

# Ordinary Council Meeting



**DATE:** Tuesday, 31 October 2023

**TIME:** 6:00pm

**VENUE:** Council Chambers  
Level 1, City Administration Centre  
12 Stewart Avenue  
Newcastle West NSW 2302

26 October 2023

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**City of Newcastle**  
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*[For documents marked 'Distributed under Separate Cover' refer to Council's website at  
http://www.newcastle.nsw.gov.au/](http://www.newcastle.nsw.gov.au/)*

*Note: Items may not necessarily be dealt with in numerical order*

## **6. CONFIRMATION OF MINUTES**

### **6.1. MINUTES - ORDINARY COUNCIL MEETING 26 SEPTEMBER 2023**

The draft minutes as circulated be taken as read and confirmed.

## **ATTACHMENTS**

**Attachment A:** 230926 Ordinary Council Meeting Minutes

*Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)*

## Minutes

### Ordinary Council Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 26 September 2023 at 6:00pm.

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#### 1. ATTENDANCE

The Lord Mayor (Councillor N Nelmes), Councillors E Adamczyk, J Barrie, J Church, D Clausen, C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, P Winney-Baartz and M Wood.

D Clarke (Acting Chief Executive Officer), S Mitchell (Acting Executive Director Corporate Services and CFO), A Jones (Executive Director Creative and Community Services), C Thomson (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance), R Dudgeon (Executive Manager Project Management Office), P Emmett (City Wide Development Assessment Manager), A Lopez (Chief Information Officer), M Murray (Chief of Staff), J Baker (Governance Manager), L Zoneff (Media Adviser), M Hughes (Media Adviser), L Barnao (Councillor Services/Minutes/Meeting Support), R Williams (Information Technology Support) and C Urquhart (Information Technology Support).

#### 2. ACKNOWLEDGEMENT OF COUNTRY

The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

#### 3. PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

#### 4. APOLOGIES / LEAVE OF ABSENCE / ATTENDANCE BY AUDIO VISUAL LINK

##### MOTION

Moved by Cr Duncan, seconded by Cr Winney-Baartz

The request submitted by Councillor Richardson to attend by audio visual link be received and leave granted.

**Carried**

## **MOTION**

Moved by Cr Barrie, seconded by Cr Mackenzie

The apology submitted on behalf of Councillor Wark be received and leave of absence granted.

**Carried**

## **5. DISCLOSURES OF INTEREST**

### **Councillor McCabe**

Councillor declared a non-significant, non-pecuniary interest in Item 8.2 - Exhibition of Draft Newcastle Development Control Plan 2023 stating that she took part in the community group that actively advocated for the Tighes Hill Character Study and would manage the interest by remaining in the Chamber.

## **6. CONFIRMATION OF MINUTES**

### **6.1. MINUTES - ORDINARY COUNCIL MEETING 22 AUGUST 2023**

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

The minutes as circulated be taken as read and confirmed.

**Carried**

## **7. LORD MAYORAL MINUTE**

### **7.1 PAUL WOSEEN CONDOLENCE MOTION**

#### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Extends its heartfelt condolences to the family, friends, and fans of Paul Woseen, recognising the profound loss they are experiencing;
2. Acknowledges and celebrates the significant cultural and artistic contributions made by Paul Woseen throughout his career;
3. Recognises the impact of the Screaming Jets, a band born in our own city, as a source of pride and inspiration for the Newcastle community;
4. Commits to preserving and promoting the musical heritage of Paul Woseen and the Screaming Jets as part of our city's cultural legacy;
5. Encourages the community to come together and celebrate Paul's life and music by keeping his memory alive through listening to his music and reflecting on the impact he had on our city;

6. Convey its condolences to Paul Woseen's family and loved ones, as a symbol of our shared sadness and appreciation for his contributions.

**Carried**

## **7.2 10 YEARS OF SERVICE TO NEWCASTLE BY SHARON CLAYDON MP**

### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Expresses its heartfelt congratulations and deepest appreciation to Sharon Claydon MP for her remarkable ten years of service as the Federal Member for Newcastle; and
2. Commends her outstanding contributions to our community and her tireless efforts to enhance the quality of life for all residents of Newcastle; and
3. Notes some of Sharon's recent achievements include:
  - a. Delivering a \$6.2 million funding package in partnership with CN to deliver sand replenishment on Stockton Beach,
  - b. \$130,000 for upgrades at Heaton Public, Belair Public and Mayfield West Demonstration Schools,
  - c. Millions for roads in the Newcastle electorate to build back better following the 2022 floods,
  - d. Restoring the Calvary Matar GP After Hours Clinic service,
  - e. \$55 million to upgrade the international terminal facility at Newcastle Airport
  - f. Funding for live music to support local talent
  - g. Increased jobs and economic diversification via the Hunter Hydrogen Hub and declaration of the Newcastle Offshore Wind Zone.
4. Formally conveys this motion of congratulations and appreciation to Ms. Sharon Claydon MP; and
5. Further resolves that this Council reaffirms its commitment to working collaboratively with Ms. Claydon and all our State and Federal Government representatives to continue advancing the well-being and prosperity of our city.

**Carried  
unanimously**

## **7.3 NEWCASTLE WILLIAMTOWN AIR SHOW 2023**

### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Notes that for the first time in more than a decade, City of Newcastle will host the free, family-friendly Royal Australian Air Force (RAAF) Aircraft Flying Display on Saturday, 18 November 2023, with up to one hundred thousand Novocastrians and visitors expected to line Newcastle Harbour to catch a glimpse of aerial displays and flypasts at the Newcastle Williamstown Air Show 2023;
2. Notes that attracting major events of this calibre is a testament to Newcastle's growth as a world-class events and cultural city and indicative of a thriving local economy, and welcomes the significant economic boost that this major event will provide for Newcastle's visitor economy, for local businesses and for the jobs that they sustain;
3. Thanks our delivery partners at the RAAF, Port Stephens Council and the NSW Government for their wonderful collaboration to secure this thrilling event for Newcastle;
4. Thanks the NSW Government, particularly Minister for Transport, the Hon. Jo Haylen MP, for providing additional transport services including rail, light rail, bus and ferry services as well as a Park and Ride service from McDonald Jones Stadium, and Park and Walk Areas from Stockton, as well as Minister for the Hunter, the Hon. Yasmin Catley MP, and the Minister for Regional NSW, the Hon. Tara Moriarty MLC.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, Pull, Richardson, Winney-Baartz and Wood.

**Against the Motion:** Councillors McCabe.

**Carried**

## 8. REPORTS

### 8.3. PROPOSED GRANTING OF RIGHT OF CARRIAGEWAY EASEMENT OVER OPERATIONAL LAND - 45 LOOKOUT ROAD NEW LAMBTON HEIGHTS

#### MOTION

Moved by Cr Winney-Baartz, seconded by Cr Mackenzie

That Council:

1. Approve the creation of an easement for a Right of Carriageway over Operational Land at Lot 40 DP19631 (45 Lookout Road New Lambton Heights) for the benefit of Lot 2 DP 659602 (4 Bushlands Close New Lambton Heights) as shown at Attachment A, for nil compensation.
2. Grant authority to the Chief Executive Officer or his delegate to execute all relevant documentation to authorise the transaction.

**Carried**



#### **8.4. CHANGE TO 2023 ADOPTED MEETING SCHEDULE**

##### **MOTION**

Moved by Cr Barrie, seconded by Cr Mackenzie

That Council:

1. Adopt a change in Council's meeting cycle; moving the Ordinary Council Meeting from Tuesday 24 October 2023 to Tuesday 31 October 2023.

**Carried  
unanimously**

#### **8.5. EXECUTIVE MONTHLY PERFORMANCE REPORT**

##### **MOTION**

Moved by Cr Barrie, seconded by Cr Clausen

That Council:

1. Receives the Executive Monthly Performance Report for August 2023.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

**Against the Motion:** Councillor Church.

**Carried**

#### **8.1. EXHIBITION OF OUTDOOR TRADING POLICY**

##### **MOTION**

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

1. Endorses Draft Outdoor Dining Policy 2023 and Draft Outdoor Dining Guidelines 2023 as at Attachment A and B for public exhibition.
2. Receives a post-exhibition report on submissions to Draft Outdoor Dining Policy 2023 and Draft Outdoor Dining Guidelines 2023.

**Carried**

#### **8.2. EXHIBITION OF DRAFT NEWCASTLE DEVELOPMENT CONTROL PLAN 2023**

A memo was circulated to all Councillors recommending an additional development control for consideration in respect of Item 8.2, which amended point 1 of the motion. In moving the motion, Councillor Adamczyk moved the recommendation outlined in the memo and an additional point 3.

##### **MOTION**

Moved by Cr Adamczyk, seconded by Cr Wood

That Council:

1. Endorses Draft NCP 2023 for exhibition (Attachment A), subject to the additional control to be inserted within sub-section 11 of section C3 Vegetation Preservation, as outlined within the Councillor memo dated 26 September 2023.
2. Receives a post-exhibition report on submissions to Draft NDGP 2023.
3. Notes our commitment to wide-reaching consultation with local, state, and national organisations and advocacy groups representing the breadth and diversity of how people build, live, and work in our city.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

**Against the Motion:** Nil.

**Carried  
unanimously**

## **8.6. TENDER REPORT – NEWCASTLE OCEAN BATHS UPGRADE STAGE 2 - PRINCIPAL DESIGN CONSULTANT - CONTRACT NO. 2023/163T**

### **MOTION**

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

1. Accept the tender of Tonkin Zulaikha Greer Pty Ltd in the amount of \$1,251,598.25 (excluding GST) for Newcastle Ocean Baths Stage 2 Principal Design Consultant for Contract No. 2023/163T.
2. The confidential attachments relating to the matters specified in s10A(2)(d) of the Local Government Act 1993 be treated as confidential and remain confidential until the Chief Executive Officer determines otherwise.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Winney-Baartz and Wood.

**Against the Motion:** Nil.

**Carried  
unanimously**

## **9. NOTICES OF MOTION**

### **9.1. BUSKING POLICY**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Mackenzie

That City of Newcastle:

1. Is increasingly recognised as a city that offers true artistic and culture life to residents, workers and visitors.

2. Recognises that live music promotes social cohesion and community wellbeing through vibrant, safe and active public places.
3. Notes CN's commitment to fostering arts and cultural activities across the LGA, supported by the principles contained within the Community Strategic Plan 2040, Live Music Strategy 2019 and After Dark Economy Strategy 2018.
4. Develops a Buskers Policy and Licence, managed by the City of Newcastle, that supports live performance opportunity and creates enjoyable ambience in public spaces, while ensuring public safety, city amenity, and the quality of performances.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Clausen, Duncan, Mackenzie, McCabe, Richardson, Winney-Baartz and Wood.

**Against the Motion:** Councillors Church and Pull.

**Carried**

## **9.2. BEAUMONT STREET - MOCKINGBIRD OUTDOOR DINING REFUSAL**

In moving the motion, Councillor Duncan advised she was moving the Officer's recommendation outlined in the Director's comment in the business papers.

### **MOTION**

Moved by Cr Duncan, seconded by Cr Winney-Baartz

That Council:

Part A:

1. Notes the active support and encouragement by City of Newcastle to support and increase the operation of outdoor dining in the city, notably by the decision of this council at the February 2020 Ordinary Council Meeting to scrap outdoor dining fees.
2. Notes that an updated outdoor trading policy is due to be presented to the September 2023 council meeting for public exhibition, further confirming the City's support for outdoor dining.
3. Notes the ongoing concerns of the owner of Mockingbird Café at 131 Beaumont Street, Hamilton, regarding the operation of outdoor dining.
4. Strongly advocates for the early and successful resolution of the issue with Keolis Downer in a manner that respects and protects the outdoor dining offered by Mockingbird to the community.

Part B:

1. Supports the recommendation endorsed by the NCTC to implement immediate changes to parking restrictions in the vicinity of 131 Beaumont Street Hamilton.

2. Applies to TfNSW to review the servicing of the 21 Bus Route, including resolving the optimum location of the bus stop in the vicinity of 131 Beaumont Street Hamilton to best serve the route to provide for fully compliant operations, and reports back to NCTC as to the outcome of the review.
3. Notes that CN will contact the Mockingbird Café encouraging them to submit an application for a compliant outdoor dining permit in accordance with CN's Outdoor Trading Policy.

**Carried  
unanimously**

## **10. CONFIDENTIAL REPORTS**

### **PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

Council move into confidential session for the reasons outlined in the business papers.

**Carried**

Council moved into confidential session at 8.02pm

### **PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Duncan

Council move into open session.

**Carried**

Council moved into open session at 8.05pm and the Acting Chief Executive Officer read the resolution of the partial confidential report (refer resolution at 8.6) and confidential Item 10.1 below.

## **10.1. NEWCASTLE AND TECHNOLOGY ONE - PROPOSED NEW SAAS AGREEMENT**

### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

That Council:

1. Not invite tenders to enter into a new agreement with TechnologyOne. A satisfactory result would not have been achieved through the calling of tenders as TechnologyOne is the sole supplier of this service.
2. Accepts the new contract for Software as a Service (SaaS) agreement with TechnologyOne.

**Carried  
unanimously**

**The meeting concluded at 8.07pm.**

## 7. LORD MAYORAL MINUTE

*To be tabled at the meeting.*

## 8. REPORTS

### 8.1. AUTHORISATION FOR SIGNING OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

**REPORT BY: CORPORATE SERVICES**  
**CONTACT: EXECUTIVE DIRECTOR CORPORATE SERVICES & CHIEF FINANCIAL OFFICER / EXECUTIVE MANAGER FINANCE, PROPERTY & PERFORMANCE & DEPUTY CFO**

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#### PURPOSE

To authorise the signing of City of Newcastle's (CN) Statements by Councillors and Management as required for the Financial Statements for the year ended 30 June 2023.

