mitigated	Engage with other tiers of government, the development / building industry and the broader community to achieve improved development outcomes

Participating in the Council Accelerated Assessment Program would provide an opportunity to deliver on the following action from the adopted Economic Development Strategy:

- 5.1 Establish a mechanism to expedite significant employment generating projects, which involves input from multiple specialist teams across Council.*

SUSTAINABILITY IMPLICATIONS

Participation in the Council Accelerated Assessment Program would aim to deliver efficiencies and improvements in the development assessment process. It would provide an opportunity to trial a range of new processes to streamline service delivery in the planning system.

RISK MANAGEMENT

Any decision around an accelerated assessment process requires adherence to probity principles. In establishing its “fast-tracked assessments process”, DPIE consulted with the Independent Commission Against Corruption and appointed an independent probity advisor to ensure that its program is robust and transparent. Council will have access to the State’s probity principles to ensure that a Wollongong Accelerated Assessment Program is appropriately managed and documented.

FINANCIAL IMPLICATIONS

Participation in the program does not involve additional fees or resources that Council can draw on. The development and trial of a Wollongong Accelerated Assessment Program will be through existing staff resources.

CONCLUSION

Council has been invited to participate in the NSW Government's Council Accelerated Assessment Program which would involve adapting and applying the State's "fast-tracked assessments process" as appropriate for Wollongong.

Under the Program, Council would seek to accelerate the final assessment and determination process of significant employment generating development applications that have completed the substantive planning work and are post the exhibition phase.

In considering the invitation to participate in the Program, staff have identified an opportunity to apply the principles that underpin the Program more broadly to achieve system improvement in the development assessment process. It is intended to develop and trial some different approaches that may result in streamlining of our end-to-end development assessment processes for significant proposals that will contribute to local economic development and employment opportunities.

The Program aims to deliver accelerated assessment of key projects without in any way compromising the current assessment process, community input, or transparency in decision making.

ITEM 5 QUARTERLY VARIATIONS FOR DEVELOPMENT APPLICATIONS - APRIL TO JUNE 2020

This quarterly report to Council identifies three (3) Development Applications which were determined during the period 1 April 2020 to 30 June 2020, where a variation to a development standard was granted. The NSW Department of Planning, Industry and Environment has been notified of the variations as part of Council's ongoing reporting requirements.

RECOMMENDATION

Council note the development standards variation report for the period 1 April to 30 June 2020.

REPORT AUTHORISATIONS

Report of: Mark Riordan, Manager Development Assessment and Certification
Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

1 Quarterly Variations for Development Applications - April to June 2020

BACKGROUND

Development Applications involving variations to development standards may be made under clause 4.6 of Wollongong Local Environmental Plan 2009 (WLEP 2009). Requirements are provided within clause 4.6 of WLEP 2009 for the assessment of variations to development standards.

Any variations approved are reported on a quarterly basis to the NSW Department of Planning, Industry and Environment (DPIE), in accordance with procedural guidelines. Council and the DPIE may in turn consider the extent and nature of variations granted when reviewing relevant planning controls or instruments.

Wollongong City Council provides further transparency and oversight of applications seeking departures to development standard via –

- Wollongong Local Planning Panel (WLPP) review
- Declaration of any variation during public exhibition
- Maintaining an ongoing public record of all variations approved

Following recent amendments to Planning Panel operations by NSW DPIE, minor variations to development standards (below 10%) receiving less than two objections may be determined by staff under delegated authority. This delegation is restricted to Manager level.

QUARTERLY RESULT

During the 1 April to 30 June 2020 quarter, three (3) Development Applications were approved which included a variation to a development standard. Attachment 1 provides a summary of each application and the circumstances relating to the variations. All of the application assessment reports are publicly available through Council's website.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2028 goal "We value and protect our environment". It specifically delivers on core business activities as detailed in the Development Assessment Service Plan 2020-2021.

Development Applications approved with variations to development standards for the quarterly period between 1 April 2020 and 30 June 2020 (Reporting applications with a decision of 'Approved'/'Deferred Commencement')

Application	DA-2019/1123		
Lots	2 DP 152994, Lot 1 DP 784111, Lot 2 DP 784111	Zone	B3 Commercial Core, B3 Commercial Core
Address	35-37 Atchison Street, WOLLONGONG NSW 2500		
Description	Demolition of existing structures and construction of a 14 storey mixed use development comprising 50 residential units, one (1) ground floor commercial tenancy and two levels of basement parking		
Decision	Approved	Decision Date	23 June 2020
Variations	Planning Instrument	WLEP 2009	Clause c8.6 (2,3) Zone B3 Commercial Core/Zone B4 Mixed
	Justification of variation	<p>The proposed variation to the side boundary building separation distances is considered acceptable on the basis that the proposal meets the objectives of B3 zone and objectives of Clause 8.6. The proposed variations better respond to the pattern of development in the locality.</p> <p>In terms of the building separation distance to the northern boundary, the separation provided does not compromise the privacy or amenity for occupants of either development given the layout of the units and the interface between residential towers that results from the treatment of habitable and non-habitable parts of the buildings.</p> <p>In terms of the building separation to the south, the requirement for there to be no separation between the neighbouring buildings at podium level (relating to the commercial ground floor) cannot be physically achieved given the existing setback of the church 5.5 metres from the common property boundary. The residential units within the podium do not achieve the 16 metre separation distance to the church as the podium is built to the side boundaries with blank walls. Although the separation distance is not achieved, the orientation of the residential units to the street means that no privacy impact will occur. The visual appearance of the development responds to the required street frontage height for developments within the city centre.</p>	
	Extent of variation	<p>Units on Levels 1 and 2 (within podium) are built to side boundary where 20m separation is required (adjoining units) to north and 16m separation to south (no dwellings) – Maximum 100% exceedance.</p> <p>Units on levels 3-13 have a 16m-18m separation distance where 20m is required to the adjacent northern shop top housing development – Maximum variable 20% exceedance</p>	
	Concurring Authority	Wollongong Local Planning Panel	

Application	DA-2020/35		
Lot	22 SP 55559	Zone	B4 Mixed Use
Address	22/100-104 Corrimal Street, WOLLONGONG NSW 2500		
Description	Residential - construction of roof level cabana for Unit 22		
Decision	Approved	Decision Date	30 April 2020
Variations	Planning Instrument	WLEP 2009	Clause c4.3(2) Height of buildings
	Justification of variation	Roof level structure (cabana) sits below existing maximum building height of lift shaft/plant room. Additional height does not	

		compromise achievement of objectives of the B4 zone and the specific development standard.
	Extent of variation	Proposed cabana height is 26.40 metres where permitted height is 24 metres – 10% exceedance
	Concurring Authority	Council under assumed concurrence

Application	DA-2019/1081		
Lot	12 DP 548409	Zone	R2 Low Density Residential
Address	3 George Street, BERKELEY NSW 2506		
Description	Residential - demolition of all existing structures and construction of multi dwelling housing - four (4) townhouses		
Decision	Approved	Decision Date	21 May 2020
Variations	Planning Instrument	WLEP 2009	Clause c7.14 (1, 2) Minimum site width
	Justification of variation	A 18 metre minimum lot width requirement generally applies for this development. The site ranges in width between 14.9 metres up to 21 metres. The rear half of the site does not achieve the 18 metre lot width. The variation is considered acceptable on the basis that the proposed development does not pose any adverse privacy, overshadowing or amenity impact upon neighbouring properties. The proposed development also complies with the majority of development requirements including minimum setback, landscaping, car parking and private open space requirements.	
	Extent of variation	18 metre lot width requirement. Variable 14.9 metre to 21 metre lot width - Maximum 17.2% exceedance	
	Concurring Authority	Wollongong Local Planning Panel	

ITEM 6

PROPOSED GRANT OF EASEMENT TO DRAIN WATER 3.0M WIDE OVER LOT 207 PIONEER DRIVE, WOONONA (LOT 207 DP 776457) AND LOT 545 THOMAS COLLAERY PLACE, WOONONA (LOT 545 DP 831486)

As a condition of consent of DA-2019/1464 at No 9 Pioneer Drive, Woonona for demolition of existing structures and construction of a self-storage unit development, the applicant is required to obtain an easement to drain water through the adjoining Council owned land known as Lot 207 Pioneer Drive, Woonona (Lot 207 DP 776457) and Lot 545 Thomas Collaery Place, Woonona (Lot 545 DP 831486). This report seeks approval to the grant of the easement.

RECOMMENDATION

- 1 Pursuant to section 46(a1) of the *Local Government Act 1993*, Council resolves to grant an easement to drain water 3.0m wide over Council Community land known as Lot 207 DP 776457 and Lot 545 DP 831486, in favour of Lot 43 DP 818249 and Lot 44 DP 818249, No 9 Pioneer Drive, Woonona, as shown crosshatched on the attachments to this report.
- 2 Council accept payment in the amount of \$1,000.00 (GST free) from the owner of Lot 43 DP 818249 and Lot 44 DP 818249, No 9 Pioneer Drive, Woonona as compensation for the grant of the easement.
- 3 Approval be granted to affix the Common Seal of Council to the survey plan, Section 88B Instrument and any other documentation required to give effect to this resolution.
- 4 The applicant be responsible for all costs relating to the easement including valuation, survey, plan registration and legal costs, and any other costs incurred in this matter.

