

Service Agreement



THIS AGREEMENT IS MADE ON:

Between

Parties

| | |
|--------------------------|--|
| Name | Newcastle City Council |
| ABN | 25 242 068 129 |
| Address | 12 Stewart Avenue, Newcastle West, NSW 2302 |
| Short form name | CN |
| Nominated representative | Nick Kaiser, Acting Executive Manager Media Engagement & Corporate Affairs |

And

| | |
|--------------------------|--|
| Name | Newcastle City Business Association Inc |
| ABN/ACN | 93 706 504 579 |
| Short form name | Service Provider |
| Address | |
| Nominated representative | |

BACKGROUND

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

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

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

Act means the Local Government Act 1993 (NSW).

Agreed Personnel means the Service Provider and its authorised representatives.

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

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

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

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

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

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

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

Service Agreement



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

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

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

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

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

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

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

2 PROVISION OF AND LOCATION OF SERVICE

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

3 SERVICE PROVIDER'S OBLIGATIONS

3.1 General obligations

The Service Provider agrees to:

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

Service Agreement



- (iii) Economic Development
- (iv) Governance
- (h) Provide the Support Officer with, for publication on CN's website, the minutes of all meetings, agenda items and reports relating to the expenditure of the Service Fee within 14 days;
- (i) Provide a standing invitation to CN's nominated representative to be present at all committee meetings for agenda items involving discussion of the expenditure of the Service Fee;
- (j) Provide a standing invitation to all CN councillors representing the ward relevant to the Newcastle City / Darby Street special rate area to be present at all Committee meetings for agenda items involving discussion of the expenditure of the Service Fee. Councillors must be provided at a minimum one (1) week's notice of the meeting. Committee meetings should not be held on Tuesday evenings to avoid clashes with CN Council meetings;
- (k) Provide CN with any records or files (financial or otherwise) relating to the performance of its obligations under this agreement within 7 days of the request. Inspection of records or files may be sufficient to satisfy this obligation at the discretion of CN;
- (l) In the instance of a Performance Review under clause 4.1, to fully co-operate with CN or CN's contractors conducting the review. This includes, providing without limitation, access to the Service Provider's premises, employees, records, documents and papers that relate directly or indirectly to the performance of the Service Provider's obligations under this agreement;
- (m) Fully co-operate with CN's auditors nominated under clause 4.2;
- (n) Ensure that where any of its obligations under this Agreement are performed under a subcontract, any subcontract contains equivalent clauses permitting CN and CN's nominated auditors to have access to the employees, premises and accounts, records, documents and papers of the subcontractor to the extent provided for in clauses 3 and 4 in relation to the expenditure of SR Funds;
- (o) Publicly acknowledge CN's support including, for example, the inclusion of CN's restricted logo on advertising and collateral and through invitations to events and functions for CN representative/s;
- (p) Use CN's restricted logo in accordance with Schedule 2 and must:
 - (i) Not modify the restricted logo in any way without the consent of CN;
 - (ii) Obtain approval from CN prior to publishing, producing, printing or distributing any material containing the restricted logo;

Service Agreement



- (iii) Use the Restricted Logo in accordance with CN's Logo Usage Guidelines at Schedule 2;
- (q) Attend, at least once per year, an Ideas Exchange hosted by CN. The Service Provider must present to the Ideas Exchange, with the presentation to include:
 - (i) Project outcomes as provided in its Deliverables Plan;
 - (ii) An outline of the highlights and challenges of its project experiences.