#### RECOMMENDATION

That Council:

- 1 Receives the draft Financial Statements for the year ended 30 June 2023 (**Attachment A**) and formally refers them to CN's Auditor, the Audit Office of New South Wales, in accordance with Section 413(1) of the Local Government Act 1993 (Act).
- 2 Authorises the Lord Mayor, a Councillor, the Chief Executive Officer and the Responsible Accounting Officer to sign the Statements by Councillors and Management in accordance with Section 413(2) of the Act (**Attachments B and C**)
- 3 In anticipation of receiving of the Auditor's Report, endorse publication on City of Newcastle's (CN) website of the intention to present its audited Financial Statements for the year ended 30 June 2023 at the Ordinary Council Meeting to be held on 28 November 2023 in accordance with Section 418 and Section 705(3) of the Act.

#### KEY ISSUES

- 4 CN is required under Section 413(1) of the Act to prepare Financial Statements each year and refer them to audit. Section 413(2) of the Act requires that the Financial Statements must include:
  - i) A General Purpose Financial Statement; and

- ii) Any other matter prescribed by the regulations; and
  - iii) A statement in the approved form by the Council as to its opinion on the General Purpose Financial Statements and the Special Purpose Financial Statements.
- 5 CN's draft Financial Statements for the year ended 30 June 2023 include the following:
- i) General Purpose Financial Statements
  - ii) Special Purpose Financial Statements, and
  - iii) Special Schedules.
- 6 The draft Financial Statements for the year ended 30 June 2023 were presented to the Audit and Risk Committee on 16 October 2023.
- 7 Attached to this report are the Statements by Councillors and Management which the Lord Mayor, a Councillor, the Chief Executive Officer and the Responsible Accounting Officer must sign in accordance with Section 413(2) c) of the Act, to confirm that the Financial Statements have been prepared in accordance with the applicable legislation, regulations, accounting standards and reporting codes.
- 8 In accordance with Section 418 of the Act, public notice will be given on CN's website on 21 November 2023 of the presentation of the Financial Statements. The Financial Statements for the year ended 30 June 2023 will be made available for inspection at the City Administration Centre and on CN's website.
- 9 In accordance with Section 419 of the Act, CN will present the signed Financial Statements for the year ended 30 June 2023 at the Ordinary Council Meeting to be held on 28 November 2023.
- 10 Under Section 420 of the Act, members of the public can make submissions to CN with respect to CN's audited Financial Statements or CN's Auditors Report. Submissions must be in writing and lodged with Council within 7 days after the Ordinary Council Meeting on 28 November 2023.
- 11 In accordance with Section 416(1) of the Act, a copy of the audited Financial Statements (**Attachment A**), together with **Attachments B and C** signed in accordance with the recommendation at paragraph 2, must be provided to the Office of Local Government (OLG) by no later than 31 October 2023.

#### Financial Performance Summary:

- 12 CN anticipates that the NSW Audit Office will issue an unqualified opinion in the Auditor's Report on CN's Financial Statements for the year ended 30 June 2023.
- 13 The operating result before capital grants and contributions was a surplus of \$7.8m in 2022/23 (against an adopted budget surplus of \$1.3m), compared to a deficit of \$12.5m in 2021/22.

- 14 CN's return to an operating surplus for 2022/23 reflects effective financial decision making and monitoring. The adopted budget for 2023/24 continues this commitment towards financial sustainability with a forecast surplus of \$6.9m (before capital grants and contributions).
- 15 CN received \$20.2m in grants and contributions for capital purposes in 2022/23, compared to \$17.1m in the prior year.
- 16 In 2022/23 CN delivered a record total spend of \$117.8m on project works across the Newcastle local government area. CN delivered 89% of the original budgeted works program which was set at \$132.6m, noting the program was revised to \$117.3m in the Council approved Quarterly Budget Review in March 2023.
- 17 Highlights of the program include \$37.5m on City Infrastructure Assets and Facilities including \$12.4m on Road Resurfacing, \$7.4m on Stormwater, \$3.6m on Bridges including \$1.4m for the Yangan Bridge repair and \$1.4m on Footpaths; \$23.4m on Creative & Community Services including \$10.8m on Aquatics including the Newcastle Ocean Baths upgrade and Lambton Pool Grandstand, \$9.9m on Recreation and Sport including upgrades to Darling Street Oval, Myer Park and Luger Park, \$0.9m on Civic Venues; \$21.0m on City Shaping Projects including \$11.3m on Astra Street Remediation, \$6.4m on the Art Gallery Expansion and \$3.2m on Summerhill upgrades; \$10.0m on Planning and Environment including \$3.2m on Coast, Estuary and Wetlands, \$3.1m on Bushlands and Watercourses and \$1.8m on Street and Park Trees; \$8.5m on Waste Services; \$6.8m on City Infrastructure Revitalisation including \$4.0m on Urban Centres and \$2.0m on Coastal projects; \$5.9m on Corporate Services including \$5.1m on Core Systems and Digital Enablement; \$4.7m on Transport including \$1.9m on Pedestrian Access, \$1.7m on Local Area and Traffic Management and \$1m on Cycleways within the cycleway specific program (not including those incorporated within other programs).
- 18 CN's financial statements reflect net assets of \$2.09b, up from \$1.91b in 2021/22.
- 19 Total revenue for 2022/23 was \$404.6m or \$51.0m higher compared to actual revenue in 2021/22.
- 20 Total operating expenditure for 2022/23 was \$376.5m or \$27.5m higher than actual expenditure in 2021/22.
- 21 In 2022/23, CN outperformed the benchmarks in all six financial key performance ratios set by the NSW Office of Local Government.

#### Operating Result:

- 22 The operating result is calculated on a full accruals basis which means that all costs / income which relate to the current financial year are included irrespective of whether a cash inflow / outflow has been made or not (except for the prepayment of Federal Assistance Grants by the Commonwealth Government, which are accounted for in the year they are paid).

- 23 To facilitate comparison, the Income Statement from the 2021/22 and 2022/23 Financial Statements is reformatted and summarised below:

<b>Line No</b>		<b>2022/23 (\$'000) Actual</b>	<b>2021/22 (\$'000) Actual</b>
i)	Total income from continuing operations	404,561	353,598
ii)	Total expenses from continuing operations	(376,487)	(348,967)
iii)	<b>Operating result from continuing operations</b>	<b>28,074</b>	<b>4,631</b>
iv)	Net operating result for the year before grants and contributions provided for capital purposes	7,834	(12,467)

- 24 Analysis of the movement of individual line items from the table above are:

- 25 Line (i): Total income from continuing operations:

Represents an increase of \$51.0m compared to 2021/22. Rates and annual charges increased by \$9.5m in 2022/23 which was driven by the Independent Pricing and Regulatory Tribunal's (IPART) Additional Special Variation (ASV) of 2.5% along with a growth in the number of rateable properties and an increase in the domestic waste charge per property.

User fees and charges increased by \$16.8m with the main drivers being increased function and ticketing income, parking meter revenue and the operations at Newcastle Airport. Other increases were observed in grants and contributions \$8.4m, other revenues \$5.7m, other income \$3.9m and the impact of the increasing interest rate environment on CN's investment portfolio \$6.6m.

- 26 Line (ii): Total expenses from continuing operations

The 2022/23 expenditure represents an increase of \$27.5m compared to 2021/22. The main driver of the increase was materials and services at \$19.5m; with the impact of revised contract cost estimates on the asset remediation provision for Astra Street accounting for most of this movement.

The remainder of the increase relates to employee benefits and on-costs \$3.9m, borrowing costs \$1.7m, depreciation, amortisation and impairment \$4.7m, and net loss from the disposal of assets \$3.7m. Other expenses offset this by \$5.9m. The prior year recorded a fair value decrement on investments, compared to an increment in 2022/23.



## 27 Line (iii): Operating result from continuing operations:

The operating result for 2022/23 was an increase of \$23.4m on the equivalent result in 2021/22. This was due to an increase in income of \$51.0m, offset by an increase in expenditure of \$27.5m as outlined above.

## 28 Line (iv): Net operating results for the year before grants and contributions provided for capital purposes:

CN's operating result before capital grants and contributions in 2022/23 was an operating surplus of \$7.8m, which is a favourable movement of \$20.3m from the 2021/22 net operating result.

## 29 Budget to actual comparison (Page 4 of the Financial Statements):

The budget disclosed in the income statement on page 4 of the Financial Statements is the original budget as detailed in the 2022/23 Delivering Newcastle 2040 document (2022/23 Delivery Program and Operational Plan) adopted at the Ordinary Council meeting held on 28 June 2022 and does not include any budget adjustments approved by Council at the Quarterly Budget Reviews during 2022/23. The actual result for 2022/23 was a net surplus (excluding capital grants and contributions) of \$7.8m against an adopted budget surplus of \$1.3m.

## 30 The explanation of the key variances between actual and budget results is as follows:

- i) Other revenues were favourable to budget by \$3.2m largely driven by the recovery from insurance claims and the recoupment of investments. This was partially offset by a reduction in revenue from parking fines.
- ii) Total grants and contributions revenue were favourable to budget by \$6.5m due to an increase in the Commonwealth Financial Assistance Grant, with the 2023/24 portion received 100% in advance, as well as additional funds received for disaster recovery and transport grants. There were smaller unfavourable movements in developer contributions and non-cash contributions due to changing economic conditions.
- iii) Interest and investment income achieved higher than budgeted results by \$8.2m due to better than forecast investment conditions and the increasing interest rate environment.
- iv) Other income was favourable to budget by \$3.6m driven by an increase in the value of CN's investments compared to budget and an increase in rental income from CN's 50% share of Newcastle Airport.
- v) Materials and services exceeded the adopted budget by \$19.1m due to the impact of revised contract cost estimates on the asset remediation provision for Astra Street.

- vi) Borrowing costs were \$1.4m higher than budgeted because of the increased cost of borrowings related to market conditions and CN's 50% share of Newcastle Airport costs.
  - vii) Net losses from the disposal of assets were \$4.9m higher than budgeted; explained by the write-off of existing assets due to renewal work completed on large, long-life infrastructure within the city.
- 31 A high-level analysis of material budget variations (above 10%) is shown in Note B5-1 of the Financial Statements.

Audited Key Performance Ratios:

- 32 Note G4-1 on Page 91 of the Financial Statements details CN's key financial performance measures.

- 33 Operating Performance Ratio 3.69%

This ratio measures the extent to which Council contains operating expenditure within operating revenue. This ratio focuses on operating performance, and hence capital grants and contributions, fair value adjustments, and the reversal of revaluation decrements are excluded. **The benchmark is greater than 0% and CN exceeded the benchmark.**

- 34 Own source operating revenue ratio 85.79%:

This ratio measures fiscal flexibility and the degree of reliance on external funding sources such as operating grants and contributions. CN's financial flexibility improves the higher the level of its own source revenue. **The benchmark is greater than 60% and CN exceeded the benchmark.**

- 35 Unrestricted current ratio 1.99x:

The unrestricted current ratio measures CN's ability to meet its short-term obligations using current assets adjusted for any external restrictions. **The benchmark is greater than 1.5x and CN exceeded the benchmark.**

- 36 Debt service cover ratio 3.38x:

This ratio measures the availability of operating cash to service debt including interest, principal, and lease payments. **The benchmark is greater than 2x and CN exceeded the benchmark.**

- 37 Rates and annual charges outstanding ratio 3.44%:

This ratio assesses the impact of uncollected rates and annual charges on liquidity and the adequacy of recovery efforts. **The benchmark is less than 10% (for Councils classified as regional and rural) and CN achieved the benchmark.**

38 Cash expense cover ratio 6.49 months:

This liquidity ratio indicates the number of months a Council can continue paying for its immediate expenses without additional cash inflow. **The benchmark is greater than three months and CN exceeded the benchmark.**

Financial Performance Measures:

- 39 The Audit and Risk Committee has been proactive throughout the year in reviewing CN's financial performance and commitment to continuing financial sustainability.
- 40 Ensuring CN is financially sustainable remains a priority, as reflected in the Long-Term Financial Plan which forecasts ten successive budget surpluses over the coming decade.
- 41 The adopted budget for 2023/24 is a surplus of \$6.9m, not including revenue from capital grants and contributions.

## FINANCIAL IMPACT

- 42 The 2022/23 Operational Plan included a budget amount of \$145,000 for the external audit of the Financial Statements for the year ended 30 June 2023. The current cost estimate provided by the auditors is \$145,000.

## COMMUNITY STRATEGIC PLAN ALIGNMENT

- 43 This report aligns to the Newcastle 2040 Community Strategic Plan under the strategic direction:

### **Achieving Together**

#### 4.1.1 Financial sustainability

## IMPLEMENTATION PLAN/IMPLICATIONS

- 44 The legislative deadlines and proposed timeline to complete the audit of the Financial Statements are as follows:
- i) 31 October 2023 - Final date for the Financial Statements for the year ended 30 June 2023 to be submitted to the OLG and the Australian Bureau of Statistics in accordance with Section 417(5) of the Act.
  - ii) 28 November - Financial Statements and Audit Report for the year ended 30 June 2023 presented at the Ordinary Council Meeting.

## **RISK ASSESSMENT AND MITIGATION**

- 45 Section 416 of the Act requires CN's Financial Statements to be externally audited. This audit has been completed by the Audit Office of New South Wales.
- 46 CN's Financial Statements for the year ended 30 June 2023 have been prepared in accordance with:
- i) The Local Government Act 1993 and the Local Government (General) Regulations 2021;
  - ii) Australian Accounting Standards and professional pronouncements; and
  - iii) The Local Government Code of Accounting Practice and Financial Reporting (Guidelines).

## **RELATED PREVIOUS DECISIONS**

- 47 At the Ordinary Council Meeting held on 23 August 2022, and annually in years past, Council resolved to authorise the Lord Mayor, a Councillor, the Chief Executive Officer and the Responsible Accounting Officer to sign the relevant statements for prior years in accordance with Section 413(2) of the Act at the conclusion of the external audit.

## **CONSULTATION**

- 48 The Financial Statements for the year ended 30 June 2023 were presented to the Audit and Risk Committee on 16 October 2023. The Audit and Risk Committee recommended the Financial Statements be approved by the elected Council.
- 49 A workshop on the Financial Statements for the year ended 30 June 2023 was provided to Councillors on 17 October 2023.
- 50 In accordance with the provisions of Section 418 of the Act, public notice of the meeting date at which CN's Financial Statements will be presented will be notified on CN's website on 21 November 2023.
- 51 Under Section 420 of the Act, members of the public can make submissions to CN with respect to the Financial Statements or CN's Auditor's Report up until 5 December 2023.