REPORT AUTHORISATIONS

Report of: Lucielle Power, Manager Property + Recreation
Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

- 1 Map of Proposed Easement over Council's Land known as Lot 207 DP 776457 and Lot 545 DP 831486
- 2 Aerial Map of Proposed Easement over Council's Land known as Lot 207 DP 776457 and Lot 545 DP 831486

BACKGROUND

Deferred development consent for DA-2019/1464 at No 9 Pioneer Drive, Woonona for demolition of existing structures and construction of a self-storage unit development was granted on 23 June 2020.

Consent condition (i)(a) of DA-2019/1464 requires the applicant to obtain an easement to drain water 3.0m wide through the adjoining Council owned Community land known as Lot 207 DP 776457 and Lot 545 DP 831486, as shown crosshatched on Attachments 1 and 2. The easement will connect to a headwall with scour protection which will be maintained as a Council asset.

Lot 207 DP 776457 and Lot 545 DP 831486 are both classified as Community land under the *Local Government Act 1993* and function as a drainage reserve. The proposed easement will not impact on the existing use of the Community land.

Council sought a valuation report from Walsh & Monaghan Valuers regarding the amount of compensation that would be payable by the applicant to Council for the grant of the easement. The amount of compensation was assessed at \$1,000.00 (GST free) which has been agreed by the applicant.

PROPOSAL

It is proposed that Council approve the grant of an easement to drain water 3.0m wide over Lot 207 DP 776457 and Lot 545 DP 831486, in favour of Lot 43 DP 818249 and Lot 44 DP 818249, No 9 Pioneer Drive, Woonona, as shown crosshatched on Attachments 1 and 2.

CONSULTATION AND COMMUNICATION

- Legal Services
- Vertex Project Management – acting on behalf of the applicant
- Walsh & Monaghan Valuers
- Council's Finance Division in relation to GST advice on compensation payable by the applicant to Council for the grant of the easement
- Council's Infrastructure Strategy and Planning Division in relation to the headwall and scour protection.

PLANNING AND POLICY IMPACT

This report is in accordance with Council's policy "Land and Easement Acquisition and Disposal".

This report contributes to the delivery of Wollongong 2028 goal 1 "We value and protect our environment".

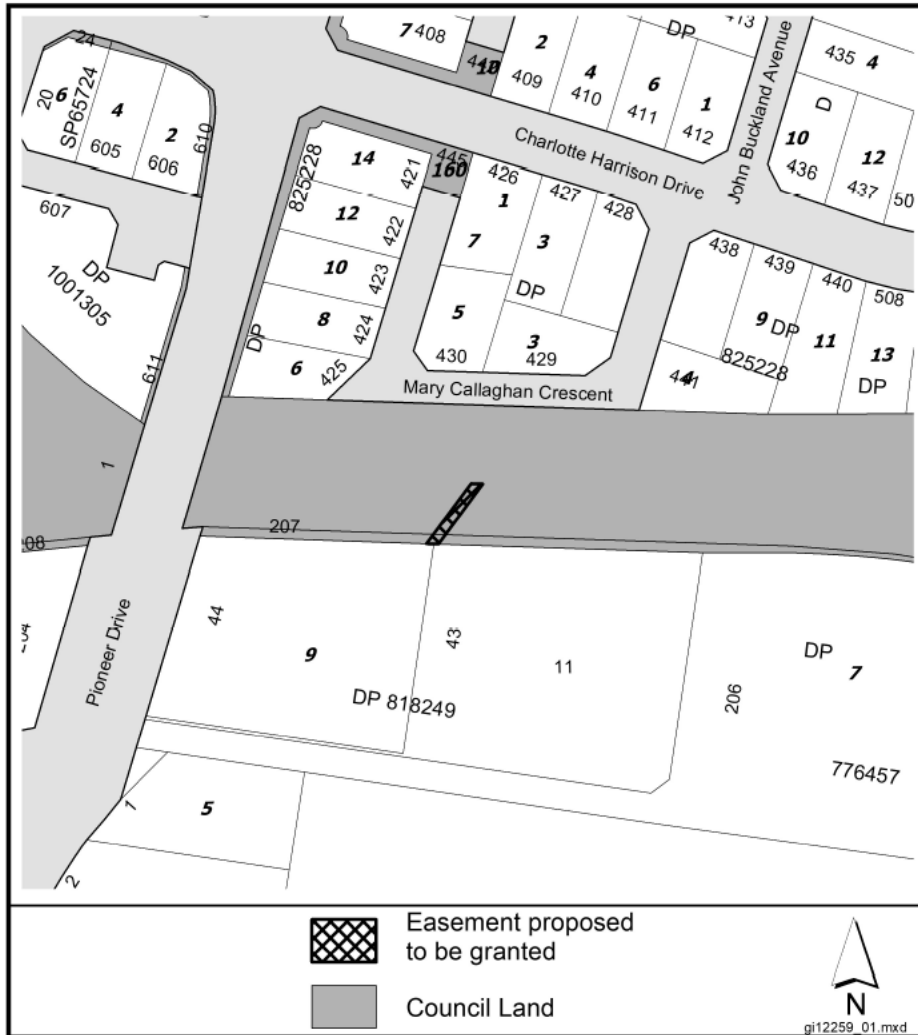
It specifically delivers on core business activities as detailed in the Property Services Service Plan 2020-21.

FINANCIAL IMPLICATIONS

Council will receive \$1,000.00 (GST free) as compensation for the grant of the easement which is considered to be fair and reasonable based on the valuation report obtained. The applicant will also be responsible for all costs in the creation of the easement including valuation, survey, plan lodgement and legal costs, and any other costs.

CONCLUSION

Consent condition (i)(a) of DA-2019/1464 permits the owners of Lot 43 DP 818249 and Lot 44 DP 818249, No 9 Pioneer Drive, Woonona to install drainage infrastructure on Council's adjoining Community land. By granting a drainage easement over the land, Council will receive compensation for the easement, be able to identify the exact location of the drainage infrastructure and will formalise maintenance obligations in relation to the drainage infrastructure.



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ITEM 7

QUOTATION E5520 - WOONONA SURF LIFE SAVING CLUB REFURBISHMENT WORKS OF MALE AMENITY AND ROOF WORKS

Council has identified the need to replace the roof following recent storm events and carry out associated repairs and refurbishment works to the male amenities at the Woonona Surf Life Saving Club (SLSC).

Council considered a report on 25 May 2020 where it was resolved that tenders not be invited for these works due to extenuating circumstances and determined that a formal quotation process be undertaken in accordance with Council's procurement policies and procedures.

This report provides Council with the outcome of that engagement process for this project.

RECOMMENDATION

Council note the engagement of Batmac Constructions Pty Ltd to complete the proposed roof replacement and refurbishment works at Woonona SLSC in the sum of \$415,085.08 (Ex GST).

REPORT AUTHORISATIONS

Report of: Glenn Whittaker, Manager Project Delivery

Authorised by: Andrew Carfield, Director Infrastructure + Works - Connectivity Assets + Liveable City

ATTACHMENTS

- 1 Location Plan

BACKGROUND

The Woonona SLSC operates out of the building located on Crown land off Kurraba Road, Woonona east of Nicholson Park. The building contains female and male amenities, lifesaver room, boat and general storage facilities.

The existing roof system at the Woonona SLSC was replaced in 1992. The asset owner has recently determined that the roof sheeting has reached the end of its life cycle and requires replacement. Council will inspect the roof framing during construction while roof sheeting is removed to determine the feasibility to upgrade capacity to support the future installation of solar panels. The works will also include the upgrade of the male amenities, following from the recent refurbishment of the female, accessible and first aid amenities. A number of windows including lintels will be replaced, asbestos eaves removed and repairs to slabs will also be completed. The building will be closed during these works, however there are no commercial tenants impacted by these arrangements.

The successful implementation of the proposed works is expected to ensure the serviceability of the Woonona SLSC building in providing ongoing support to the local community and to life saving operations which are conducted from the facility.

Council on 25 May 2020 considered a report regarding the Woonona SLSC roof replacement and associated refurbishment works and resolved the following:

- 1 Pursuant to section 55(3)(i) of the Local Government Act 1993, tenders not be invited for the contract or contracts for the refurbishment of the:
 - a Bellambi SLSC facility, located off Morgan Place, Bellambi,
 - b Coledale SLSC facility, located off Lawrence Hargrave Drive, Coledale; and
 - c Woonona SLSC facility, located off Kurraba Road, Woonona

due to extenuating circumstances, being the timeframe required for tendering for these contracts would involve refurbishment work extending into the summer surf season, with consequential severe and adverse impact upon the Clubs' operations and commitments.