3.2 Financial Obligations

The Service Provider agrees:

- (a) To open an account with the Commonwealth Bank of Australia for the Service Fee paid under this agreement. The account must have the following criteria:
 - (i) The account name must be in the format of 'Newcastle City BIA' on behalf of Newcastle City Council;
 - (ii) A CN officer as a signatory to the account;
 - (iii) CN be provided internet banking access to view and transact within the account;
- (b) To submit an Acquittal Report to CN's nominated representative by 31 July each year with tax invoices that directly align to the approved Deliverables Plan expenditure for the previous financial year;
- (c) Provide the Support Officer with any requests for approval for budget variations, if the Service Provider proposes to alter any of the approved category budgets by more than 20 per cent from its annual Deliverables Plan categories of i) Beautification, ii) Promotion, iii) Economic Development, or iv) Governance;
- (d) To return any portion of the Service Fee not spent in accordance with the Deliverables Plan to CN by 31 July following the financial year in which it was allocated to be spent, unless:
 - (i) The Service Provider applies to, and is authorised in writing by CN's nominated representative, to carry over unspent Service Fee from one financial year to the next where the Service Fee is approved to be used for the same purpose as that specified in the Deliverables Plan; or
 - (ii) CN's nominated representative informs the Service Provider in writing that it will adjust a future payment of Service Fee to take account of the unspent Service Fee from the previous year.

- (e) To abide by CN's Statement of Business Ethics (Appendix 2) when expending the Service Fee, including that all committee members declare any conflict of interest at committee meetings;
- (f) To either:
 - (i) Develop procurement guidelines that comply with the Statement of Business Ethics and will be submitted for approval by CN as part of the Deliverables Plan Template; or
 - (ii) Comply with the following procurement requirements when expending the Service Fee:

Procurement Thresholds (excluding consultants)

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

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

Procurement of Consultants

For the engagement of any consultant, the following applies:

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

4 PERFORMANCE REVIEW

4.1 Performance Review

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

4.2 Nomination of auditors

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

4.3 Prior notice

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

5 CN'S OBLIGATIONS

5.1 General obligations

CN agrees:

- (a) That CN's nominated representative will provide written approval/rejection of the Service Provider's proposed Deliverable Plan and Acquittal Report in accordance with section 6;
- (b) To co-operate with the Service Provider as the Service Provider reasonably requires;
- (c) Provide the information and documentation that the Service Provider reasonably requires to fulfil its obligations under this Agreement;
- (d) To provide, free of charge (if requested by the Service Provider), an appropriate CN space during business hours for the Service Provider to hold meetings each month or as required by the Deliverables Plan and the Service Provider's constitution;
- (e) Provide access to a Support Officer to assist the Service Provider with meeting their obligations under the Deliverables Plan;
- (f) Use reasonable endeavours to keep the Service Provider informed of decisions of CN which are relevant to the Service Provider's obligations under this agreement;
- (g) To grant the Service Provider a non-exclusive, royalty free, non-transferable license to use CN's restricted logo in its advertising materials solely for the purpose of promoting CN's association with the Service Provider and initiatives of the Deliverables Plan.

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

6.1 Process for payment of service fee

- (a) The Service Provider submits a proposed Deliverables Plan using the DPT within 30 days of the Start Date.
- (b) CN's nominated representative provides written approval/rejection within 30 days of submission of the proposed Deliverables Plan.
- (c) If the proposed Deliverables Plan is approved by CN it becomes the Deliverables Plan for the upcoming 12 months and the Service Provider submits an invoice for the Service Fee agreed in the approved Deliverables Plan.
- (d) CN pays the Service Fee within 21 days of the invoice to the account opened in accordance with clause 3.2(a).

- (e) If the proposed Deliverables Plan is rejected by CN, the reasons why will be provided to the Service Provider who will amend the plan within 14 days and re-submit to CN for approval. CN's nominated representative must provide written approval/rejection within 14 days of submission of the revised Deliverables Plan.
 - (f) The Service Provider provides CN with a financial Acquittal Report by 31 July each year in accordance with Acquittal Report requirements of the Agreement.
 - (g) CN's nominated representative must approve/reject the Acquittal Report within 30 days of it being submitted. If the Service Fee has not been expended in accordance with this Agreement and the Deliverables Plan to the satisfaction of CN, CN's nominated representative will advise the Service Provider in writing and CN may terminate this Agreement and the Service Provider must repay the unspent portion of the Service Fee within 30 days.
 - (h) The Deliverables Plan may be amended at any time by written agreement between CN's nominated representative and the Service Provider. The written agreement containing amendments becomes an appendix to the Deliverables Plan, replacing the relevant sections.
- 6.2 Nothing in this agreement stops or restricts the Service Provider from applying for additional special rates as part of any competitive process undertaken by CN.