## **BACKGROUND**

- 52 This report and its associated approval by way of Council resolution will ensure that the Statement by Councillors and Management made pursuant to Section 413(2)(c) of the Act is approved and signed by the relevant parties to comply with lodgment of the audited Financial Statements with the OLG by 31 October 2023.

## **OPTIONS**

### **Option 1**

53 The recommendation as at paragraphs 1, 2 and 3. This is the recommended option.

### **Option 2**

54 Council resolves to vary the recommendations. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** City of Newcastle's Draft Financial Statements for the year ended 30 June 2023

**Attachment B:** Statement by Councillors and Management made pursuant to Section 413(2) of the Act – General Purpose Financial Statements for the year ended 30 June 2023.

**Attachment C:** Statement by Councillors and Management made pursuant to Section 413(2) of the Act – Special Purpose Financial Statements for the year ended 30 June 2023.

**Attachments A - C distributed under separate cover**

## 8.2. TABLING OF REGISTER OF DISCLOSURES OF INTEREST ANNUAL REPORT

**REPORT BY:** CORPORATE SERVICES  
**CONTACT:** EXECUTIVE DIRECTOR CORPORATE SERVICES AND  
CHIEF FINANCIAL OFFICER / EXECUTIVE MANAGER  
LEGAL & GOVERNANCE

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### PURPOSE

To table the Register of Disclosures of Interest (Register) for the financial year 2022/2023 received from designated persons in accordance with the Codes of Conduct for Councillors, Staff and Committee Members, Delegates of Council and Council Advisors (Codes of Conduct).

### RECOMMENDATION

That Council:

- 1 Note the tabling of the Register of Disclosures of Interest for the financial year 2022/2023 by the Chief Executive Officer.

### KEY ISSUES

- 2 Councillors, Chief Executive Officer (CEO), senior staff, Audit and Risk Committee members and staff who exercise delegated functions are Designated Persons for the purposes of the Codes of Conduct. Further, the Codes of Conduct requires:
  - i) Designated Persons to lodge a Disclosure of Interest Return (disclosing of certain pecuniary interests) by 30 September each year for the prior financial year;
  - ii) The CEO to table the Register of Disclosures of Interests (Register) at the first Ordinary Council Meeting held after the 30 September; and
  - iii) The CEO to make the Register accessible in accordance with the *Government Information (Public Access) Act 2009* (GIPA Act).

### FINANCIAL IMPACT

- 3 There is no budget implication in tabling the Register.

### NEWCASTLE 2040 ALIGNMENT

- 4 The tabling of the Register is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

## **Achieving Together**

### 4.2 Trust and Transparency

#### 4.2.2 Shared information and celebration of success

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 5 Disclosures received from Councillors, the Executive Leadership Team and Audit and Risk Committee members are made publicly available on CN's website (with personal information redacted to ensure protection of privacy). The full Register may be accessed by the public on request in accordance with the GIPA Act (which ensures protection of personal information).

## **RISK ASSESSMENT AND MITIGATION**

- 6 Disclosures of interest are a key control in mitigating the failure to appropriately disclose and manage conflicts of interest, and tabling of the Register supports CN compliance with legislative requirements.

## **RELATED PREVIOUS DECISIONS**

- 7 At the Ordinary Council meeting held on 25 October 2022, Council noted the tabling of the Register for the period 1 July 2021 to 30 June 2022 by the CEO.

## **CONSULTATION**

- 8 No consultation is required as this is a statutory process required under the Codes of Conduct.

## **BACKGROUND**

- 9 Nil.

## **OPTIONS**

### **Option 1**

- 10 The recommendation as at Paragraph 1. This is the recommended option.

### **Option 2**

- 11 Council does not adopt the recommendation. The Codes of Conduct require the Register to be tabled at a Council meeting. Failure to do so would constitute a breach of the Codes. This is not the recommended option.

## **REFERENCES**

Codes of Conduct

<https://www.newcastle.nsw.gov.au/Council/Our-Responsibilities/Code-of-Conduct>

**ATTACHMENTS**

Nil.



### 8.3. ADOPTION OF NEWCASTLE ENVIRONMENT STRATEGY (NES)

**REPORT BY:** PLANNING AND ENVIRONMENT

**CONTACT:** EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT /  
EXECUTIVE MANAGER ENVIRONMENT AND SUSTAINABILITY

#### PURPOSE

To adopt the *Newcastle Environment Strategy 2023* (NES).

#### RECOMMENDATION

That Council:

- 1 Adopts the *Newcastle Environment Strategy 2023* at **Attachment A**.
- 2 Receives the *Newcastle Environment Strategy – Public Exhibition Engagement Report* at **Attachment B**.

#### KEY ISSUES

- 3 The NES provides a 10-year road map for achieving the three sustainability priorities and eight sustainability objectives of *Newcastle 2040*, CN's Community Strategic Plan (CSP), as shown in Figure 1 below:



Figure 1: Sustainability priorities and objectives in *Newcastle 2040*

- 4 The NES comprises seven policy commitments that underpin the delivery of the strategy, seven strategic priorities that define where CN efforts should be focused over the coming decade, and 15 key deliverables for the first four years of implementation.
- 5 The NES will be delivered in conjunction with the *Our Sustainable Waste Strategy*, *Newcastle Transport Strategy* and *On Our Bikes Cycling Plan* and is supported by the *Newcastle Climate Action Plan 2021-2025*.

### **FINANCIAL IMPACT**

- 6 The NES will be delivered through a staged funding model, commencing in the 2023/24 financial year.

### **NEWCASTLE 2040 ALIGNMENT**

- 7 The NES is consistent with the strategic directions of *Newcastle 2040* and outlines how CN will deliver the sustainable theme of *Newcastle 2040* over the next 10 years.

### **IMPLEMENTATION PLAN / IMPLICATIONS**

- 8 The NES repeals and replaces the *Newcastle Environmental Management Strategy 2013*.
- 9 As well as replacing the *Newcastle Environmental Management Strategy 2013*, the NES repeals the *Strategic Climate Change Policy 2010*, with the content of this dated policy being superseded by the NES and the supporting *Newcastle Climate Action Plan 2021-2025*.
- 10 Implementation of the NES will be supported and enabled by the development and delivery of a Climate Risk and Resilience Action Plan; Urban Forest Action Plan; Blue Green Grid Action Plan; Water-Sensitive City Action Plan; CN Vehicle, Plant and Equipment Transition Plan; and city-wide Electric Vehicle and Low Emissions Transport Plan, which will further guide how CN will achieve the sustainable theme of the CSP over the next 10 years.

### **RISK ASSESSMENT AND MITIGATION**

- 11 A key component of the NES is developing and implementing a climate risk assessment, management and reporting framework; communicating the local physical, social and economic risks from climate change, as well as the complementary roles and responsibilities in living with these risks; and prioritising initiatives to build more resilient communities, and urban and natural areas, in response to climate change.

**RELATED PREVIOUS DECISIONS**

- 12 At the Ordinary Council Meeting on 25 July 2023, Council resolved to place the draft *Newcastle Environment Strategy 2023* on public exhibition.

**CONSULTATION**

- 13 The draft NES was placed on public exhibition for 28 days from 27 July to 24 August 2023. Engagement activities during the public exhibition period included a dedicated Have Your Say webpage, with an online survey and written submission form; a photo competition; two community pop-up sessions; promotion of the public exhibition in CN’s e-newsletter, targeted emails to 152 stakeholders, a media release and several social media posts. During the exhibition, 132 survey responses, seven written submissions, and 49 photo competition entries were received, with over 200 people attending the community pop-up sessions (see *Public Exhibition Engagement Report* at **Attachment B**).
- 14 Overwhelming support was received during the public exhibition for the NES, with community support ranging from 77% to 87% for the strategic priorities and deliverables contained in the NES (see Figure 2 below).

**Support for strategic priorities and deliverables**

Percentage of online survey respondents who are supportive/very supportive

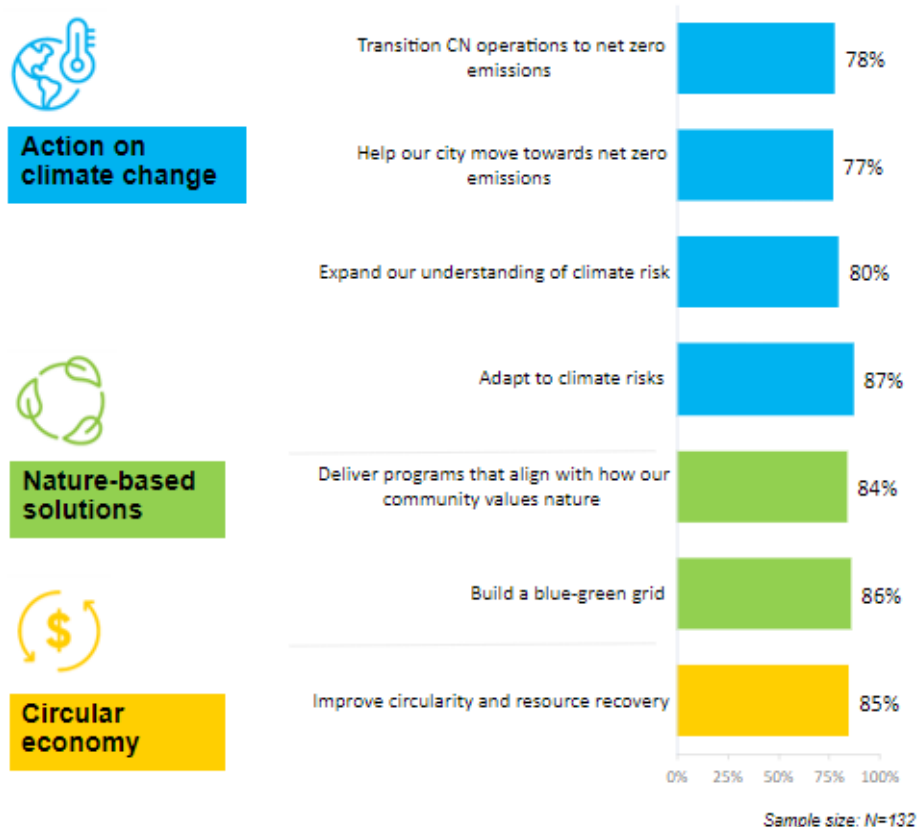


Figure 2. Indication of support for NES strategic priorities and deliverables from online survey

15 Across all engagement activities, the key themes heard during the exhibition were:

- strong action on climate change is needed
- support for building a blue green grid and maintaining/increasing green spaces and trees across the city
- support for renewable energy
- support for more public transport and active transport (cycling) infrastructure
- support for improved sustainability outcomes in urban planning and development
- support for improved waste services and recycling initiatives.

16 Minor revisions have been made to strengthen the NES in response to the key public submission themes, as per the response to submissions table in the *Public Exhibition Engagement Report* at **Attachment B**.

## **BACKGROUND**

17 The *Newcastle Environmental Management Strategy* was adopted in 2013. The NES will revise and repeal this strategy.

## **OPTIONS**

### **Option 1**

18 The recommendation as in Paragraph 1 and 2. This is the recommended option.

### **Option 2**

19 Council resolves not to adopt the *Newcastle Environment Strategy 2023*. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Newcastle Environment Strategy 2023

**Attachment B:** Newcastle Environment Strategy - Public Exhibition Engagement Report

**Attachments A-B distributed under separate cover**

## 8.4. CONSERVATION AGREEMENT FOR BLACK HILL WETLAND

**REPORT BY: PLANNING AND ENVIRONMENT**

**CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT /  
EXECUTIVE MANAGER ENVIRONMENT AND  
SUSTAINABILITY**

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### PURPOSE

To seek Council endorsement for the establishment of a Conservation Agreement over Lot 122, DP 1235373 at 185D Lenaghans Drive, Black Hill.

### RECOMMENDATION

That Council:

- 1 Endorses the establishment of a Conservation Agreement (**Attachment A**) over Lot 122, DP 1235373 at 185D Lenaghans Drive, Black Hill, in accordance with Division 12 of the NSW *National Parks and Wildlife Act 1974* and Part 5, Division 3 of the NSW *Biodiversity Conservation Act 2016*.
- 2 Authorises the Executive Director Planning & Environment to sign the Conservation Agreement on behalf of the City of Newcastle (CN).

### KEY ISSUES

- 3 The land parcel (Lot 122, DP 1235373 at 185D Lenaghans Drive, Black Hill), is currently designated as CN operational land (O1591) and is managed as a registered wetland and bushland environmental asset for conservation purposes.
- 4 Understanding this land parcel's special natural and cultural values and its biodiversity connectivity role in the landscape, CN successfully lodged an EOI to the NSW Biodiversity Conservation Trust (BCT) in October 2021, for them to undertake the required investigations to determine whether the land parcel was fit for the purpose of a Conservation Agreement. Following investigations, the BCT supported the creation of a Conservation Agreement on this site, due to its significant conservation values.
- 5 The biodiversity and significant cultural values of the site has also been recognised and accommodated by Transport for NSW (TfNSW) in its design of the adjacent extension of the M1 motorway.
- 6 The proposed alignment for the future construction of a Lower Hunter Freight Corridor (LHFC) traverses the northern boundary of the land parcel subject to this Conservation Agreement, occupying approx.1.4 hectares, some 120 metres uphill from the E2 Environmental Conservation zoned, Resilience and Hazards SEPP wetland (**Attachment B**).