- 2 *Council delegate to the General Manager the authority to undertake and finalise a formal quotation process, in accordance with Council's procurement policies and procedures with contractors with demonstrated experience and ability to undertake the works with a view to entering into a contract or contracts for the works.*
- 3 *Council delegate to the General Manager authority to enter into a contract (or contracts) with the contractor or contractors selected following the process outlined at 2 above.*
- 4 *A report describing the outcome of the procurement process be submitted to the next available Council meeting following the successful engagement of contractor or contractors.*
- 5 *That staff work with operators to minimize disruption to commercial operations at these clubs, recognising that following COVID-19 enforced closures, they are striving to rebuild their businesses.*

This report addresses Item 4 of that resolution and provides Council with the outcomes of the formal quotation and engagement process.

Quotations were invited for this project by the selective quotation method, with a close of quotations of 10.00 am on 23 June 2020.

Fourteen (14) quotations were received by the close of quotations and all quotations have been scrutinised and assessed by a Quotation Assessment Panel constituted in accordance with Council's Procurement Policies and Procedures and comprising representatives of the Project Delivery, Property & Recreation, Governance and Customer Services Divisions.

The Quotation Assessment Panel assessed all quotations in accordance with the following assessment criteria and weightings as set out in the formal quote documents:

Mandatory Criteria

- 1 Satisfactory references from referees for previous projects of similar size and scope;
- 2 Financial assessment acceptable to Council which demonstrates the responder's financial capacity to undertake the works; and
- 3 Site Inspection – Responders are required to attend a site inspection.

Assessable Criteria

- 1 Cost to Council – 45%
- 2 Appreciation of scope of works and construction methodology – 15%
- 3 Experience and Satisfactory Performance in understanding Projects – 10%
- 4 Staff Qualifications and Experience – 5%
- 5 Project Schedule – 10%
- 6 Environmental Management Policies and Procedures – 5%
- 7 Workplace Health and Safety Management System – 5%
- 8 Demonstrated Strengthening of Local Economic Capacity – 5%.

The mandatory assessment criteria have been met by the recommended responder.

The Quotation Assessment Panel utilised a weighted scoring method for the assessment of quotes which allocates a numerical score out of 5 in relation to the level of compliance offered by the quotes to each of the assessment criteria as specified in the quote documentation. The method then takes into account pre-determined weightings for each of the assessment criteria which provides for a total score out of 5 to be calculated for each quote. The quote with the highest total score is considered to be the quote that best meets the requirements of the quote documentation in providing best value to Council. Table 1 below summarises the results of the quotation assessment and the ranking of responders.

TABLE 1 – SUMMARY OF QUOTE ASSESSMENT

Name of Responders	Ranking
Batmac Constructions Pty Ltd	1
Project Coordination Pty Ltd	2
Advanced Constructions Pty Ltd	3
Sullivans Constructions	4
Davone Constructions Pty Ltd	5
M & A Lukin	6
Cooper Commercial Constructions Pty Ltd	7
Reitsma Constructions Pty Ltd	8
Malsave Pty Ltd	9
Momentum Built Pty Ltd	10
Van Mal Group Constructions Pty Ltd	11
Innovatus Projects Pty Ltd	12
Assett Group Services	13
Specbuilt Constructions Pty Ltd	14

PROPOSAL

Batmac Constructions Pty Ltd has been engaged to carry out the roof replacement and refurbishment works at Woonona SLSC in accordance with the scope of works and technical specifications developed for the project.

The contractor has satisfied the Quotation Assessment Panel that it is capable of undertaking the works to Council’s standards and in accordance with the technical specification.

Referees nominated by the recommended responder have been contacted by the Quotation Assessment Panel and expressed satisfaction with the standard of work and methods of operation undertaken on their behalf.

CONSULTATION AND COMMUNICATION

- 1 Members of the Quote Assessment Panel
- 2 Nominated Referees

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal 5 “We are a healthy community in a liveable city”.

It specifically delivers on core business activities as detailed in the Infrastructure Planning & Support and Aquatic Services Service Plans 2020-21.

RISK MANAGEMENT

The risk in accepting the recommendation of this report is considered low on the basis that the quote process has fully complied with Council’s Procurement Policies and Procedures and the Local Government Act 1993.

The risk of the project works is considered medium based upon Council’s risk assessment matrix and appropriate risk management strategies will be implemented.

FINANCIAL IMPLICATIONS

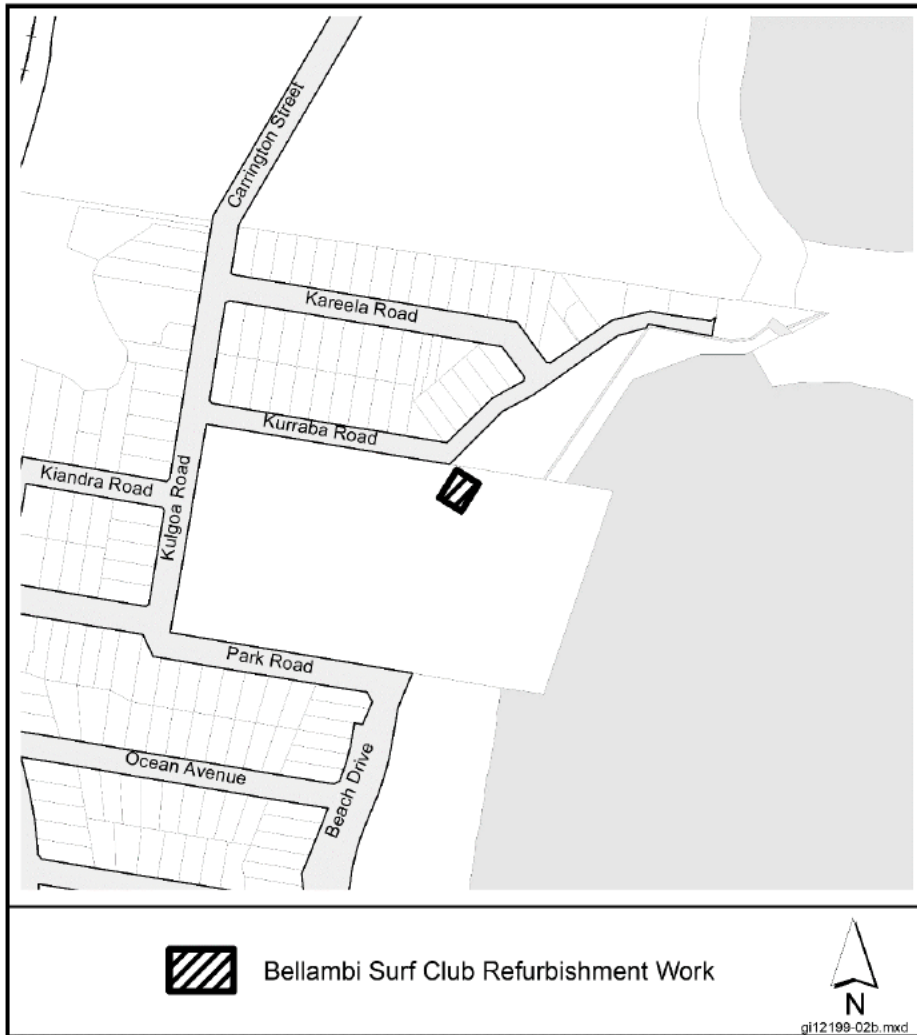
It is proposed that the total project be funded from the following source/s as identified in the Annual Plan –

Capital Budget 2020/21

CONCLUSION

The recommended respondent has submitted an acceptable quotation for this project and has been engaged to complete the work in accordance with Council’s requirements.





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ITEM 8

QUOTATION E5521 - COLEDALE SURF LIFE SAVING CLUB ROOF REPLACEMENT WORKS

Council has identified the need to replace the roof and carry out associated works at the Coledale Surf Life Saving Club (SLSC) following recent storm events.

Council considered a report on 25 May 2020 where it was resolved that tenders not be invited for these works due to extenuating circumstances and determined that a formal quotation process be undertaken in accordance with Council's procurement policies and procedures.

This report provides Council with the outcome of that engagement process for this project.

RECOMMENDATION

Council note the engagement of Peloton Constructions Pty Ltd to complete the proposed roof replacement of Coledale Surf Life Saving Club in the sum of \$180,687.50 (Ex GST)

REPORT AUTHORISATIONS

Report of: Glenn Whittaker, Manager Project Delivery

Authorised by: Andrew Garfield, Director Infrastructure + Works - Connectivity Assets + Liveable City

ATTACHMENTS

- 1 Location Plan

BACKGROUND

The Coledale SLSC is located off Lawrence Hargrave Drive, Coledale. Recent storm events caused water to enter the building. A subsequent condition assessment identified the requirement for the replacement of the roof and associated infrastructure as it was determined that the roof had reached the end of its serviceable life.