7 INTELLECTUAL PROPERTY

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

8 INDEMNITY

- 8.1 The Service Provider indemnifies CN, its servants and agents from and against all actions, claims, losses, damages, penalties, demands or costs whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of the performance by the Service Provider of the Agreement including:
- (a) (a) any negligence, wrongful act or omission of the Service Provider or of any other persons for whose acts or omissions the Service Provider is liable; and/or
 - (b) death or injury to any person or loss of or damage to any property; and/or

- (c) any breach of a third party's Intellectual Property Rights; and/or
 - (d) any breach of the Agreement by the Service Provider; and/or
 - (e) any action, claim or demand from liability brought against CN in connection with a breach by the Service Provider of the WH&S Act and associated legislation (so far as it is permissible at law).
- 8.2 The Service Provider's liability to indemnify CN is reduced proportionally to the extent that an action or omission of CN or employees or agents (other than the Service Provider) of CN may have contributed to the injury, damage or loss.

9 INSURANCE

- 9.1 For every year other than the first year after the Agreement commences, the Service Provider must, as part of its Deliverables Plan, affect and maintain the following insurances:
- (a) Workers Compensation insurance (if required) in accordance with the NSW Workers Compensation Act 1987);
 - (b) Public Liability insurance (of no less than \$20,000,000 coverage for any claim);
 - (c) Professional Indemnity insurance (of at least \$10,000,000 coverage).
- 9.2 The Service Provider must provide Certificates of Currency for the required insurance policies to the CN at least one week prior to the Start Date.
- 9.3 The Certificates of Currency must not be cancelled or amended without written notice being given to CN and must be made available for inspection at any time during the term of the Agreement.

10 ALTERATIONS AND MUTUAL TERMINATION

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

11 SURVIVAL

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

12 SEVERABILITY

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

13 RELATIONSHIP

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

14 GOVERNING LAW AND JURISDICTION

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

15 FORCE MAJEURE

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

16 PRIVACY AND GIPA

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

17 CODE OF CONDUCT

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

18 PAYMENT

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

19 TERMS AND CONDITIONS

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

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

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

The documents listed above form part of the Agreement.

20 TERMINATION

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

- (a) fails to perform its obligations under the Agreement at all, or within any time period specified by CN;
- (b) fails to carry out a reasonable direction of CN in respect to its obligations under the Agreement;
- (c) fails to submit a Deliverables Plan or Acquittal Report by the required date; or
- (d) fails to fulfil any of the Service Provider's obligations under section 4.

20.2 CN may terminate this Agreement by giving 14 days written notice to the Service Provider if:

- (a) if it ceases to levy the Special Rate;

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

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

21 DISPUTE RESOLUTION

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


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

Service Agreement



Agreement

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



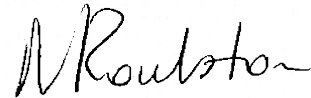
Authorised officer

Nick Kaiser

Name of Authorised officer (print)

21/08/2023

Date



Signature of witness


Melissa Roulston

Name of witness (print)

21/08/2023

Date

Signed on behalf of the **NEWCASTLE CITY BUSINESS ASSOCIATION INC** ABN: 93 706 504 579 by its Authorised officer:



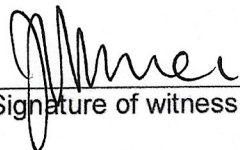
Authorised officer

Kendall Brooks

Name of Authorised officer (print)