- 7 CN's submission on the recommended alignment of the LHFC (23 September 2021) requests that this portion of the proposed freight corridor is relocated out of CN's land parcel subject to this Conservation Agreement and consideration is given to co-locating the freight rail within the excavated corridor of the M1 project in this vicinity, noting this may also provide both noise mitigation and visual amenity benefits to the residents of Black Hill.
- 8 The submission notes that CN intends to manage this land parcel primarily for environmental purposes and that 'this land offers what is now a very rare direct connection for wildlife - between the wetlands and remnant woodland fringes around the Hunter River floodplain'.
- 9 The submission also requests that arrangements for residual lands south of the rail corridor provide an integrated corridor of forested mature woodland of at least 200 metres width on the southern side of the proposed rail corridor in the vicinity of Black Hill. A review of buffer lands provided between residents and the proposed corridor in Lake Macquarie (page 60 of the Draft Strategic Environmental Assessment on the LHFC) indicates that typically a minimum forested buffer of 200 metres width has been provided.
- 10 Should the northern boundary of the CN land subject to this Conservation Agreement be required for the LHFC, alterations to the CN lot boundary can be undertaken in negotiation with the BCT, leaving the Conservation Agreement in place for the remainder of the CN owned land parcel.
- 11 An option exists to convert the Conservation Agreement in future years to a Biodiversity Stewardship Site, should CN decide to participate in the NSW Biodiversity Offsets Scheme, to offset the impacts of biodiversity from development, including CN's own activities.
12. The Conservation Agreement is registered on the title of the land, ensuring that if the land is sold the Conservation Agreement and management requirements remain in place.
- 13 The Conservation Agreement includes management actions and a monitoring program tailored for the site.
- 14 A Conservation Agreement will elevate the protection of this high conservation value site, aided by practical advice about conservation management strategies, and funding to support implementation of management plans that can be sourced post Conservation Agreement endorsement.

## **FINANCIAL IMPACT**

- 15 The cost to CN associated in creating the Conservation Agreement are met under the operational budget.
- 16 Following the creation of the Conservation Agreement, CN will be eligible for the BCT's Conservation Partners Grants, of up to \$15,000 per year for up to three (3)

years, for activities such as fencing, assisted regeneration and weed control, introduced animal pest control, revegetation and habitat restoration.

- 17 Funding is also available in CN's capital works program for the identified on-ground works that form part of the Conservation Agreement, including for co-contributions to the Conservation Partners Grants funding.

## **NEWCASTLE 2040 ALIGNMENT**

- 18 The creation of a Conservation Agreement on this parcel of land aligns with the Newcastle 2040 Strategic Plan objectives as follows.

### **2. Sustainable**

2.1 Action on climate change

2.1.3. Resilient urban and natural areas

2.2 Nature-based solutions

2.2.1. Regenerate natural systems

2.2.2. Expand the urban forest

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 19 The Conservation Agreement contains a series of recommended management actions to assist in the further conservation and enhancement of biodiversity within the site.
- 20 Maintaining conservation land on the western edge of Hexham Swamp aligns with three of the strategic priorities in the *Newcastle Environment Strategy 2023*, namely:

*Apply adaptive management to urban planning and development, infrastructure design and natural area management in response to increased climate risks from flooding, coastal erosion and inundation, storms, heatwaves, heat stress, drought, and bush and grass fires.*

*Apply the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Nature Futures Framework (Nature for Nature, Nature for Society and Nature for Culture) to guide projects and initiatives that respond to the climate change, nature loss and pollution crises.*

*Build a network of high-quality blue and green spaces that connects town centres, public transport hubs, schools and residential areas (a blue green grid) for enhanced liveability and biodiversity outcomes.*

## **RISK ASSESSMENT AND MITIGATION**

- 21 Entering into a Conservation Agreement will ensure that the identified environmental risks (such as grazing cattle and weeds) associated with this land

parcel, causing detrimental impacts to the conservation values of the site, will be effectively mitigated into the future.

- 22 A Conservation Agreement on the land parcel will amplify the necessity to negotiate with all neighbouring stakeholders the implementation of land management practices that enhance the biodiversity conservation outcomes of the site.

## **RELATED PREVIOUS DECISIONS**

- 23 Nil.

## **CONSULTATION**

- 24 The proposed Conservation Agreement on this parcel of land was presented to the Guraki Aboriginal Advisory Committee on 22 February 2023. The Conservation Agreement was strongly supported by the Committee. There was also agreement to enhance understanding and to share the importance of the Black Hill bushland and wetland landscape to the Awabakal and Worimi peoples, and to ensure there is a clear acknowledgement and inclusion of the traditional custodians in ongoing planning and management activities at Black Hill.
- 25 The proposed Conservation Agreement was endorsed by the Asset Advisory Committee on 12 October 2023.

## **BACKGROUND**

- 26 The land parcel (Lot 122, DP 1235373 at 185D Lenaghans Drive, Black Hill), considered as the 'gem of the north-west', provides an essential section of the Watagan to Stockton biodiversity corridor and is one of only two land parcels containing remnant, native, riparian vegetation adjacent to the Hexham Wetlands.
- 27 The land parcel contains the Endangered Ecological Community (EEC) "Lower Hunter Spotted Gum-Ironbark Forest in the Sydney Basin Bioregion" and much of the site supports the Black Hill Coastal Freshwater Wetland (Zoned E2 Environmental Conservation and mapped with its associated buffer zone under the *State Environmental Planning Policy (Resilience and Hazards) 2021*).
- 28 This wetland is also identified as a high potential groundwater dependent ecosystem in the Environmental Impact Statement (EIS) for the M1 expressway extension from Black Hill to Raymond Terrace.
- 29 The site is rich with a diverse array of important flora and fauna populations, including a wide range of migratory and wetland species, and contains high conservation value habitat. A number of threatened species are associated with site, including the Grey-headed Flying-fox, Black-neck stork and Netted Bottle Brush.



- 30 The locality in which the parcel sits and the proximity to the Hexham Swamp is of high significance to the Awabakal, Worimi, Guringai and Wonnarua traditional custodians, due to the stories they contain, the cultural pathways and the places of spiritual significance. CN will continue to meaningfully partner with its traditional custodians regarding conservation and management of the site.
- 31 A Conservation Agreement, administered by the BCT as part of the Conservation Partners Program, is a voluntary, in-perpetuity agreement for the protection of high value conservation land.

## **OPTIONS**

### **Option 1**

- 32 The recommendation as at Paragraph 1 and 2. This is the recommended option.

### **Option 2**

- 33 That CN does not endorse the recommendation as at Paragraph 1 and 2. This is not the recommended option.

## **ATTACHMENTS**

- Attachment A:** Draft Conservation Agreement
- Attachment B:** Map of Lot 122 DP and proximity to TfNSW M1 extension and proposed Lower Hunter Freight Corridor.

**Attachments A-B - Distributed under separate cover**

## 8.5. EXHIBITION OF DRAFT NEWCASTLE CITY CENTRE HERITAGE CONSERVATION AREAS REVIEW REPORT

**REPORT BY:** PLANNING AND ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT /  
 ACTING EXECUTIVE MANAGER, PLANNING,  
 TRANSPORT & REGULATION

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### PURPOSE

Exhibit the Draft Newcastle City Centre Heritage Conservation Areas Review Report (NCC HCAs Review Report).

### RECOMMENDATION

That Council:

- 1 Endorses the Draft NCC HCAs Review Report for exhibition purposes for a minimum 28 days. (**Attachment A**).
- 2 Receives a post-exhibition report on submissions to the Draft NCC HCAs Review Report.

### KEY ISSUES

- 3 The Newcastle City Centre continues to experience significant change with economic revitalisation. The NCC HCAs Review Report assesses the heritage value and merits of two of our eight heritage conservation areas (HCAs) the Newcastle City Centre HCA and Newcastle East HCA (**Attachment B**).
- 4 The NCC HCAs Review Report outlines the current heritage significance of each HCA and states its desired future character. It documents what the community values about these areas and investigates potential new HCAs. It also examines the planning context, assesses the appropriateness of boundaries, and identifies items that contribute to or detract from each area.
- 5 The final chapter of the NCC HCAs Review Report recommends potential changes as outlined below. Any changes would require the Council to separately endorse the exhibition of any future planning proposal to change the Newcastle Local Environmental Plan 2012 (LEP) or Development Control Plan 2012 (DCP).

### Key HCA Review Report Recommendations

The NCC HCAs Review Report recommends ways to preserve and protect the cultural heritage in the Newcastle City Centre. Key recommendations include:

**6 Recommendation 1:**

Amend planning controls for the Newcastle East HCA (**Attachment C**) to reflect heritage conservation best practice and for consistency with our approach for other existing HCAs. The recommendation is to remove the height of building (HOB) and floor space ratio (FSR) controls as development in these areas is assessed differently from development outside an HCA.

**7 Recommendation 2:**

- a) Replace Newcastle City Centre HCA with smaller HCAs, based on shared development history and/or built character (**Attachment D**).
- b) Amend the boundaries of the existing Cooks Hill HCA and The Hill HCA with the proposed HCAs (described above) to align with the proposed Newcastle City Centre LEP 2012 boundary. This ensures alignment between heritage conservation with the zoning and objectives of NLEP 2012.

**8 Recommendation 3:**

Adjust the boundary of the existing Newcastle City Centre HCA to remove land that does not contribute to heritage significance. The removal of non-contributory properties is reflected in the HCA boundaries proposed under recommendation 2 (above).

**FINANCIAL IMPACT**

- 9 The costs to exhibit the Draft NCC HCAs Review Report are met under the operational budget.

**NEWCASTLE 2040 ALIGNMENT**

- 10 The NCC HCAs Review Report aligns with Newcastle 2040 Community Strategic Plan and implements the following priorities and objectives:

**1. Liveable****1.1 Enriched neighbourhoods and places**

- 1.1.3 Protected heritage places

**4. Achieving Together**

- 4.2.1 Genuine engagement
- 4.3.3 Data-driven decision-making and insights.

**IMPLEMENTATION PLAN/IMPLICATIONS****Local Strategic Planning Statement**

- 11 The Local Strategic Planning Statement (LSPS) commits to an integrated and accessible transport network, green and liveable city, and smart and innovative economy.
- 12 The NCC HCAs Review Report recommendations address the following LSPS planning priority:
  - a) Planning Priority 11 - to protect and enhance heritage buildings, streetscapes, views and key features to maintain the identity of the city.

### **Heritage Strategy**

- 13 The following Heritage Strategy objectives guide the Newcastle City Centre HCAs review:
  - a) Objective 1.1 – CN will review and update the city-wide heritage study, add new items and places to the heritage schedule of the LEP if warranted, and maintain the Newcastle heritage database of the State Heritage Inventory and the Collections Database to ensure the diversity of the city’s heritage is recognised and represented.
  - b) Objective 2.1 – CN develops and implements policy and guidance based on the principles of the Burra Charter and best practice to ensure there is a strong future for heritage items, heritage conservation areas, archaeological relics and sites, Aboriginal objects and Aboriginal places.
  - c) Objective 3.1 – CN will support projects which will protect and restore the integrity of heritage places.

### **RISK ASSESSMENT AND MITIGATION**

- 14 The NCC HCAs Review has been informed by best practice heritage guidelines, including the Burra Charter.

### **RELATED PREVIOUS DECISIONS**

- 15 At the Ordinary Council Meeting of 27 October 2020, Council adopted the Heritage Strategy 2020-2030. The Heritage Strategy is the strategic framework which guides management of city-wide heritage matters to 2030.
- 16 At the Ordinary Council Meeting of 22 November 2022, the Council adopted the Heritage Policy.

### **CONSULTATION**

- 17 Engagement activities from 17 April 2023 to 29 May 2023 sought community input on what people feel contributes to heritage significance and cultural identity in the Newcastle City Centre and Newcastle East HCAs. The community were invited to provide feedback via the following means:

- a) An online form available for submission via the CN Have Your Say webpage.
- b) An interactive map used to pinpoint feedback about specific streets, buildings and places.
- c) A quick poll asked community members to review a series of 10 streetscapes.
- d) Providing written submissions via email.

This feedback was considered and addressed in the NCC HCAs Review Report.

- 18 Liveable Cities Advisory Committee considered and supported key recommendations in the NCC HCAs Review Report on 5 September 2023.

## **BACKGROUND**

- 19 An HCA's heritage significance evolves over time. HCAs are dynamic and subject to change from development, the resident population's cultural and social changes, as well as renewal and decay.
- 20 It is essential to periodically review and update the conservation management strategies, policies and planning framework for these areas to ensure their heritage value is understood, protected, and supported for future generations.
- 21 Review of HCAs is consistent with Newcastle's commitment to heritage conservation under the Heritage Strategy and Heritage Policy.
- 22 After exhibition and consideration of submissions, adoption of the NCC HCAs Review Report would lead to further Council decisions to endorse specific changes implementing the recommendations for the HCAs.

## **OPTIONS**

### **Option 1**

- 23 The recommendation as in Paragraphs 1 and 2. This is the recommended option and allows for the exhibition of the Draft NCC HCAs Review Report.

### **Option 2**

- 24 Council resolves not to place the Draft NCC HCAs Review Report on public exhibition. This is not the recommended option as the existing HCA boundaries and planning controls do not ensure effective conservation and protection of significant heritage places within the Newcastle City Centre.

## **REFERENCES**

## **ATTACHMENTS**

- Attachment A:** Draft Newcastle City Centre HCAs Review Report  
**Attachment B:** Newcastle City Centre and Newcastle East HCAs  
**Attachment C:** Designated low-rise residential area within Newcastle East HCA  
**Attachment D:** Proposed amendment to Newcastle City Centre HCA

**Attachments A - D distributed under separate cover**

## 8.6. ADOPTION OF ADAMSTOWN PARK MASTERPLAN

**REPORT BY: CREATIVE & COMMUNITY SERVICES**  
**CONTACT: EXECUTIVE DIRECTOR CREATIVE & COMMUNITY SERVICES / EXECUTIVE MANAGER COMMUNITY & RECREATION**

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### PURPOSE

To adopt the Adamstown Park Masterplan.

### RECOMMENDATION

That Council:

- 1 Adopts the Adamstown Park Masterplan at **Attachment A**.
- 2 Receives the Adamstown Park Masterplan – Public Exhibition Report at **Attachment B**.