A scope of works was developed which encompassed the following:

- Replacement of all roof sheeting, flashings, capping and roof screws;
- Removal and safe storage of any roof or eave mounted equipment for reinstallation on completion of works;
- Removal of existing parapet construction and box guttering and replacement with fascia and gable lining, including removal of identified asbestos containing material (ACM) and replacement with non-hazardous alternatives;
- Installation of half round eaves gutters including leaf diverters and modification of existing downpipes to accommodate new works;
- Replacement or installation of new steel roof safety mesh;
- Replacement or installation of new roof insulating blanket;
- Replace flashings to all roof penetrations;
- Painting of new works in accordance with Council's standard requirements.

The successful implementation of the proposed works is expected to ensure the serviceability of the Coledale SLSC building in providing ongoing support to the local community and to life saving operations which are conducted from the facility.

Council on 25 May 2020 considered a report regarding the Coledale Surf Life Saving Club (SLSC) roof replacement and associated works and resolved the following:

- 1 *Pursuant to section 55(3)(i) of the Local Government Act 1993, tenders not be invited for the contract or contracts for the refurbishment of the:*
 - a *Bellambi SLSC facility, located off Morgan Place, Bellambi,*
 - b *Coledale SLSC facility, located off Lawrence Hargrave Drive, Coledale; and*
 - c *Woonona SLSC facility, located off Kurraba Road, Woonona*

due to extenuating circumstances, being the timeframe required for tendering for these contracts would involve refurbishment work extending into the summer surf season, with consequential severe and adverse impact upon the Clubs' operations and commitments.
- 2 *Council delegate to the General Manager the authority to undertake and finalise a formal quotation process, in accordance with Council's procurement policies and procedures with contractors with demonstrated experience and ability to undertake the works with a view to entering into a contract or contracts for the works.*
- 3 *Council delegate to the General Manager authority to enter into a contract (or contracts) with the contractor or contractors selected following the process outlined at 2 above.*
- 4 *A report describing the outcome of the procurement process be submitted to the next available Council meeting following the successful engagement of contractor or contractors.*
- 5 *That staff work with operators to minimize disruption to commercial operations at these clubs, recognising that following COVID-19 enforced closures, they are striving to rebuild their businesses.*

This report addresses Item 4 of that resolution and provides Council with the outcomes of the formal quotation and engagement process.

Quotations were invited for this project by the selective quotation method with a close of quotations of 10.00 am on 23 June 2020.

Ten (10) quotations were received by the close of quotations and all quotations have been scrutinised and assessed by a Quotation Assessment Panel constituted in accordance with Council's Procurement Policies and Procedures and comprising representatives of the Project Delivery, Property and Recreation and Governance and Customer Service Divisions.

The Quotation Assessment Panel assessed all quotations in accordance with the following assessment criteria and weightings as set out in the formal quotation documents:

Mandatory Criteria

- 1 Satisfactory references from referees for previous projects of similar size and scope
- 2 Financial assessment acceptable to Council which demonstrates the respondent's financial capacity to undertake the works

Assessable Criteria

- 1 Cost to Council – 45%
- 2 Appreciation of scope of works and construction methodology – 15%

- 3 Experience and satisfactory performance in undertaking projects of similar size, scope and risk profile – 10%
- 4 Staff qualifications and experience – 5%
- 5 Project schedule – 10%
- 6 Workplace health and safety management system – 5%
- 7 Environmental management policies and procedures – 5%
- 8 Demonstrated strengthening of local economic capacity – 5%

The mandatory assessment criteria have been met by the recommended respondent.

The Quotation Assessment Panel utilised a weighted scoring method for the assessment of quotations which allocates a numerical score out of 5 in relation to the level of compliance offered by the quotations to each of the assessment criteria as specified in the quotation documentation. The method then takes into account pre-determined weightings for each of the assessment criteria which provides for a total score out of 5 to be calculated for each quotation. The quotation with the highest total score is considered to be the quotation that best meets the requirements of the quotation documentation in providing best value to Council. Table 1 below summarises the results of the quotation assessment and the ranking of quotation.

TABLE 1 – SUMMARY OF QUOTATION ASSESSMENT

Name of Respondent	Ranking
Peloton Constructions Pty Ltd	1
Davone Constructions Pty Ltd	2
Advanced Constructions Pty Ltd	3
Cooper Commercial Constructions Pty Ltd	4
Project Coordination Aust Pty Ltd	5
Reitsma Constructions Pty Ltd	6
Malsave Pty Ltd	7
Momentum Built Pty Ltd	8
M & A Lukin	9
Van Mal Group Pty Ltd	10

PROPOSAL

Peloton Constructions Pty Ltd has been engaged to carry out the proposed Coledale SLSC roof replacement works in accordance with the scope of works and technical specifications developed for the project.

The recommended respondent satisfied the Quotation Assessment Panel that it is capable of undertaking the works to Council's standards and in accordance with the technical specification.

Referees nominated by the recommended respondent have been contacted by the Quotation Assessment Panel and expressed satisfaction with the standard of work and methods of operation undertaken on their behalf.

CONSULTATION AND COMMUNICATION

- 1 Members of the Quotation Assessment Panel
- 2 Nominated Referees

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal 5 “We are a healthy community in a liveable city”.

It specifically delivers on core business activities as detailed in the Infrastructure Planning & Support and Aquatic Services Service Plans 2020-21.

RISK MANAGEMENT

The risk in accepting the recommendation of this report is considered low on the basis that the quotation process has fully complied with Council’s Procurement Policies and Procedures and the Local Government Act 1993.

The risk of the project works is considered medium based upon Council’s risk assessment matrix and appropriate risk management strategies will be implemented.

FINANCIAL IMPLICATIONS

It is proposed that the total project be funded from the following source/s as identified in the Annual Plan –

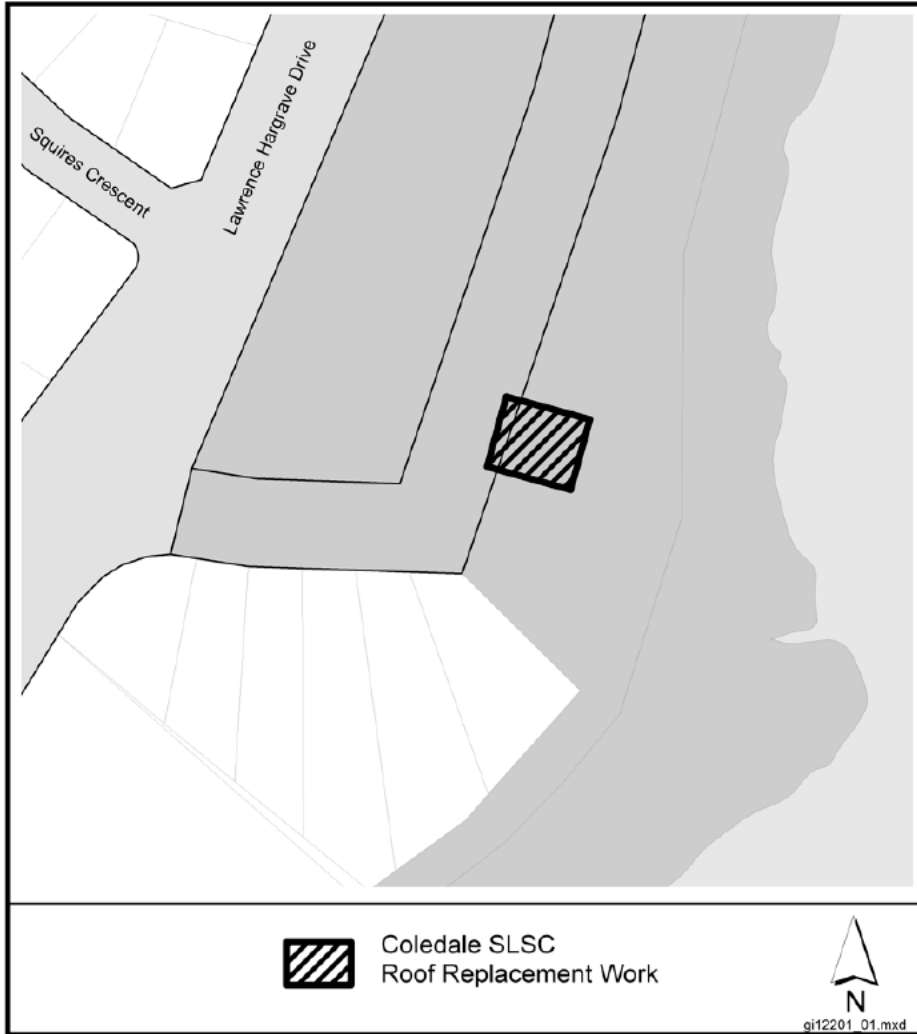
2020/21 Capital Budget

CONCLUSION

The recommended respondent submitted an acceptable quotation for this project and has been engaged to complete the work in accordance with Council’s requirements.