14/8/23

Date



Signature of witness

Janice Musumeci

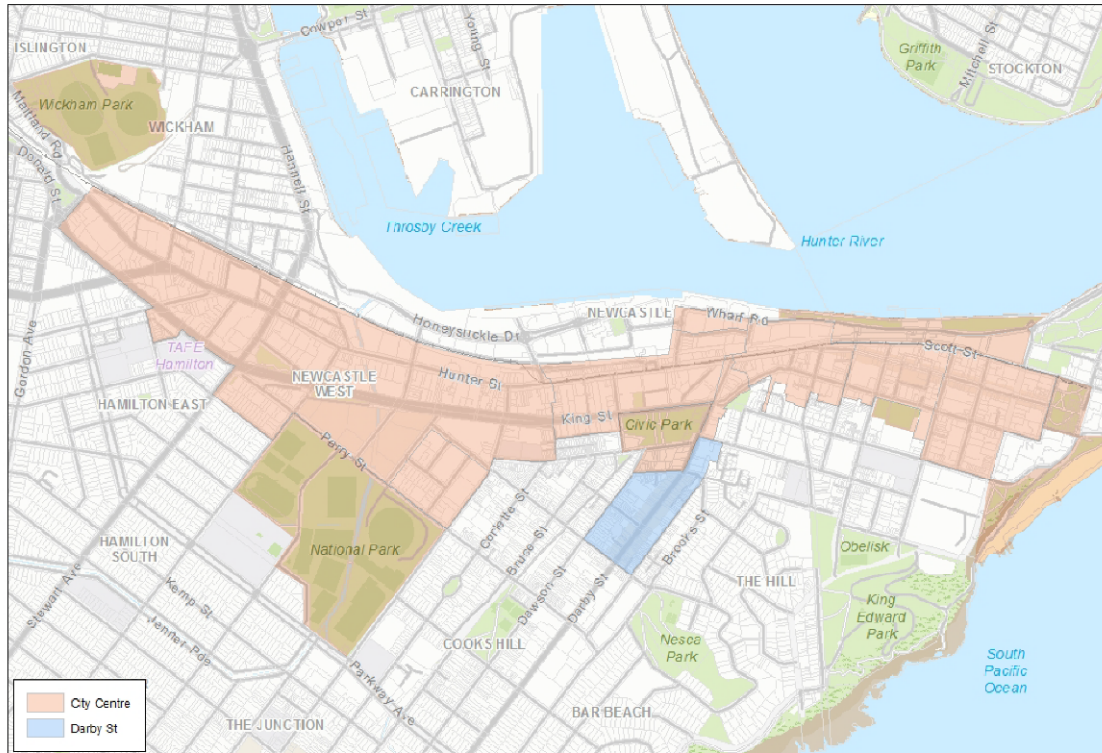
Name of witness (print)

14/8/23

Date

Schedule 1 – Details

1. Start date:
2. SBR Area: Newcastle City (City Centre and Darby Street)



Schedule 2 – CN’s Logo Use Guidelines

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

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

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

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

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

22 Correct Use



Stacked



Horizontal

Service Agreement

23 Incorrect Use



Do not distort the logo



Do not delete any part of the logo



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



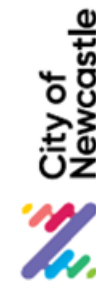
Do not use the colour logo on a photo or colour other than specified



Do not recolour any part of the logo



Do not add copy or text to the logo



Do not rotate any part of the logo

Where the City of Newcastle logo appears with the Newcastle Tourism brand, the CN logo must appear on the left.



Appendix 1 – Deliverables Plan (DPT)

Appendix 2 – CN Statement of Business Ethics

Appendix 3 – Terms of Engagement Consultants



NEWCASTLE CITY
BIA
BUSINESS IMPROVEMENT ASSOC.

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STRATEGIC DELIVERABLES PLAN OVERVIEW

2023 - 2024

BUSINESS IMPROVEMENT ASSOCIATION
NEWCASTLE CITY PRECINCT

ABN 93706504579
INC ID 1901584

INTRODUCTION

Newcastle is the economic hub of the Hunter Region and accounts for approximately 30% of the Hunter's developed industrial space and 80% of the office space. While Newcastle's industrial sector continues to play an important role, Newcastle is no longer a 'steel city'. A substantial and growing portion of Newcastle's economy is now based around the service sectors. The Port of Newcastle is Australia's largest coal export port by volume and a growing multi-purpose cargo hub.