### KEY ISSUES

- 3 Adamstown Park Masterplan (the Masterplan) has been developed to guide the future vision and renewal of local infrastructure over the next 15 years. The Masterplan aims to develop a flexible multi-use precinct to meet the recreation and sporting needs of the surrounding community and user groups.
- 4 Development of the Masterplan was a recommendation in City of Newcastle's (CN's) adopted [Strategic Sports Plan](#) (SSP) and includes the fields and community facilities within the Park.
- 5 The Masterplan integrates with works recently completed at Myers Park including drainage works and fencing, covered tiered seating, a perimeter walking/running track with fitness stations and a half basketball court and bat ball court.
- 6 The Masterplan aims to maximise the active and passive use of this significant open space area and identifies improvements to the area including improved field layouts, flood lighting upgrades, irrigation, new amenities and upgrades to existing amenities, pathways, new playground and an increase in trees and landscaping.
- 7 The Masterplan also addresses comments received during community consultation which includes relocating the World War 1 (WW1) Returned and Services League of Australia (RSL) Memorial currently located on private property on Bruncker Road to Adamstown Park, and inclusion of a synthetic training pitch at Adamstown No 1, subject to external funding.

## **FINANCIAL IMPACT**

- 8 Stage 1 works at Myers Park were funded through a successful grant application prepared by Broadmeadow Magic Junior Football Club under the Greater Cities and Regional Sport Facility Fund (GCRSFF) 2021/22.
- 9 A replacement playground is being undertaken as part of CN's playground renewal program and is included in the 2023/24 capital works program.
- 10 The staged delivery of the Masterplan will be prioritised within CN's capital works program with further grant funding opportunities also being sought.

## **NEWCASTLE 2040 ALIGNMENT**

- 11 The Adamstown Park Masterplan is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

### **Liveable**

- 1.1 Enriched neighbourhoods and places
- 1.2 Connected and fair communities
- 1.3 Safe, active and linked movement across the city

### **Sustainable**

- 2.1 Action on climate change
- 2.2 Nature-based solutions

### **Achieving Together**

- 4.2 Trust and Transparency
- 4.3 Collaborative and innovative approach

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 12 The SSP recommended preparing Masterplans for key sportsgrounds in the Newcastle Local Government Area including Adamstown Park to guide future works to ensure they are consistent with the long term vision of the park and meet the needs of all user groups.
- 13 Future works will be undertaken through CN's annual Delivery Program and in consultation with key user groups.

## **RISK ASSESSMENT AND MITIGATION**

- 14 Extensive feedback was sought from key user groups and the broader community on the Masterplan to ensure the needs of all users were considered and understood.

## **RELATED PREVIOUS DECISIONS**

- 15 Council resolved to adopt the Strategic Sports Plan 2020 at the Ordinary Council Meeting of 8 December 2020.



## CONSULTATION

- 16 Public consultation on the draft Adamstown Masterplan occurred between 2 November and 20 November 2022. Community engagement included site signage, notification to nearby residents and businesses, CN Have Your Say webpage and via social media.
- 17 Fifty five submissions were received.
- 18 During the drafting of the Masterplan CN's Sports Infrastructure Working Party reviewed the plan multiple times prior to public exhibition. The Sports Infrastructure Working Party also met on 25 September 2023 to review the final Masterplan following the public exhibition period which incorporated community feedback.
- 19 In general, key sporting user groups and community were supportive of the Masterplan with support provided for the inclusion of a new playground, installation of irrigation and drainage, new pathways and multipurpose courts.
- 20 Key issues raised during the public consultation included the need for drainage and irrigation to be prioritised, inclusion of a full-size basketball court and parking and traffic issues.
- 21 The Merewether Hamilton Adamstown RSL Sub-Branch requested that space be allocated near the corner of Glebe Road and Bryant Street to accommodate the relocation of the WW1 Memorial currently located on private property on Brunner Road.
- 22 The public exhibition report is included at **Attachment B**.

## BACKGROUND

- 23 The SSP outlined the following recommendations as part of the preparation of a Masterplan for Adamstown Park including:
  - i) Improve field layout, drainage, irrigation and lighting layout
  - ii) Improve playing surfaces
  - iii) Upgrade amenities for football and cricket
  - iv) Ensure infrastructure at Adamstown No 1 complies with NPL standards.
- 24 Broadmeadow Magic Junior Football Club had previously prepared a concept plan which included upgrades to Myers Park and a proposed Multipurpose Sport Community Leisure Hub.
- 25 The Masterplan prepared by CN is for the entirety of Adamstown Park (including Myers Park) consolidating aspects of Broadmeadow Magic Junior Football Club's concept plan, recommendations from the SSP and consultation with key sporting groups and the community.

## **OPTIONS**

### **Option 1**

26 The recommendation as at Paragraph 1 and 2. This is the recommended option.

### **Option 2**

27 Council resolves to not adopt the Adamstown Park Masterplan. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Adamstown Park Masterplan

**Attachment B:** Adamstown Park Masterplan - Public Exhibition Report

**Attachments A - B distributed under separate cover**

## **8.8. PUBLIC EXHIBITION OF DRAFT COUNCIL PROPERTY LEASE AND LICENCE POLICY**

**REPORT BY:** CORPORATE SERVICES  
**CONTACT:** EXECUTIVE DIRECTOR CORPORATE SERVICES AND CHIEF FINANCIAL OFFICER / EXECUTIVE MANAGER FINANCE PROPERTY AND PERFORMANCE AND DEPUTY CHIEF FINANCIAL OFFICER

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### **PURPOSE**

To place City of Newcastle's (CN's) Draft Council Property Lease and Licence Policy on public exhibition.

### **RECOMMENDATION**

That Council:

- 1 Place the Draft Council Property Lease and Licence Policy (Draft Policy) at **Attachment A** on public exhibition for a period of 28 days.
- 2 Receives a report back following the public exhibition period.

### **KEY ISSUES**

- 3 Leasing and licensing of Community Land is governed by the *Local Government Act 1993* and Crown Land (where CN is Crown Land Manager) is governed by the *Crown Land Management Act (2016)*.
- 4 CN owns a wide range of land and buildings ("Council Property") which help meet the diverse needs of its residents. Council Property is provided to Community Groups to deliver social, cultural, recreational, educational, environmental services for community benefit and may include commercial buildings that generate a financial return.
- 5 This Draft Policy sets out the way Council Property will be leased and licenced by individuals, organisations and businesses. It determines lease and licence terms, responsibilities, financial obligations, as well as the process for entering into new Leases and Licences.
- 6 The intent of the Draft Policy is to establish a framework for optimal use and utilisation of Council Property based on community need, equitable access, and affordability; and a strategic approach to ensure Leases and Licences reflect Council Property objectives. It aims to provide equitable access to CN facilities and ensure optimal use of all land and property by increasing bookable spaces where possible.

- 7 CN recognises the valuable contribution to the community made by not for profit and community groups operating out of its facilities. The Draft Policy clarifies the level of subsidy provided by CN in support of these operations.
- 8 Proposed uses of Council Property must be compatible with permitted uses in the current Local Environmental Plan.

### **FINANCIAL IMPACT**

- 9 The Policy sets out the method for determination of rent to be paid by Lessees.

### **NEWCASTLE 2040 ALIGNMENT**

- 10 The Draft Policy is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

#### **Liveable**

- 1.2 Connected and fair communities
  - 1.1.1 Connected communities

#### **Creative**

- 3.4 City-shaping partnerships
  - 3.4.1 Optimise city opportunities

#### **Achieving Together**

- 4.3 Collaborative and innovative approach
  - 4.3.2 Collaborative organisation

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 11 This policy enables the delivery of all CN plans and strategies involving the leasing of CN land and property.
- 12 The Policy applies to all new Leases and Licences. The Policy will not apply to existing Leases or Licences (including any option terms) until such time as they are being considered for renewal or renegotiation.

### **RISK ASSESSMENT AND MITIGATION**

- 13 Any risk incurred through the lease and licensing of Council Property is mitigated through a robust approvals framework.

### **RELATED PREVIOUS DECISIONS**

- 14 Nil.

## **CONSULTATION**

- 15 Placing the Draft Policy on public exhibition provides an opportunity for the community to provide feedback via submissions to CN.
- 16 The Asset Advisory Committee was briefed on the Draft Policy on 12 October 2023 and endorsed a report to Council for the Draft Policy to be placed on public exhibition.
- 17 A workshop on the Draft Policy was provided to Councillors on 17 October 2023.

## **BACKGROUND**

- 18 CN own a wide range of land and buildings which help the diverse needs of its community. The policy sets out the way Council Property will be leased and licenced by individuals, organisations and business. It determines the terms, responsibilities and financial obligations and the process for entering into new Leases and Licences.

## **OPTIONS**

### **Option 1**

- 19 The recommendation as at Paragraph 1 and 2. This is the recommended option.

### **Option 2**

- 20 Council resolves to not place the Draft Policy on public exhibition. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Draft Council Property Lease and Licence Policy

**Attachment A distributed under separate cover**

## 8.9. APPLICATION FOR LOCAL EVENT DAY FOR NEWCASTLE SHOW 2024

**REPORT BY:** CORPORATE SERVICES  
**CONTACT:** EXECUTIVE DIRECTOR CORPORATE SERVICES AND  
CHIEF FINANCIAL OFFICER / EXECUTIVE MANAGER  
PEOPLE AND CULTURE

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### PURPOSE

To make an application to the Minister for Industrial Relations for Newcastle Show Day in 2024.

### RECOMMENDATION

That Council:

- 1 Resolves to make an application to the Minister for Industrial Relations seeking the proclamation of Show Day for Friday 1 March 2024 as a Local Public Holiday, and if that is not approved by the Minister, request their approval for it to be proclaimed a Local Event Day as set out in the *Public Holidays Act 2010 (NSW)*.

### KEY ISSUES

- 2 The Newcastle Agriculture, Horticulture & Industrial Association Inc (the Association) has advised that the Newcastle Show 2024 will commence on Friday 1 March and conclude on Sunday 3 March 2024. The Association supports City of Newcastle (CN) making an application for a Local Event Day on Friday 1 March 2024.
- 3 For Show Day to be proclaimed a Local Event Day or Local Public Holiday, an application must be made each year to the NSW Department of Premier and Cabinet. The Minister for Industrial Relations considers the application, and if granted, the proclamation is published on the NSW legislation website in early 2024.
- 4 As per the NSW Government Guidelines for Local Event Day Applications (**Attachment A**), the Minister requires for the application to be accompanied by a copy of Council's resolution authorising the making of the application and a report on the consultation process.
- 5 In preparation for the making of an application to the Minister, community consultation was undertaken between Friday 18 August to Friday 8 September 2023. 144 submissions were received via the *Have Your Say* page on CN's website. The majority of respondents supported either a local public holiday or local event day, with 84% supporting a local public holiday and 67% supporting a local event day. A late submission was received from the Shop, Distributive and Allied (SDA) Employees' Association, Newcastle and Northern Branch supporting a local public holiday.

- 6 The capacity for the Minister to declare a Local Public Holiday or Local Event Day at the request of Council is available under the *Public Holidays Act 2010*. The Minister must be satisfied that the day will be observed as a day of special significance to the community in the area concerned.
- 7 The declaration of a 'Local Event Day' under the *Public Holidays Act 2010* does not make the local event day a public holiday and it does not preclude banks or shops located within the designated holiday area from opening or trading on the day.
- 8 A declared local event day does not automatically mean that employers in the particular locality are compelled to treat the day as a public holiday. Entitlements to paid leave or penalty rates on a local event day will only arise where agreed to at the workplace level, usually in the form of an enterprise agreement or by contract.

### **FINANCIAL IMPACT**

- 9 As per Section 3, Clause 27.1 of the City of Newcastle Enterprise Agreement 2023 (the Agreement), Show Day is regarded as a holiday and would be observed on the Friday of Show Week.
- 10 Where CN employees are required to work on Show Day to provide an essential service, affected employees are entitled to the penalty rates as provided by the Agreement, regardless of proclamation. CN has budgeted for the payment of these penalty rates in accordance with the Agreement.

### **NEWCASTLE 2040 ALIGNMENT**

- 11 The Newcastle Show is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

#### **Creative**

##### 3.1 Vibrant and creative city

- 3.1.1 Vibrant events
- 3.1.2 Bold and challenging programs
- 3.1.3 Tourism and visitor economy
- 3.1.4 Vibrant night-time economy

##### 3.3 Celebrating culture

- 3.3.1 Nurture cultural and creative practitioners
- 3.3.2 Promote Newcastle as a major arts and cultural destination
- 3.3.3 Culture in everyday life

##### 3.4 City-shaping partnerships

- 3.4.1 Optimise city opportunities
- 3.4.2 Government relations and advocacy

## IMPLEMENTATION PLAN/IMPLICATIONS

- 12 The proclamation of Show Day as a 'Local Event Day' or 'Local Public Holiday' under the *Public Holidays Act 2010*, would recognise the event as a day of special significance to the community.
- 13 The Minister requires the application to be accompanied by a copy of the current Council's resolution authorising the making of the application and a report on the consultation process.

## RISK ASSESSMENT AND MITIGATION

- 14 By making a new resolution and undertaking annual consultation on the proposal, CN is complying with the requirements of the *Public Holidays Act 2010* (NSW) and the NSW Government's Guidelines for Local Event Day Applications.

## RELATED PREVIOUS DECISIONS

- 15 At the Ordinary Council Meeting of 22 November 2022, Council resolved to make an application for a Local Public Holiday on Newcastle Show Day, and if that was not approved by the Minister for Employee Relations, request their approval for a Local Event Day for the Newcastle Show Day (consistent with Council's decisions since 2015).

## CONSULTATION

- 16 In preparation for the making of an Application to the Minister, community consultation was undertaken between Friday 18 August to Friday 8 September 2023. One hundred and forty four submissions were received via the *Have Your Say* page on CN's website. The majority of respondents supported either a local public holiday or local event day, with 84% supporting a local public holiday and 67% supporting a local event day.
- 17 No submissions were received via [engage@ncc.nsw.gov.au](mailto:engage@ncc.nsw.gov.au).
- 18 Feedback was also invited from schools in the Newcastle LGA, Business Hunter and via LinkedIn. No submissions were received from schools, but a submission was received from Business Hunter in support of the Local Event Day.
- 19 An Engagement Report summarising the submissions received is included at **Attachment B**.
- 20 A late submission was received from the Shop, Distributive and Allied (SDA) Employees' Association, Newcastle and Northern Branch (the Union), representing the interests of retail, fast food, warehouse and distribution employees throughout Newcastle, Central Coast and Hunter Valley regions. The submission supports the declaration of a Local Public Holiday for Friday 1 March 2024.