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ITEM 9

QUOTATION E5522 - BELLAMBI SURF LIFE SAVING CLUB REFURBISHMENT OF AMENITIES AND ROOF WORKS

Council has identified the need to upgrade public amenities, provide accessible amenities and replace the roof and complete associated works at the Bellambi Surf Life Saving Club (SLSC).

Council considered a report on 25 May 2020 where it was resolved that tenders not be invited for these works due to extenuating circumstances and determined that a formal quotation process be undertaken in accordance with Council's procurement policies and procedures.

This report provides Council with the outcome of that engagement process for this project.

RECOMMENDATION

Council note the engagement of Project Coordination (Australia) Pty Ltd to complete the proposed amenities upgrades and roof replacement of Bellambi SLSC in the sum of \$497,060.00 (Ex GST).

REPORT AUTHORISATIONS

Report of: Glenn Whittaker, Manager Project Delivery

Authorised by: Andrew Garfield, Director Infrastructure + Works - Connectivity Assets + Liveable City

ATTACHMENTS

- 1 Location Plan

BACKGROUND

The Bellambi SLSC operates out of the building located on Crown land known as Bellambi Point Reserve. The current Surf Club was officially opened in 1981. The building contains a café and outdoor seating area, female and male amenities, change rooms for the SLSC, boat storage facilities, including a kitchen, function room and office facilities.

The Bellambi SLSC building requires refurbishment to bring it up to the service standards expected of a modern facility.

Recent storm events in February this year resulted in storm damage and leaks within the building. Recent photographs indicate the purlins which support the roof and the fasteners which secure the roof sheeting are corroded while flashings appear to have been repaired repeatedly. While works are underway, asbestos eaves linings also need to be removed to reduce future risks inherent with this material. In addition, the building does not currently include accessible amenities and a design has been prepared to include contemporary accessible facilities within the existing footprint of the refurbished amenities area.

The scope of works encompasses the following:

- Upgrade of existing public amenities, including the installation of accessible amenities;
- Replacement of all roof sheeting, flashings, capping and roof screws;
- Removal and safe storage of any roof or eave mounted equipment for reinstallation on completion of works;
- Removal of identified asbestos containing material (ACM) and replacement with non-hazardous alternatives;
- Installation of half round eaves gutters including leaf diverters and modification of existing downpipes to accommodate new works;
- Replacement or installation of new steel roof safety mesh;
- Replacement or installation of new roof insulating blanket;

- Replacement of flashings to all roof penetrations;
- Replacement of sections of damaged ceiling;
- Investigation and repair, if appropriate, of reinforced concrete cantilever balcony;
- Painting of new works in accordance with Council's standard requirements.

The successful implementation of the proposed works is expected to ensure the serviceability of the Bellambi SLSC building in providing ongoing support to the local community and to life saving operations which are conducted from the facility.

Council on 25 May 2020 considered a report regarding the Bellambi Surf Life Saving Club (SLSC) roof replacement and associated works and resolved the following:

- 1 *Pursuant to section 55(3)(i) of the Local Government Act 1993, tenders not be invited for the contract or contracts for the refurbishment of the:*
 - a *Bellambi SLSC facility, located off Morgan Place, Bellambi,*
 - b *Coledale SLSC facility, located off Lawrence Hargrave Drive, Coledale; and*
 - c *Woonona SLSC facility, located off Kurraba Road, Woonona*

due to extenuating circumstances, being the timeframe required for tendering for these contracts would involve refurbishment work extending into the summer surf season, with consequential severe and adverse impact upon the Clubs' operations and commitments.
- 2 *Council delegate to the General Manager the authority to undertake and finalise a formal quotation process, in accordance with Council's procurement policies and procedures with contractors with demonstrated experience and ability to undertake the works with a view to entering into a contract or contracts for the works.*
- 3 *Council delegate to the General Manager authority to enter into a contract (or contracts) with the contractor or contractors selected following the process outlined at 2 above.*
- 4 *A report describing the outcome of the procurement process be submitted to the next available Council meeting following the successful engagement of contractor or contractors.*
- 5 *That staff work with operators to minimize disruption to commercial operations at these clubs, recognising that following COVID-19 enforced closures, they are striving to rebuild their businesses.*

This report addresses Item 4 of that resolution and provides Council with the outcomes of the formal quotation and engagement process.

Quotations were invited for this project by the selective quotation method with a close of quotations of 10.00 am on 23 June 2020.

Eleven (11) quotations were received by the close of quotations and all quotations have been scrutinised and assessed by a Quotation Assessment Panel constituted in accordance with Council's Procurement Policies and Procedures and comprising representatives of the Project Delivery, Property and Recreation and Governance and Customer Service Divisions.

The Quotation Assessment Panel assessed all quotations in accordance with the following assessment criteria and weightings as set out in the formal quotation documents:

Mandatory Criteria

- 1 Satisfactory references from referees for previous projects of similar size and scope
- 2 Financial assessment acceptable to Council which demonstrates the respondent's financial capacity to undertake the works

Assessable Criteria

- 1 Cost to Council – 45%
- 2 Appreciation of scope of works and construction methodology – 15%
- 3 Experience and satisfactory performance in undertaking projects of similar size, scope and risk profile – 10%
- 4 Staff qualifications and experience – 5%
- 5 Project schedule – 10%
- 6 Workplace health and safety management system – 5%
- 7 Environmental management policies and procedures – 5%
- 8 Demonstrated strengthening of local economic capacity – 5%

The mandatory assessment criteria have been met by the recommended respondent.

The Quotation Assessment Panel utilised a weighted scoring method for the assessment of quotations which allocates a numerical score out of 5 in relation to the level of compliance offered by the quotations to each of the assessment criteria as specified in the quotation documentation. The method then takes into account pre-determined weightings for each of the assessment criteria which provides for a total score out of 5 to be calculated for each quotation. The quotation with the highest total score is considered to be the quotation that best meets the requirements of the quotation documentation in providing best value to Council. Table 1 below summarises the results of the quotation assessment and the ranking of quotation.

TABLE 1 – SUMMARY OF QUOTATION ASSESSMENT

Name of Respondent	Ranking
Project Coordination (Australia) Pty Ltd	1
Batmac Constructions Pty Ltd	2
Cooper Commercial Constructions Pty Ltd	3
Advanced Constructions Pty Ltd	4
Davone Constructions Pty Ltd	5
Reitsma Constructions Pty Ltd	6
Momentum Built Pty Ltd	7
Van Mal Group Constructions Pty Ltd	8
Innovatus Projects Pty Limited	9
Malsave Pty Ltd	10
Assett Group Services	11

PROPOSAL

Project Coordination (Australia) Pty Ltd has been engaged to carry out the proposed Bellambi SLSC public amenities upgrade and roof replacement works in accordance with the scope of works and technical specifications developed for the project.

The recommended respondent has satisfied the Quotation Assessment Panel that it is capable of undertaking the works to Council’s standards and in accordance with the technical specification.

Referees nominated by the recommended respondent have been contacted by the Quotation Assessment Panel and expressed satisfaction with the standard of work and methods of operation undertaken on their behalf.

CONSULTATION AND COMMUNICATION

Council staff have already made initial contact with the President of the Bellambi SLSC to discuss ways to minimise impacts on both the SLSC and the commercial tenancy operating from this building. Whilst every effort will be made to minimise disruption, it should be noted that there can be no occupation of the building while high risk activities such as asbestos removal is carried out. Outside of these critical construction activities, Council will be able to maintain satisfactory access to the commercial component of the building.

Council has also contacted the following:

- 1 Members of the Quotation Assessment Panel
- 2 Nominated Referees

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal 5 “We are a healthy community in a liveable city”.

It specifically delivers on core business activities as detailed in the Infrastructure Planning & Support and Aquatic Services Service Plans 2020-21.

RISK MANAGEMENT

The risk in accepting the recommendation of this report is considered low on the basis that the quotation process has fully complied with Council's Procurement Policies and Procedures and the Local Government Act 1993.