It is the overarching objective of the Newcastle City BIA to promote the development, beautification and advancement of the commercial interests of businesses within the Newcastle City Precinct. Part of this commitment is to consider all parts of the precinct's landscape, all people no matter what their role or level within the business (formal or informal) and the relationship they have with all parts of the wider community. Additionally, the BIA believes that this will be most effective if it works in collaboration with organisations, groups and individuals who can inform all elements of its purpose.

The Newcastle City BIA Board is represented as below:

Chair: *Kendall Brooks* of Brooks Events & Marketing.

Vice-Chair: *Shanelle Lowe* of Chandler Macleod.

Treasurer and Public Officer: *Damien O'Brien* of O'Brien Winter Partners.

Secretary: *Taiyo Namba* of Namba Group.

Ordinary Member: *Lucy Glover* of Kafey Cafe.

Ordinary Member: *Kristy Coady* of Design Bug.

Ordinary Member: *Blake Phillips* of Pokey.

Ordinary Member: *Chris Russell* of CIMS Cafe.

STAKEHOLDERS

The Newcastle City BIA understands that it is part of a rich and diverse community and considers the following key and general groups (in no particular order) as audiences that will inform, engage and/or communicate with, to deliver activities, initiatives and plans in its objectives to support business in the Newcastle City precinct.

The following is an overview and analysis of stakeholders – it is not a complete stakeholder map and serves only to understand the wider stakeholder landscape.



VISION MISSION GOALS



Vision

Newcastle City BIA is a facilitator of conversations, projects and initiatives that best serve the changing and diverse needs of an evolving business community that seeks increased participation, promotion and growth.

Mission

The Association is guided by a common purpose to:

- Work with its members (precinct businesses) and other key players to identify and understand current and emerging project opportunities
- Collaborate and effectively communicate with City of Newcastle and other stakeholders for the benefit of promotional, beautification and economic outcomes for the precinct
- Effectively utilise available funding to enhance business outcomes
- Enable growth amidst change and uncertainty
- Best represent the needs of those who make up the Newcastle City precinct business community – that is, recognising the value and contribution of all staff, volunteers, business owners and the community.
- Operate in a professional and respectful manner and in accordance with all governance and compliance guidelines.

Goals

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

KEY STRATEGIC DELIVERABLES



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

Each project is detailed in this plan and includes information about how the project will deliver against the precincts’ target audiences, its overarching goals, the Service Agreement it has with CN and a budget that will include all aspects to costs and income such as projects costs, additional grants, sponsorships or partnerships.

Strategic Deliverables Budget 2023 – 2024 \$100,000

Promotion - \$35,000

- Live Spots
- Digital Asset Management
- Sponsorship of Networking Events
- Business Beat

Economic Development - \$60,000

- Open for sponsorship opportunities

Governance - \$5,000

- Voluntary Workers Insurance
- Association Liability
- Public Liability
- Association Fees
- Professional Accounting Fees

KEY DELIVERABLES

GOVERNANCE AND COMPLIANCE

INSURANCES

Timing: Annually

Budget: \$3 000

Details:

- Public Liability.
- Association Liability.
- Voluntary Workers Liability.

KPIs

- All of the above are a requirement of Service Agreement with CN.

ASSOCIATION FEES

Timing: Annually

Budget: \$100

Details:

- Submission of A12-T2 Form.

KPIs

- Governance for Associations in accordance with Department of Fair Trading.

PROFESSIONAL FEES

Timing: Annually

Budget: \$1 900

Details:

- Quarterly BAS; and
- EOFY Summary prepared for AGM.

KPIs

- Governance for Association's AGM and comply with all aspects of ATO requirements.

TOTAL = \$5 000

KEY DELIVERABLES



ECONOMIC DEVELOPMENT

OPEN TO SPONSORSHIP OPPORTUNITIES

Timing: Ongoing

Details:

- Collaborate with SBR Contestable funding applicants to provide activations including murals on hoardings to the Hunter Street Mall and East End to improve visitation and anti-graffiti purposes to the area which is affected by development.
- Liaise closely with Iris Capital to assist with input that can assist minimise the impact to businesses in the areas being developed.
- Seek a partner to assist with improving wayfinding in the precinct the BIA is currently in discussions with the University of Newcastle.