## **BACKGROUND**

- 21 The Newcastle Show is an event of special significance to the local community that dates back to 1901 when the first Show was held.
- 22 Up to and including 2011, CN had traditionally supported an application for the Newcastle Show Holiday to be declared as a full day Local Public Holiday.

## **OPTIONS**

### **Option 1**

- 23 The recommendation as at Paragraph 1. This is the recommended option.

### **Option 2**

- 24 Council resolves not to make an application to the Minister for Industrial Relations seeking the proclamation of Show Day for Friday 1 March 2024. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

- Attachment A:** NSW Government Guidelines for Local Event Day Applications  
**Attachment B:** Engagement Report

**Attachments A-B distributed under separate cover**

## 8.10. REQUEST FOR SUPPORT FOR THE RELEASE OF EASEMENT IN GROSS - 13 GRANDVIEW ROAD, NEW LAMBTON HEIGHTS

**REPORT BY:** PLANNING AND ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT /  
 ACTING EXECUTIVE MANAGER, PLANNING,  
 TRANSPORT & REGULATION

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### PURPOSE

To consider a request to release an existing easement.

### RECOMMENDATION

That Council:

- 1 Resolves to support the request to release an existing easement for drainage and create an easement to drain water, burdening Lot 1 DP 1234593 (13 Grandview Road, New Lambton Heights) as shown at **Attachment A**.

### KEY ISSUES

- 2 City of Newcastle (CN) received a request from the owner of Lot 1 DP 1234593 (13 Grandview Road, New Lambton Heights) to release an existing easement for drainage and create an easement to drain water, burdening the title of the land, pursuant to section 88B of the *Conveyancing Act, 1919*.
- 3 Lot 1 is a rectangular shaped allotment having an area of 1182 m<sup>2</sup> and is zoned R2 Low Density Residential under Newcastle Local Environmental Plan 2012.
- 4 In accordance with condition 43 of the development consent issued by CN in respect of DA2018/00543 for the '*Demolition of dwelling, alterations to car park, erection of three detached two storey dwellings and three lot strata subdivision*', prior to the developer obtaining an occupation certificate, the following is to be satisfied:

*A minimum 3m wide drainage easement being placed over the new Council stormwater pipe to allow for any future Council access for maintenance or replacement. The drainage easement over the disused Council pipe being extinguished. The appropriate notation is to be made on a subdivision plan and accompanying instrument under Section 88B of the Conveyancing Act 1919 (NSW) setting out the terms of the required drainage easement and such being lodged with Council for certification before being registered with NSW Land Registry Services. The instrument is to provide that the drainage easement is unable to be released, varied or modified without the concurrence of the Newcastle City Council. Registration of the easement needs to occur prior to the issuing of an Occupation Certificate for the proposed development.*

- 5 The intent of the existing easement was to give CN the right to drain stormwater from the road reserve, through the private property on the low side of the road, connecting to downstream natural waterways. As part of the development the easement width was required to be adjusted, as the developer has been required to upgrade CN's pipes within the easement. The new easement generally covers the same area as the existing easement plus additional variable width to allow for improved future maintenance access and to accommodate overland flow path travelling down the new 3m wide driveway. The new easement will be created as an 'easement to drain water' consistent with the standard terms of easements outlined within the *Conveyancing Act 1919*.
- 6 The submitted easement documentation relating to DA2018/00543 has been reviewed and the draft 88B instrument and subdivision plan are consistent with the requirements of condition 43.

### **FINANCIAL IMPACT**

- 7 There are no financial implications in releasing or creating the easement, beyond the management of the easement site.

### **NEWCASTLE 2040 ALIGNMENT**

- 8 The proposed release of the existing easement and creation of the new easement is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

#### **Liveable**

- 1.1 Enriched neighbourhoods and places
- 1.1.1 Well designed places

### **IMPLEMENTATION PLAN / IMPLICATIONS**

- 9 The release of a public easement benefitting a Council (easement in gross) is a matter that falls with section 337(h) of the Local Government Act 1993, meaning it cannot be delegated to the Chief Executive Officer or CN staff and therefore requires a resolution of Council.
- 10 Creation of the easement to drain water does not require Council resolution, however, to avoid confusion and demonstrate that CN will still benefit over the land, the creation has been included in the recommended resolution of Council.
- 11 Council resolution as per the recommendation in Paragraph 1 will allow the applicant to lodge documentation with the NSW Land Registry Services (LRS) for registration, allowing the development to fulfill condition 43 of the DA consent and then obtain an Occupation Certificate.
- 12 Release of the existing easement and creation of a new easement is consistent with the approved development on the site which is also consistent with the

Local Strategic Planning Statement, the associated Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012.

## **RISK ASSESSMENT AND MITIGATION**

- 13 The proposed release of an existing easement and creation of a wider easement will not expose CN to additional risk or involve any additional operational costs.

## **RELATED PREVIOUS DECISIONS**

- 14 There have been no previous decisions made in relation to this matter.

## **CONSULTATION**

- 15 Nil.

## **BACKGROUND**

- 16 On the 2 October 2023, CN received a request from the owner to support and sign the draft 88B instrument for the release of the existing '*easement for drainage 1.83m wide*' and creation of '*easement to drain water 1.83 wide, 3.15 wide & variable width*', both of which benefit the City of Newcastle.

## **OPTIONS**

### **Option 1**

- 17 The recommendation as in Paragraph 1. This is the recommended option.

### **Option 2**

- 18 Resolve not to support the applicant's request for release of the 1.83m wide easement and creation of a wider easement burdening Lot 1 DP 1234593. This option would result in the developer being unable to satisfy their requirements to obtain an Occupation Certificate for DA2018/00543. This is not the recommended option.

## **ATTACHMENTS**

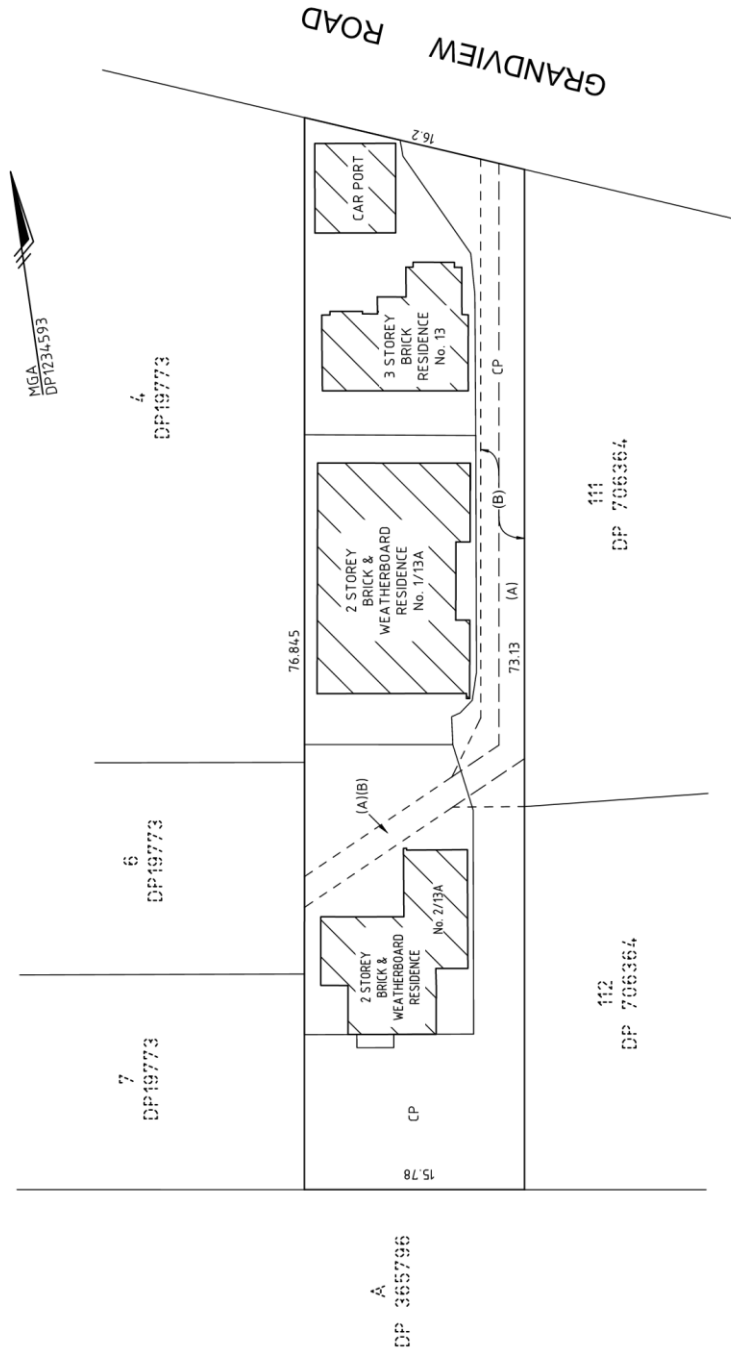
- Attachment A:** Draft Plan of Subdivision of Lot 1 in DP1234593, including Draft Section 88B instrument and Draft Strata Plan Administration sheet

Attachment A - Draft Plan of Subdivision

SHEET 1 OF 2 SHEETS

PLAN FORM 1 (A3) WARNINGS: CREASING OR FOLDING WILL LEAD TO REJECTION

**LOCATION PLAN**



- (A) EASEMENT FOR DRAINAGE 1.83 WIDE (DP390632) (G24/7600) TO BE RELEASED
- (B) EASEMENT TO DRAIN WATER 1.83 WIDE, 3.15 WIDE & VARIABLE WIDTH
- CP DENOTES COMMON PROPERTY

SURVEYOR Name: DAREN SCOTT ROBSON Date of Survey: 13-09-2023 Surveyor's Ref: 11246-SP1	PLAN OF SUBDIVISION OF LOT 1 IN DP1234593	L.G.A.: NEWCASTLE Locality: NEW LAMBTON HEIGHTS Reduction Ratio: 300 Lengths are in metres.	Registered: S.P. DRAFT 18.09.2023
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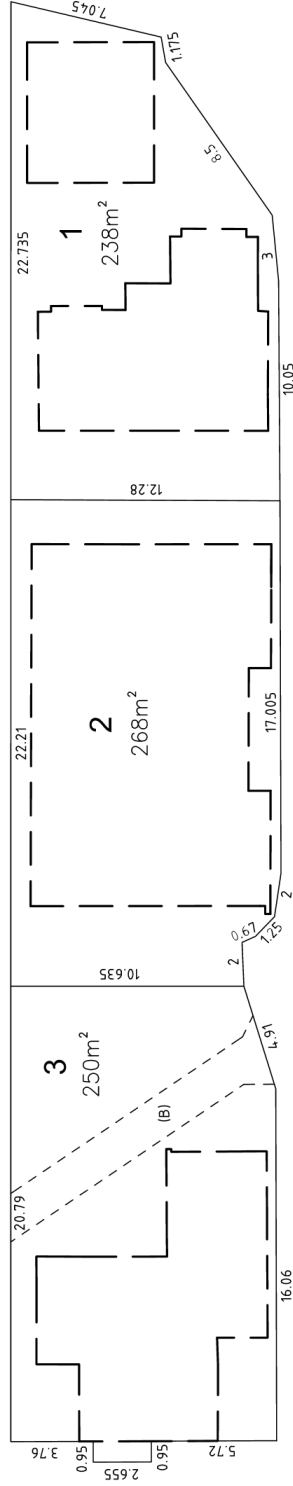
10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 Table of mm

SHEET 2 OF 2 SHEETS

WARNING: CREASING OR FOLDING WILL LEAD TO REFLECTION

PLAN FORM 1 (A3)

**FLOOR LEVEL**



1. ALL AREAS ARE APPROXIMATE ONLY AND FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT, 2015. THEY SHOULD NOT BE USED FOR LEASE PURPOSES.
  2. THE STRUCTURE OF ANY BUILDING STANDING ON EACH LOT INCLUDING WALLS, FLOORS, CEILINGS, DECKS, CAR PORTS AND ROOFS FORM PART OF THE LOT AND IS NOT COMMON PROPERTY EXCLUDING ANY COMMON SERVICE LINES.
  3. LOTS 1 TO 3 ARE LIMITED FROM 5 BELOW THE LOWEST FLOOR LEVEL TO 15 ABOVE THE UPPER SURFACE OF THE GARAGE FLOOR OF THEIR RESPECTIVE UNIT EXCEPT WHERE COVERED WITHIN THIS LIMIT.
  4. ANY SERVICE LINE WITHIN ONE LOT AND SERVICING ANOTHER LOT IS COMMON PROPERTY.
  5. ANY STRUCTURE, PIPE OR PIT RELATING TO THE RAIN GARDEN THAT IS WITHIN ANY LOT IS COMMON PROPERTY WITH THE EXCEPTION OF RAINWATER TANKS APPURTENANT TO INDIVIDUAL LOTS.
- (B) EASEMENT TO DRAIN WATER 1.83 WIDE, 3.15 WIDE & VARIABLE WIDTH

SURVEYOR Name: DAREN SCOTT ROBSON Date of Survey: 13-09-2023 Surveyor's Ref: 11246-SP1	PLAN OF SUBDIVISION OF LOT 1 IN DP1234593	L.G.A.: NEWCASTLE Locality: NEW LAMBTON HEIGHTS Reduction Ratio: 200 <small>Lengths are in metres.</small>	Registered: S.P. DRAFT 18.09.2023
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**Attachment A - Draft 88B Instrument**

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.**

**LENGTHS ARE IN METRES**

(Sheet 1 of 4 Sheets)

**Plan:**

PLAN OF SUBDIVISION OF  
LOT 1 in DP1234593  
SUBDIVISION CERT. No.:

**Full Name and Address of the Registered  
Proprietor of the Land**

DAVID BRUCE WILLIAMS  
701 / 209 HUNTER STREET  
NEWCASTLE NSW 2300

**PART 1 (CREATION)**

<b>Number of item shown in the intention panel on the plan:</b>	<b>Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan:</b>	<b>Burdened lot(s) or parcel(s):</b>	<b>Benefited lot(s), road(s), persons, bodies or Prescribed Authorities:</b>
1	EASEMENT TO DRAIN WATER 1.83 WIDE, 3.15 WIDE & VARIABLE WIDTH (B)	Lot 3 Common Property	Newcastle City Council

**PART 1A (RELEASE)**

<b>Number of item shown in the intention panel on the plan:</b>	<b>Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan:</b>	<b>Burdened lot(s) or parcel(s):</b>	<b>Benefited lot(s), road(s), persons, bodies or Prescribed Authorities:</b>
1	EASEMENT FOR DRAINAGE 1.83 WIDE (A)	Lot 1 DP1234593	Newcastle City Council

**Name of the person or authority whose consent is required to release, vary, or modify the easement, covenant or restriction numbered 1**

Newcastle City Council

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.**

**LENGTHS ARE IN METRES**

(Sheet 2 of 4 Sheets)

**Plan:**

PLAN OF SUBDIVISION OF  
LOT 1 in DP1234593  
SUBDIVISION CERT. No.:

**EXECUTED BY:**

**DAVID BRUCE WILLIAMS**

.....  
Signature

**Witnessed by:**

.....  
Signature of Witness

.....  
Name of Witness (BLOCK LETTERS)

.....  
.....