The risk of the project works is considered medium based upon Council's risk assessment matrix and appropriate risk management strategies will be implemented

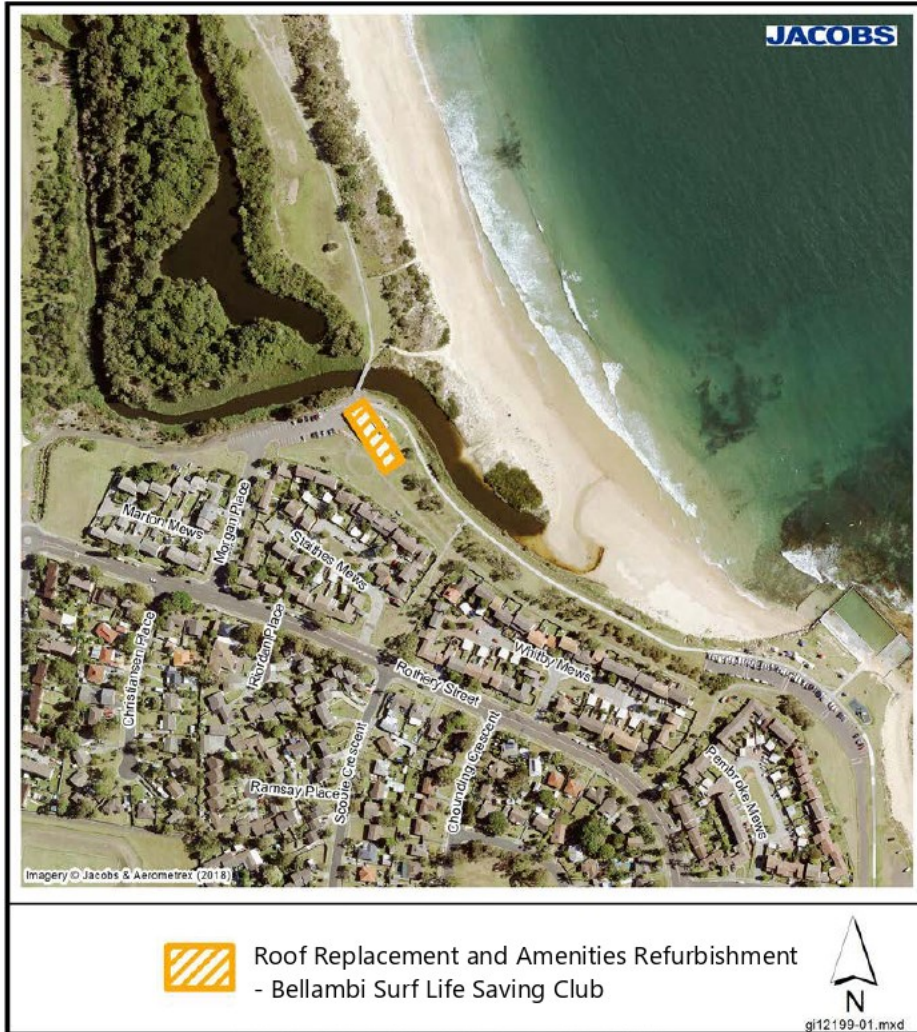
FINANCIAL IMPLICATIONS

It is proposed that the total project be funded from the following source/s as identified in the Annual Plan –

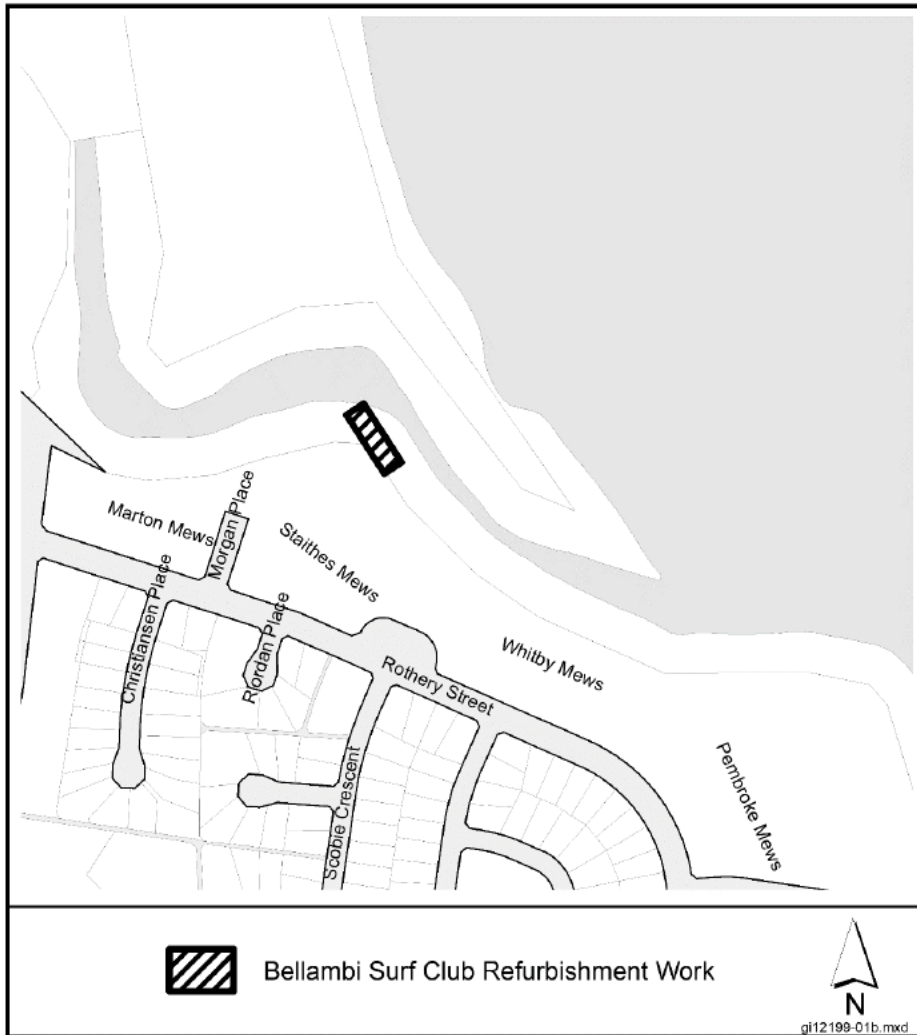
2020/21 Capital Budget

CONCLUSION

The recommended respondent submitted an acceptable quotation for this project and has been engaged to complete the work in accordance with Council's requirements.



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Bellambi Surf Club Refurbishment Work



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ITEM 10 STATEMENT OF INVESTMENT - JUNE 2020

This report provides an overview of Council's investment portfolio performance for the month of June 2020.

Council's average weighted return for June 2020 was 1.59% which was above the benchmark return of 0.08%. This result was primarily due to positive marked to market valuation of the aggregated NSW TCorp Hourglass facilities. The remainder of Council's portfolio continues to provide a high level of consistency in income and a high degree of credit quality and liquidity.

RECOMMENDATION

Council receive the Statement of Investment for June 2020.

REPORT AUTHORISATIONS

Report of: Brian Jenkins, Chief Financial Officer

Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

- 1 Statement of Investment - June 2020
- 2 Investment Income Compared to Budget 2019-2020

BACKGROUND

Council is required to invest its surplus funds in accordance with the Ministerial Investment Order and Division of Local Government guidelines. The Order reflects a conservative approach and restricts the investment types available to Council. In compliance with the Order and Division of Local Government guidelines, Council adopted an Investment Policy on 10 December 2018. The Investment Policy provides a framework for the credit quality, institutional diversification and maturity constraints that Council's portfolio can be exposed to. Council's investment portfolio was controlled by Council's Finance Division during the period to ensure compliance with the Investment Policy. Council's Audit, Risk and Improvement Committee's (ARIC) role of overseer provides for the review of Council's Investment Policy and the Management Investment Strategy.

Council's Responsible Accounting Officer is required to sign the complying Statement of Investment contained within the report, certifying that all investments were made in accordance with the Local Government Act 1993 and the Local Government Regulation 2005.

Council's investment holdings as at 30 June 2020 were \$157,277,615 (Statement of Investment attached) [30 June 2019 \$154,161,422].

Council's average weighted return for June 2020 was 1.59% which was above the benchmark return of 0.08%. This result was primarily due to positive marked to market valuation of the aggregated NSW TCorp Hourglass facilities. The remainder of Council's portfolio continues to provide a high level of consistency in income and a high degree of credit quality and liquidity. The global markets are still experiencing unprecedented turmoil and volatility in the wake of COVID-19 and may still provide uncertainty for the foreseeable future.

At 30 June 2020, year to date interest and investment revenue of \$2,980,658 was recognised compared to the year to date budget of \$3,176,064.

Council's 22 floating rate notes had a net decrease in value of \$8,572 for June 2020.

Council holds two Mortgaged Backed Securities (MBS) that recorded a net increase in value of \$1,727 for June 2020. The coupon margins on these investments reflect pre-Global Financial Crisis (GFC) pricing. For example, the Emerald A is paying 45 basis points over the BBSW where a comparative investment is now paying 100 basis points over the BBSW. This is reflected in the coupon rates on both these investments. While the maturity dates are outside Council's control, the investment advisors had

previously indicated that capital is not at risk at that stage and recommended a hold strategy due to the illiquid nature of the investment.

Council has two investment holdings under the NSW TCorp Hour Glass Facility: the Long-Term Growth Facility and the NSW TCorpIM Cash Fund. The Long-Term Growth recorded a net increase in value of \$10,513 and the Cash Fund recorded a net increase in value of \$12,756 in June 2020. The fluctuation in the Long-Term Growth Facility is a reflection of the current share market volatility both domestically and internationally and is diversified across a number of different asset classes that have differing risk and return characteristics. The TCorp Cash Fund generally provides relatively stable returns with low potential for capital loss while maintaining high levels of liquidity, similar to an at call account, and only invests in Australian cash and fixed interests.