KPI's

- Promotes visitation to the precinct by locals and visitors from outside the precinct therefore assisting local businesses.
- Creates murals on hoardings for beautification and anti-graffiti purposes.

TOTAL = \$60 000

KEY DELIVERABLES

PROMOTION

DIGITAL ASSET MANAGEMENT

Timing: Ongoing as required

Budget: \$15 000

Details:

- Management of NCBIA digital assets including website landing page, EDM, LinkedIn (to be established) and NCBIA branding review.

KPIs

- Grow awareness of NCBIA improving Board numbers for succession planning.
- More membership engagement with feedback received to assist with NCBIA projects and planning.

HOST / SPONSOR NETWORKING EVENTS

Timing: Quarterly

Budget: \$10 000

Details:

- Align with The Business Centre to host informative sessions to update businesses on current matters, social media to communicate with businesses on precinct matters (such as parking project data) and to encourage public visitation to businesses.

KPIs

- Grow awareness of NCBIA improving Board numbers for succession planning.
- More membership engagement with feedback received to assist with NCBIA projects and planning.

LIVE SPOTS

Timing: July 2023 to September 2023

Budget: \$10 000

Details:

- Supporting local musicians and small businesses within venue performances.
- NCBIA to support application for SBR Contestable funding of project ongoing in 2023 - 2024.
- Bringing live music to Newcastle City Saturday mornings 3 locations each week across the precinct.
- Promoting the business in social media and posters to improve visitation to the area on Saturdays.
- Dedicated Talent Manager who will also manage Live Spots Instagram page.

BUSINESS BEAT

Timing: Ongoing as required

Budget: N/A

Details:

- Business Beat will see the Local Area Police Command visit the Newcastle precincts and meet one-on-one with business operators.
- This initiative will give local police officers the opportunity to talk about local policing issues to ensure that local businesses are not only informed but they also have the chance to connect with their local officers.
- The 'Business Beat' initiative will aim to show support of local police by local businesses and will give Police the opportunity to talk about local policing issues (inform, educate, connect, visibility). This initiative will also connect local police officers with business owners to develop relationships and make our community safer.

TOTAL = \$35 000





**BUSINESS IMPROVEMENT ASSOCIATION
NEWCASTLE CITY PRECINCT**

**ABN 93706504579
INC ID 1901584**

2023 - 2024 STRATEGIC DELIVERABLES PLAN OVERVIEW

NCC313; Rev. 5

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

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

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

Business Principles

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

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

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

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

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

Doing Business with Council

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

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

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

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

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

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

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

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

Modern Slavery: Suppliers and contractors must comply with the requirements under the Modern Slavery Amendment Act 2021 (Cth) and all related legislation including the Modern Slavery Act 2018 (NSW). Council will not participate in any procurement with a supplier or contractor that is found to be engaging in modern slavery.

Complying with this Statement

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

Reporting

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

Chief Executive Officer
City of Newcastle
PO Box 489
Newcastle NSW 2300



City of Newcastle

Terms of Engagement for Consultants

(Edition 6; April 2020) ©

CONTENTS

- | | | | |
|-----|---------------------------------|-----|-----------------------------|
| 1. | INTERPRETATIONS | 13. | DELAYS & EXTENSIONS OF TIME |
| 2. | GOVERNING LAW | 14. | PAYMENT |
| 3. | STATUTORY & OTHER REQUIREMENTS | 15. | TERMINATION |
| 4. | PRINCIPAL'S OBLIGATIONS | 16. | CONFIDENTIALITY & PRIVACY |
| 5. | RELATIONSHIP WITH THE PRINCIPAL | 17. | INTELLECTUAL PROPERTY |
| 6. | DIRECTIONS AND VARIATIONS | 18. | INDEMNITY |
| 7. | DISCREPANCIES IN INFORMATION | 19. | INSURANCE |
| 8. | SUBCONTRACTING OR ASSIGNMENT | 20. | SAFETY MANAGEMENT |
| 9. | CONFLICT OF INTEREST | 21. | DISPUTES |
| 10. | STANDARD OF CARE | 22. | WAIVER |
| 11. | PERSONNEL | 23. | SURVIVING OBLIGATIONS |
| 12. | REPORTS & INFORMATION | | |