.....  
Address of Witness (BLOCK LETTERS)



**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.**

**LENGTHS ARE IN METRES**

(Sheet 3 of 4 Sheets)

**Plan:**

PLAN OF SUBDIVISION OF  
LOT 1 in DP1234593  
SUBDIVISION CERT. No.:

**EXECUTED BY:**

**NEWCASTLE CITY COUNCIL**  
by its authorised delegate pursuant  
to s.377 Local Government Act 1993

) I certify that I am an eligible witness  
) and that the delegate signed in my  
) presence

.....  
Signature of Authorised Officer

.....  
Signature of Witness

.....  
Name of Authorised Officer (BLOCK LETTERS)

.....  
Name of Witness (BLOCK LETTERS)

.....

.....

.....  
Address of Witness (BLOCK LETTERS)

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE  
CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE  
COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.**

**LENGTHS ARE IN METRES**

(Sheet 4 of 4 Sheets)

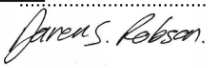
**Plan:**

PLAN OF SUBDIVISION OF  
LOT 1 in DP1234593  
SUBDIVISION CERT. No.:

**EXECUTED BY:**

National Australia Bank

**Attachment A - Draft Administration Sheet**

SP FORM 3.01	<b>STRATA PLAN ADMINISTRATION SHEET</b>	Sheet 1 of 4 sheet (s)
Office Use Only		Office Use Only
Registered :		
<b>PLAN OF SUBDIVISION OF:</b> LOT 1 IN DP 1234593	LGA : NEWCASTLE Locality : NEW LAMBTON HEIGHTS Parish : NEWCASTLE County : NORTHUMBERLAND	
This is a <del>*FREEHOLD/LEASEHOLD</del> Strata Scheme		
Address for Service of Documents  <b>The Owners - Strata Plan No</b> No.13 GRANDVIEW ROAD NEW LAMBTON HEIGHTS NSW 2305  Provide an Australian postal address including a postcode		The by-laws adopted for the scheme are: * Model by-laws for residential strata schemes together with: Keeping of animals: Option *A <del>#B</del> Smoke penetration: Option *A <del>#B</del> (see Schedule 3 <i>Strata Schemes Management Regulation 2016</i> )  * <del>The strata by laws lodged with the plan.</del>
<p style="text-align: center;"><b>Surveyor's Certificate</b></p> I, <u>DAREN SCOTT ROBSON</u> of <u>RPS AAP CONSULTING PTY LTD</u> <u>UNIT 2A, 45 FITZROY ST, CARRINGTON</u> being a land surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that the information shown in the accompanying plan is accurate and each applicable requirement of Schedule 1 of the <i>Strata Schemes Development Act 2015</i> has been met. <del>*The building encroaches on:</del> <del>*(a) a public place</del> <del>*(b) land other than a public place and an appropriate easement to permit the encroachment has been created by ^</del>  Signature: ..... Date: <u>19-09-2023</u> Surveyor ID: <u>8187</u> Surveyor's Reference: <u>11246-SP1</u>  ^ Insert the deposited plan number or dealing number of the instrument that created the easement		<p style="text-align: center;"><b>Strata Certificate (Registered Certifier)</b></p> I, .....being a Registered Certifier, registration number ....., certify that in regards to the strata plan with this certificate, it has made the required inspections and I am satisfied the plan complies with clause 17 <i>Strata Schemes Development Regulation 2016</i> and the relevant parts of Section 58 <i>Strata Schemes Development Act 2015</i> .  <del>*(a) This plan is part of a development scheme.</del> <del>*(b) The building encroaches on a public place and in accordance with section 62(3) Strata Schemes Development Act 2015 the local council has granted a relevant planning approval that is in force for the building with the encroachment or for the subdivision specifying the existence of the encroachment.</del>  <del>*(c) This certificate is given on the condition contained in the relevant planning approval that lot(s) ^ will be created as utility lot(s) and restricted in accordance with section 63 Strata Schemes Development Act 2015:</del>  Certificate Reference: ..... Relevant Planning Approval No.: ..... issued by: ..... Signature: ..... Date: .....  # Insert the name of the local council ^ Insert lot numbers of proposed utility lots
* Strike through if inapplicable		

SP FORM 3.07	<b>STRATA PLAN ADMINISTRATION SHEET</b>	Sheet 2 of 4 sheet (s)												
Office Use Only	Office Use Only													
Registered :														
<b>VALUER'S CERTIFICATE</b>														
<p>I, * ..... of .....</p> <p>being a qualified valuer, as defined in the Strata Schemes Development Act 2015 by virtue of having membership with:</p> <p>Professional Body:.....</p> <p>Class of membership:.....</p> <p>Membership number:.....</p> <p>certify that the unit entitlements shown in the schedule herewith were apportioned on ..... (being the valuation day) in accordance with Schedule 2 Strata Schemes Development Act 2015</p> <p>Signature: ..... Date .....</p> <p>* Full name, valuer company name or company address</p>														
<b>SCHEDULE OF UNIT ENTITLEMENT</b>														
<table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="padding: 5px;">LOT No.</th> <th style="padding: 5px;">UNIT ENTITLEMENT</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">1</td> <td style="text-align: center; padding: 5px;">25</td> </tr> <tr> <td style="text-align: center; padding: 5px;">2</td> <td style="text-align: center; padding: 5px;">40</td> </tr> <tr> <td style="text-align: center; padding: 5px;">3</td> <td style="text-align: center; padding: 5px;">35</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;"></td> </tr> <tr> <td style="text-align: center; padding: 5px;">AGGREGATE</td> <td style="text-align: center; padding: 5px;">100</td> </tr> </tbody> </table>			LOT No.	UNIT ENTITLEMENT	1	25	2	40	3	35			AGGREGATE	100
LOT No.	UNIT ENTITLEMENT													
1	25													
2	40													
3	35													
AGGREGATE	100													
<p>PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919, AS AMENDED, IT IS INTENDED TO CREATE:</p> <p>1. EASEMENT TO DRAIN WATER 1.83 WIDE, 3.15 WIDE &amp; VARIABLE WIDTH (B)</p> <p>IT IS INTENDED TO RELEASE:</p> <p>1. EASEMENT FOR DRAINAGE 1.83 WIDE (DP390632) (G247600) (A) IN THE TERMS OF THE ACCOMPANYING INSTRUMENT</p>														
Surveyor's Reference : 11246-SP1														

SP FORM 3.08 (Annexure)	<b>STRATA PLAN ADMINISTRATION SHEET</b>	Sheet 3 of 4 sheet (s)																				
Office Use Only																						
Registered :																						
<p>This sheet is for the provision of the following information as required :</p> <ul style="list-style-type: none"> <li>Any information which cannot fit in the appropriate panel of any previous administration sheets</li> <li>A schedule of street addresses</li> <li>Statements of intention to create and or release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i></li> <li>Signatures and seals- see section 22 <i>Strata Schemes Development Act 2015</i></li> </ul>																						
<p>SCHEDULE OF STREET ADDRESSES</p> <table border="1" style="margin: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 5px;">LOT</th> <th style="padding: 5px;">STREET NUMBER</th> <th style="padding: 5px;">STREET NAME</th> <th style="padding: 5px;">STREET TYPE</th> <th style="padding: 5px;">LOCALITY</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">1</td> <td style="padding: 5px;">13</td> <td style="padding: 5px;">GRANDVIEW</td> <td style="padding: 5px;">ROAD</td> <td style="padding: 5px;">NEW LAMBTON HEIGHTS</td> </tr> <tr> <td style="padding: 5px;">2</td> <td style="padding: 5px;">1/13</td> <td style="padding: 5px;">GRANDVIEW</td> <td style="padding: 5px;">ROAD</td> <td style="padding: 5px;">NEW LAMBTON HEIGHTS</td> </tr> <tr> <td style="padding: 5px;">3</td> <td style="padding: 5px;">2/13</td> <td style="padding: 5px;">GRANDVIEW</td> <td style="padding: 5px;">ROAD</td> <td style="padding: 5px;">NEW LAMBTON HEIGHTS</td> </tr> </tbody> </table>			LOT	STREET NUMBER	STREET NAME	STREET TYPE	LOCALITY	1	13	GRANDVIEW	ROAD	NEW LAMBTON HEIGHTS	2	1/13	GRANDVIEW	ROAD	NEW LAMBTON HEIGHTS	3	2/13	GRANDVIEW	ROAD	NEW LAMBTON HEIGHTS
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3	2/13	GRANDVIEW	ROAD	NEW LAMBTON HEIGHTS																		
Surveyor's Reference : 11246–SP1																						



## 8.11. REQUEST FOR SUPPORT FOR THE RELEASE OF TWO PUBLIC POSITIVE COVENANTS - 79A YOUNG ROAD, LAMBTON

**REPORT BY:** PLANNING AND ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT /  
ACTING EXECUTIVE MANAGER, PLANNING,  
TRANSPORT & REGULATION

---

### PURPOSE

To consider a request to release an existing easement.

### RECOMMENDATION

That Council:

- 1 Resolves to support the release of the two public positive covenants currently burdening Lot 432 DP 1094038 (79A Young Road, Lambton).

### KEY ISSUES

- 2 City of Newcastle (CN) received a request from the owner of Lot 432 DP 1094038 (79A Young Road, Lambton) to release two public positive covenants burdening the title of the land, pursuant to section 88E(7) of the *Conveyancing Act, 1919*.
- 3 Lot 432 is a battle-axe shaped allotment having an area of 512 m<sup>2</sup> and is zoned R2 Low Density Residential under Newcastle Local Environmental Plan 2012.
- 4 In accordance with the condition of consent issued by CN in respect of DA 2004/0056 for the '*Subdivision of 1 lot into 2 and erection of detached double garage*', two public positive covenants were registered on the title of Lot 432 DP 1094038. Newcastle City Council is the nominated 'prescribed authority' benefitting from these covenants.
- 5 The intent of these two covenants was to ensure that the form of further development on what is now Lot 432 was consistent with the conceptual dwelling and stormwater management designs submitted with DA2004/0056 demonstrating that the land could support a future dwelling in a manner that would satisfy CN's planning controls.
- 6 Subsequent development consent was granted by CN to DA2009/0429 for a '*New two storey brick veneer/weatherboard and tile roof dwelling comprising three bedrooms and attached double garage*' on Lot 432.
- 7 A review of the documentation relating to DA2009/0429 was completed which identified that the approved development is consistent with the development controls imposed under the Newcastle Development Control Plan (NDCP) applicable at that time.

- 8 The two covenants no longer serve any public purpose and any future developments proposed on Lot 432 would be expected to comply with the NDCP applicable at that time which would better reflect current development standards as opposed to those applicable in 2004.

### **FINANCIAL IMPACT**

- 9 There are no financial implications in releasing the two public positive covenants.

### **NEWCASTLE 2040 ALIGNMENT**

- 10 The proposed release of the two covenants is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

#### **Liveable**

- 1.1 Enriched neighbourhoods and places
- 1.1.1 Well designed places

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 11 The release of a public positive covenant is a matter that falls with section 337(h) of the *Local Government Act 1993*, meaning it cannot be delegated to the Chief Executive Officer or CN staff and therefore requires a resolution of Council.
- 12 Release of the two covenants will ensure any future development on the subject land is consistent with the Local Strategic Planning Statement, the associated Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012, as amended from time to time, as opposed to those site-specific and now superseded development controls prepared in association with DA2004/0056.
- 13 Council resolution as per the recommendation in Paragraph 1 will allow the applicant to lodge documentation with the NSW Land Registry Services (LRS) for registration, resulting in the release of the covenants from the title of the land.

### **RISK ASSESSMENT AND MITIGATION**

- 14 The proposed release of the covenants will not expose CN to additional risk or involve any additional operational costs.

### **RELATED PREVIOUS DECISIONS**

- 15 There have been no previous decisions made in relation to this matter.



## **CONSULTATION**

16 Nil.

## **BACKGROUND**

17 On 23 June 2023 CN received a request (SC2023/00064) to endorse a Real Property Act form for the release, *pursuant to section 88E(7) of the Conveyancing Act, 1919*, of these two public positive covenants.

## **OPTIONS**

### **Option 1**

18 The recommendation as in Paragraph 1. This is the recommended option.

### **Option 2**

19 Resolve not to support the applicant's request for release of the two public positive covenants currently burdening Lot 432 DP 1094038. This option would result in the covenants remaining a burden on the subject land. As discussed above, this would result in the existing development approved and constructed on the land being inconsistent with the terms of the covenants and would also result in contradictory planning controls being applicable to future development applications on the subject land. This is not the recommended option.