At their July 2020 meeting, the Reserve Bank of Australia (RBA) maintained the official cash rate at the record low of 0.25%. The RBA will continue to assess the outlook and adjust policy as needed to foster sustainable growth in demand and inflation outcomes consistent with the inflation target over time.

In response to the COVID-19 pandemic, Council will not be making any new investments and is having all investment maturities returned to the at call accounts. This is to facilitate cash flow requirements of the organisation.

The current investment portfolio complies with Council’s Investment Policy which was endorsed by Council on 10 December 2018. Council’s Responsible Accounting Officer has signed the Statement of Investment contained within the report, certifying that all investments were made in accordance with the Local Government Act 1993 and the Local Government Regulation 2005.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 Goal 4 ‘*We are a connected and engaged community*’. It specifically delivers on the following:

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2020-2021
Strategy	4 Year Action	Operational Plan Actions
4.3.2 Resources (finance, technology, assets and people) are effectively managed to ensure long term financial sustainability	4.3.2.1 Effective and transparent financial management systems are in place	Monitor and review achievement of Financial Strategy
		Continuous budget management is in place, controlled and reported
		Provide accurate and timely financial reports monthly, quarterly and via the annual statement
		Manage and further develop a compliance program to promote awareness and compliance with Council’s procurement policies and procedures and other related policies

CONCLUSION

The investments for June 2020 recorded an average weighted return above the annualised Bloomberg Bank Bill Index Benchmark, although annual return on investments remains slightly below the year to date budget.

WOLLONGONG CITY COUNCIL STATEMENT OF INVESTMENT 30 June 2020							
On Call & Term Deposits							
DIRECT INVESTMENTS							
Investment Body	Rating	Purchase Price \$	Fair Value of Holding \$	Security	Purchase Date	Maturity Date	Interest / Coupon Rate
NAB Professional Maximiser	A1+	-	13,931,632	Prof Fund A/c	30/06/2020	30/06/2020	0.65%
NAB General Fund	A1+	-	1,810,195	General A/c	30/06/2020	30/06/2020	
Bank of Queensland Ltd	Moody's ST P-2	1,000,000	1,000,000	T/Deposit	6/09/2019	6/07/2020	1.65%
IMB Ltd	Moody's ST P-2	1,000,000	1,000,000	T/Deposit	6/03/2020	6/07/2020	1.20%
Bendigo & Adelaide Bank Ltd	Moody's A3	2,000,000	2,000,000	T/Deposit	14/03/2019	14/07/2020	2.60%
Bank of Queensland Ltd	Moody's A3	3,000,000	3,000,000	T/Deposit	24/08/2018	24/08/2020	3.00%
Bank of Queensland Ltd	Moody's ST P-2	2,000,000	2,000,000	T/Deposit	28/02/2020	28/08/2020	1.60%
Members Equity Bank Ltd	S&P ST A2	4,000,000	4,000,000	T/Deposit	28/02/2020	28/08/2020	1.60%
Commonwealth Bank of Australia Ltd	S&P ST A1+	5,000,000	5,000,000	T/Deposit	13/09/2019	7/09/2020	1.63%
Members Equity Bank Ltd	S&P BBB	2,000,000	2,000,000	T/Deposit	14/09/2018	14/09/2020	2.82%
IMB Ltd	S&P ST A2	2,000,000	2,000,000	T/Deposit	25/11/2019	23/10/2020	1.50%
IMB Ltd	S&P ST A2	1,000,000	1,000,000	T/Deposit	28/11/2019	29/10/2020	1.50%
National Australia Bank Ltd	S&P ST A1+	1,030,000	1,030,000	T/Deposit	19/11/2019	18/11/2020	1.46%
IMB Ltd	S&P ST A2	2,000,000	2,000,000	T/Deposit	28/11/2019	26/11/2020	1.50%
Bank of Queensland Ltd	Moody's A3	3,000,000	3,000,000	T/Deposit	14/03/2019	14/12/2020	2.73%
IMB Ltd	S&P ST A2	3,000,000	3,000,000	T/Deposit	20/12/2019	18/12/2020	1.50%
Westpac Banking Corporation Ltd	S&P AA-	5,000,000	5,000,000	T/Deposit	23/12/2019	23/12/2020	1.48%
Members Equity Bank Ltd	S&P ST A2	3,000,000	3,000,000	T/Deposit	6/03/2020	31/12/2020	1.25%
Bank of Queensland Ltd	Moody's A3	3,000,000	3,000,000	T/Deposit	21/02/2019	19/02/2021	2.80%
Bendigo & Adelaide Bank Ltd	Moody's A3	2,000,000	2,000,000	T/Deposit	28/11/2019	24/02/2021	1.55%
Bank of Queensland Ltd	Moody's ST P-2	2,000,000	2,000,000	T/Deposit	6/03/2020	1/03/2021	1.40%
Westpac Banking Corporation Ltd	S&P AA-	2,000,000	2,000,000	T/Deposit	6/03/2020	8/03/2021	1.00%
Bendigo & Adelaide Bank Ltd	Moody's A3	2,000,000	2,000,000	T/Deposit	28/11/2019	25/06/2021	1.55%
Westpac Banking Corporation Ltd	S&P AA-	2,000,000	2,000,000	T/Deposit	2/12/2019	2/12/2021	0.98%
Westpac Banking Corporation Ltd	S&P AA-	2,000,000	2,000,000	T/Deposit	6/03/2019	6/03/2024	2.83%
Total			70,771,827				

WOLLONGONG CITY COUNCIL
STATEMENT OF INVESTMENT
30 June 2020 continued

Bond and Floating Rate Note Securities

DIRECT INVESTMENTS							
Investment Body	Rating	Purchase Price \$	Fair Value of Holding \$	Security	Purchase	Maturity Date	Interest / Coupon
Bendigo & Adelaide Bank Ltd	Fitch A-	2,000,000	2,004,780	FRN	18/08/2015	18/08/2020	1.20%
Suncorp Bank	S&P A+	1,500,000	1,508,085	FRN	20/10/2015	20/10/2020	1.38%
National Australia Bank Ltd	S&P AA-	1,000,000	1,004,910	FRN	5/11/2015	5/11/2020	1.18%
Newcastle Permanent Building Society Ltd	S&P BBB	500,000	502,010	FRN	26/02/2019	26/02/2021	1.20%
Suncorp Bank	S&P A+	2,000,000	2,021,780	FRN	12/04/2016	12/04/2021	1.38%
AMP Bank Ltd	S&P BBB+	2,000,000	2,009,840	FRN	24/05/2016	24/05/2021	1.45%
Westpac Banking Corporation Ltd	S&P AA-	3,000,000	3,029,220	FRN	3/06/2016	3/06/2021	1.27%
ANZ Banking Group Ltd	S&P AA-	2,000,000	2,023,220	FRN	16/08/2016	16/08/2021	1.23%
Credit Union Australia Ltd	S&P BBB	1,200,000	1,208,592	FRN	6/09/2018	6/09/2021	1.35%
AMP Bank Ltd	S&P BBB+	1,500,000	1,500,975	FRN	10/09/2018	10/09/2021	1.18%
Westpac Banking Corporation Ltd	S&P AA-	1,500,000	1,511,535	FRN	16/11/2018	25/10/2021	0.84%
Credit Union Australia Ltd	Moody's Baa1	1,000,000	1,007,450	FRN	4/03/2019	4/03/2022	1.33%
AMP Bank Ltd	S&P BBB+	3,000,000	2,986,020	FRN	30/03/2017	30/03/2022	1.15%
Suncorp Bank	S&P A+	1,500,000	1,513,620	FRN	30/08/2017	16/08/2022	1.07%
Bendigo & Adelaide Bank Ltd	Fitch A-	3,000,000	3,004,050	FRN	12/12/2019	12/09/2022	0.95%
Bank Australia Limited	S&P BBB	4,000,000	3,980,200	FRN	2/12/2019	2/12/2022	1.00%
ANZ Banking Group Ltd	S&P AA-	1,000,000	1,013,540	FRN	9/05/2018	9/05/2023	1.00%
National Australia Bank Ltd	S&P AA-	3,000,000	3,040,710	FRN	26/09/2018	26/09/2023	1.03%
Westpac Banking Corporation Ltd	S&P AA-	1,500,000	1,523,370	FRN	16/11/2018	16/11/2023	1.05%
ANZ Banking Group Ltd	S&P AA-	2,000,000	2,035,200	FRN	6/12/2018	6/12/2023	1.13%
National Australia Bank Ltd	S&P AA-	2,000,000	2,025,620	FRN	19/06/2019	19/06/2024	1.03%
Macquarie Bank	Moody's A2	2,000,000	2,008,780	FRN	12/02/2020	12/02/2025	0.93%
Emerald Reverse Mortgage Trust	S&P AAA	526,228	389,719	M/Bac	17/07/2006	21/08/2051	0.54%
Emerald Reverse Mortgage Trust	Fitch AA	2,000,000	1,231,840	M/Bac	17/07/2006	21/08/2056	0.84%
Total			44,085,066				