(This document was developed in association with the Hunter Joint Organisation of Councils)

TERMS OF ENGAGEMENT FOR CONSULTANTS

1. INTERPRETATION

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

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

"Contract Sum" (or **"Service Fee"**) means the lump sum in Australian Dollars set out or calculated in accordance with service rates or expenses stated in the Agreement;

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

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

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

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

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

"Principal" means the Council of the City of Newcastle;

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

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

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

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

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

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

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

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

2. GOVERNING LAW

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

3. STATUTORY & OTHER REQUIREMENTS

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

4. PRINCIPAL'S OBLIGATIONS

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

5. RELATIONSHIP WITH PRINCIPAL

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

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

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

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

6. DIRECTIONS & VARIATIONS

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

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

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

7. DISCREPANCIES IN INFORMATION

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

8. SUB-CONTRACTING OR ASSIGNMENT

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

9. CONFLICT OF INTEREST

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

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

10. STANDARD OF CARE

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

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

11. PERSONNEL

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

The Service Provider shall reasonably ensure that the personnel nominated in the Agreement are engaged throughout the entire period of the Agreement.

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

12. REPORTS & INFORMATION

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

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

13. DELAYS & EXTENSION OF TIME

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

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

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

Nothing in this Clause shall:

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

14. PAYMENT

14.1 Costs, Fees and Expenses

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

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

14.2 Claims for Payment

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

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

14.3 Time for Payment

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

14.4 Disputed Claims

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

14.5 Payments on Account

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

15. TERMINATION

15.1 Termination by the Principal – Default of the Service Provider

Without prejudice to any other rights, the Principal reserves the right to terminate the Agreement if the Service Provider commits a substantial breach of the Agreement, including:

- (a) failure to carry out the Agreement at all, or within the time specified, or at a reasonable quality; or
- (b) failure to carry out a reasonable direction of the Principal's Representative.

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

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

15.2 Termination – Frustration, Convenience

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

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

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

15.3 Termination by the Service Provider

If the Principal fails to:

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

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

16. CONFIDENTIALITY & PRIVACY

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

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

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

17. INTELLECTUAL PROPERTY

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

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

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

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

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

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

18. INDEMNITY

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

- (a) any negligence, wrongful act or omission of the Service Provider or of any other persons for whose acts or omissions the Service Provider is liable; and/or
- (b) death or injury to any person or loss of or damage to any property; and/or
- (c) any breach of a third party's Intellectual Property Rights; and/or
- (d) any breach of the Agreement by the Service Provider; and/or
- (e) any action, claim or demand from liability brought against the Principal in connection with a breach by the Service Provider of the *Work Health & Safety Act 2011* and associated legislation (so far as it is permissible at law).

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

19. INSURANCE

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

The Service Provider must keep current during the contract term, the following policies of insurances:

- (a) public liability - in respect of any one occurrence, \$20,000,000 but unlimited in the aggregate;
- (b) Accident insurance - Complying with the *Workers Compensation Act 1987*. Alternatively, where the Service Provider has no employees, insurance for personal accident and illness providing:
 - (i) Weekly benefits of at least 75% of weekly income;
 - (ii) Death benefits of at least \$250,000;
 - (iii) Minimum benefit period of 24 months.
- (c) professional indemnity insurance - a limit for any one claim of \$10,000,000 unless otherwise stated by the Principal.

20. SAFETY MANAGEMENT

The Service Provider must comply with the current Work Health & Safety legislation and the Principal's Site safety requirements.

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

21. DISPUTES

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

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

22. WAIVER

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

23. SURVIVING OBLIGATIONS

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