Managed Funds

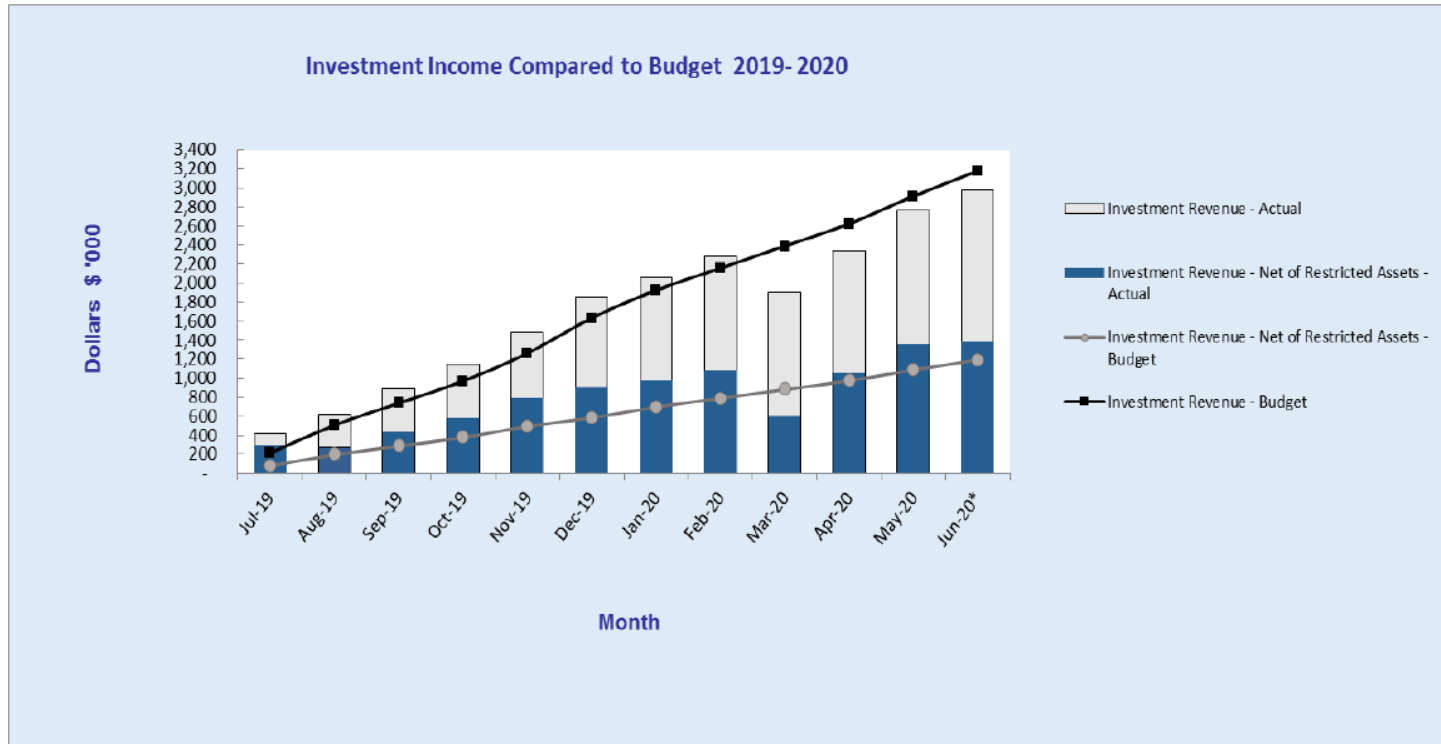
MANAGED FUNDS							
Investment Body	Rating	Purchase Price \$	Fair Value of Holding \$	Purchase Date	Monthly	FYTD (Actual)	
TcorpIM Cash Fund Facility	N/A	40,113,507	40,113,507	28/06/2019	0.04%	1.10%	
Tcorp Long Term Growth Facility Trust	N/A	1,773,197	2,307,215	13/06/2007	0.46%	0.15%	
Total			42,420,721				

TOTAL INVESTMENTS \$ 157,277,615

* The maturity date provided is the weighted-average life of the security. This is the average amount of time that will elapse from the date of security's issuance until each dollar is repaid based on an actuarial assessment. Assessments are carried out on a regular basis which can potentially extend the life of the investment. Current assessments anticipate an extension of life of the investment.

This is to certify that all of the above investments have been placed in accordance with the Act, the regulations and Council's Investment Policies.

Brian Jenkins
RESPONSIBLE ACCOUNTING OFFICER



ITEM 11

NOTICE OF MOTION - COUNCILLOR LEIGH COLACINO - EXTENSION OF MEMORIAL DRIVE FROM THE HOSPITAL ROAD AND PRINCES HIGHWAY INTERSECTION, BULLI TO BULLI PASS

Councillor Colacino has submitted the following Notice of Motion –

“I formally move that Wollongong City Council -

- 1 Request Transport for NSW (TforNSW) enter into a dialogue with Wollongong City Council with the intent of creating a working group that will ascertain what needs to be done to assess the merits for, and need for, an extension of Memorial Drive from the intersection of Memorial Drive, Hospital Road and the Princes Highway at Bulli to the top of Bulli Pass. Copies of this correspondence be sent to the State Minister for Transport, Andrew Constance, the Minister for Regional Transport and Roads, Paul Toole and all local Federal and State Members. As part of this communication, Council should -
 - a Ask TforNSW if any encroachments have occurred on the reserved area of land set aside for the extension of Memorial Drive from the intersection Memorial Drive, Princes Highway and Hospital Road at Bulli to the top of Bulli Pass;
 - b Seek clarity from TforNSW on the status of the Thirroul to Unanderra Network Strategy and the Bulli Corridor Strategy projects which have been underway for a number of years but have not been finalised or publicly released by TforNSW;
 - c Request that time and directional specific traffic counts be undertaken at the intersection at the end of Memorial Drive at Bulli, the hill section of Bulli Pass that leads to the top of Bulli Pass and along Lawrence Hargrave Drive after the intersection at the bottom of Bulli Pass as Lawrence Hargrave Drive enters into Thirroul.
- 2 The request for a shared dialogue and the establishment of a Working Group should be sent no later than the first week of September 2020 and the response from TforNSW be shared with Councillors and all others on the mailing list, as soon as it is received.”

Background provided by Councillor Colacino:

On the 24 September 2012 Council passed a motion that asked for a letter to be written to the Minister for Roads and Ports, the Hon Duncan Gay, MLC, informing him of the need for the completion of the final section of Memorial Drive, from the Princes Highway and Hospital Road intersection at Bulli to Bulli Pass.

Mr Gay responded, in a letter received by Council on the 26 November 2012, confirming that the corridor that was reserved for this extension existed and that planning for this work had been at a strategic level only and no funds had been committed. The letter also stated that the RMS was in the process of modelling that section of road to identify future traffic improvements.

Mr Gay also informed Council that in October 2012, the RMS had held a meeting with business owners, local Members, the Parliamentary Secretary for Transport and Roads and Wollongong City Council to discuss issues around possible changes to parking restrictions on the Princes Highway at Bulli and that issues raised at that meeting were currently being discussed.

To date Wollongong is yet to see what plans have been considered that will address the growing traffic issues that are continually compounding.

Definitive directional traffic counts need to be undertaken to determine true usage routes.

Residential and Business feedback could be by email, Snap Send or any appropriate form of correspondence. This is an essential element of the motion because there is currently an overwhelming amount of ambiguity relating to the traffic issues revolving around this section of Wollongong's road network.

ITEM 12

NOTICE OF MOTION - COUNCILLOR TANIA BROWN - WOLLONGONG HARBOUR MASTERPLAN

Councillor T Brown has submitted the following Notice of Motion –

“I formally move that the General Manager write to the NSW Government seeking advice on when the NSW Wollongong Harbour Masterplan will be released.

The draft Masterplan was exhibited in August 2018, having commenced in 2017, with a revised draft released and adopted by Wollongong City Council in June 2019. Over a year later we are still waiting for a final report.

We seek an update on when we will see progress on delivering recreational and tourism upgrades to this important harbour precinct which will be a key location for the UCI World Road Cycling in 2022. It is therefore crucial that progress begins now to meet this deadline.”

Background provided by Councillor T Brown:

In 2017 the Department of Industry (Lands) commenced drafting a Masterplan for Wollongong Harbour. An initial draft went on exhibition in 2018 and following stakeholder and community consultation an amended draft was released in June 2019.

Wollongong City Council adopted the new draft Masterplan in June 2019, and it was then referred to The Minister for Water, Property and Housing for adoption by the State Government.

The draft Masterplan reflected the community’s view that this remain a working harbour, protecting the heritage of the area, but allowing some tourism activation with improved facilities and footpaths.

The release of a final Masterplan for Wollongong Harbour is well past due.