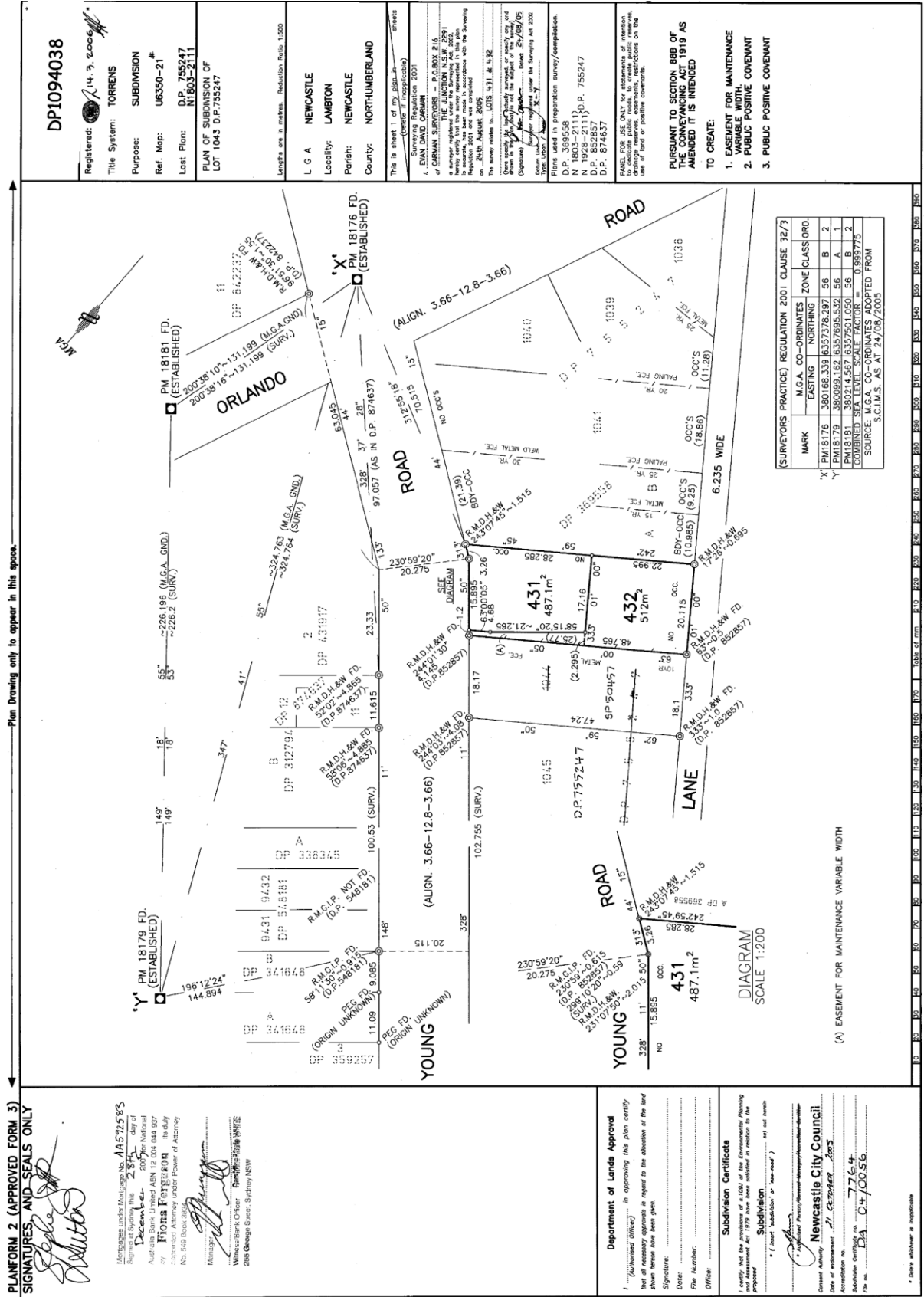
## **ATTACHMENTS**

**Attachment A:** Deposited Plan (DP1094038)

**Attachment B:** Section 88B instrument (DP1094038)

**Attachment C:** Release of Public Covenant Form

Attachment A



**Attachment B**

**Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

(Sheet 1 of 3 Sheets)

**DP1094038**

Subdivision of  
Lot 1043 DP 755247

**Full name and address of proprietor of the land:**

*Dr. Stephen*  
~~ss~~ **Steve and Louise Sutton**  
79 Young Road  
Lambton NSW 2299

**Full name and address of mortgagee of the land:**

.....  
.....  
.....  
.....

**Part 1 (Creation)**

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be released and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities.
1	Easement for Maintenance Variable Width	432	431
2	Public Positive Covenant	432	Newcastle City Council
3	Public Positive Covenant	432	Newcastle City Council

**PART 2 (Terms)**

**Terms of Easement numbered One in the plan.**

**1**

The owner of the lot benefited may:

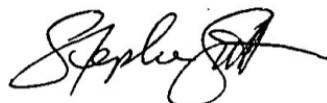
- (a) at the expiration of at least one week's notice served on the owner or occupier of a lot burdened, use the lot burdened for the purpose of carrying out necessary work on, or on any structure on, the lot benefited which cannot otherwise reasonably be carried out, and
- (b) do anything reasonably necessary for that purpose, including:

- entering the lot burdened, and
- taking anything on to the lot burdened:

**2**

In exercising those powers, the owner of the lot benefited must:

- (a) ensure all work on the lot benefited is done properly and carried out as quickly as is practicable, and





**Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.**

(Sheet 2 of 3 Sheets)

**DP1094038**

Subdivision of  
Lot 1043 DP 755247

- (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
- (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
- (d) restore the lot burdened as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

**Terms of Public Positive Covenant numbered Two in the plan.**

The proprietor of the lot burdened shall ensure that any future development on the burdened lot be carried out in accordance with details under Development Application 04/0056 development consent for 2 lot subdivision issued by Newcastle City Council under the provisions of the Environmental Planning and Assessment Act, 1979.

**Terms of Public Positive Covenant numbered Three in the plan.**

The proprietor of the lot burdened shall ensure a stormwater detention facility be provided and maintained as part of any future development on the burdened lot in accordance with the requirements of Newcastle City Council's Development Control Plan 50 – 'Stormwater Management for Development Sites as proposed in development application number 04/0056 development consent for 2 lot subdivision issued by Newcastle City Council.

**Name of Authority empowered to release, vary or modify the easements, covenants and restriction numbered One, Two and Three in the plan.**

NEWCASTLE CITY COUNCIL


Three handwritten signatures in black ink are located at the bottom right of the page. The first signature is the most prominent and appears to be 'Stephen [unclear]'. The second signature is 'L. Sutton'. The third signature is smaller and less legible.

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

(Sheet 3 of 3 Sheets)

DP1094038


Subdivision of  
Lot 1043 DP 755247


  
-----  
Steve Sutton  
Stephen

  
-----  
Louise Sutton

79 YOUNG ROAD  
LAMBTON  
NSW 2299  
-----  
Address


79 YOUNG ROAD  
LAMBTON  
NSW 2299  
-----  
Address

  
-----  
Witness Signature

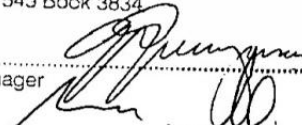
  
-----  
Witness Signature

Joanne Baumert  
-----  
Witness Name  
NATIONAL AUSTRALIA BANK  
ENGADINE BRANCH

Joanne Baumert  
-----  
Witness Name

  
-----  
(Authorized Person)  
Newcastle City Council

Mortgagee under Mortgage No. AA 592583  
Signed at Sydney this 28th day of  
December 2005 for National  
Australia Bank Limited APN 12 004 044 937  
by Fiona Ferguson its duly  
appointed Attorney under Power of Attorney  
No. 543 Book 3834

  
-----  
Manager

Witness/Bank Officer  
255 George Street, Sydney NSW



**Attachment C**

Form: 13PRE Release: 3.2 Licence: 01-05-075 Licensee: LEAP Legal Software Pty Limited Firm name: Newcastle Legal & Conveyancing	<p><b>RELEASE OR EXTINGUISHMENT OF POSITIVE COVENANT</b></p> <p>New South Wales                  Sections 88D(12), 88E(7) or 89(8)                  Conveyancing Act 1919</p>	Leave this space clear. Affix additional pages to the top left-hand corner.								
<p><b>PRIVACY NOTE:</b> Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.</p>										
(A) <b>TORRENS TITLE</b>	432/1094038									
(B) <b>LODGED BY</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; padding: 2px;">Document Collection Box</td> <td style="padding: 2px;">Name, Address or DX, Telephone and Customer Account Number if any</td> <td style="width: 15%; padding: 2px; text-align: center;"><b>CODE</b></td> </tr> <tr> <td style="padding: 2px;">Email:</td> <td style="border-bottom: 1px solid black;"></td> <td rowspan="2" style="text-align: center; vertical-align: middle; font-size: 2em;"><b>EP</b></td> </tr> <tr> <td style="padding: 2px;">Reference:</td> <td style="border-bottom: 1px solid black;"></td> </tr> </table>	Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	<b>CODE</b>	Email:		<b>EP</b>	Reference:		
Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	<b>CODE</b>								
Email:		<b>EP</b>								
Reference:										
(C) <b>POSITIVE COVENANT No.</b>	Public Positive Covenant shown as 2 and 3 on Sec 88B in DP1094038									
(D) <b>APPLICANT</b>	The prescribed authority in the case of a release, the registered proprietor in the case of an extinguishment Newcastle City Council									
(E)	<p><b>1. RELEASE: SECTION 88D(12) CONVEYANCING ACT 1919 NOT APPLICABLE</b>                  The applicant, being the prescribed authority entitled to enforce the above positive covenant, applies to have a recording made in the Register of the order dated _____ and annexed hereto marked _____ releasing that positive covenant.</p> <p><b>2. RELEASE: SECTION 88E(7) CONVEYANCING ACT 1919 APPLICABLE</b>                  The applicant, being the prescribed authority entitled to enforce the above positive covenant, releases that positive covenant and applies to have a recording made in the Register giving effect to the release.</p> <p><b>3. EXTINGUISHMENT: SECTION 89(8) CONVEYANCING ACT 1919 NOT APPLICABLE</b>                  The applicant, being the registered proprietor of the above land, applies to have all necessary recordings made in the Register to give effect to the order of the Supreme Court of New South Wales dated _____ an office copy of which is annexed hereto and marked _____ which wholly extinguishes the above positive covenant.</p> <p><b>DATE</b></p>									
(F) I certify that I am an eligible witness and that an authorised officer of the prescribed authority signed this dealing in my presence. [See note* below]	Certified correct for the purposes of the Real Property Act 1900 by the authorised officer of the prescribed authority named below.									
Signature of witness:	Signature of authorised officer:									
Name of witness:	Authorised officer's name:									
Address of witness:	Authority of officer: Signing on behalf of:									
<p><small>* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.                  ALL HANDWRITING MUST BE IN BLOCK CAPITALS. <span style="float: right;">Page 1 of 1</span></small></p>										

## **8.12. MAJOR EVENTS UPDATE**

**REPORT BY: CREATIVE & COMMUNITY SERVICES**

**CONTACT: EXECUTIVE DIRECTOR CREATIVE & COMMUNITY SERVICES / ACTING EXECUTIVE MANAGER MEDIA ENGAGEMENT ECONOMY & CORPORATE AFFAIRS**

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### **PURPOSE**

To confirm City of Newcastle's commitment to attracting and hosting major events.

### **RECOMMENDATION**

That Council:

#### **Part A:**

- 1 Notes in 2022, the elected Council unanimously resolved to undertake extensive community consultation on the option available in the existing agreement to extend the Newcastle 500 for a further five years (at a cost of no more than \$1.6 million annually).
- 2 Notes the NSW Government has declined to support the five year extension of the event.
- 3 Resolves that a proposed one year extension is inconsistent with the extensive community consultation undertaken in 2023 which was based upon an option of a five year extension within the 2017 contract.
- 4 Notes that Supercars Australia has informed City of Newcastle (CN) that it is finalising options to replace the Newcastle 500 as the 2024 season-opener.
- 5 Resolves that the previous agreements between CN, the NSW Government and Supercars Australia, including a five-year option, have expired with the decision of the NSW Government not to support the five year option.
- 6 Notes that since successfully hosting the Newcastle 500 as the city's largest ever event, Newcastle has attracted new, and significantly larger events, including events of an international reach, (and notwithstanding the impacts of COVID-19) than in the five years prior to 2017.
- 7 Endorses the success of major events attended by hundreds of thousands of locals and intrastate, interstate and international visitors during the last six years, including:

- i) Supercars Newcastle 500 (2017-2023)
- ii) Australian Matildas fixtures (2017, 2018, 2021, 2023)
- iii) Oceania Supermoto Championships (2018, 2022, 2023)
- iv) NSW Waratahs Super Rugby match (2019, 2020)
- v) Australian Wallabies Rugby Union Test match (2020)
- vi) Argentina Pumas vs New Zealand All Blacks Rugby Union Test match (2020)
- vii) Mens World Hockey Masters (2021)
- viii) New Annual Arts Festival (2021, 2022, 2023)
- ix) World Surf League Newcastle Cup (2021)
- x) Van Gogh Alive Exhibition (2022)
- xi) Australian Diamonds vs England Netball match (2022)
- xii) Come From Away Musical (2023)
- xiii) Elton John Concerts (2023)
- xiv) Paul McCartney Concert (2023)
- xv) RAAF Air Show (2023)
- xvi) Rocky Horror Show Musical (2024)
- xvii) Pink Concert (2024)

#### **Part B:**

- 8 Endorses Foreshore Park, including Camp Shortland, as Newcastle's premier major event space in line with the adopted Foreshore Plan of Management.
- 9 Commits to secure new major events in Newcastle, as a central pillar of our visitor economy.

#### **KEY ISSUES**

- 10 CN's unanimously adopted Destination Management Plan 2021-2025 includes a key priority to raise awareness of Newcastle and showcase its strengths through attracting and developing signature events.
- 11 Supercars Newcastle 500 (N500) has been the city's flagship event since 2017, with a gross average attendance of 169,000 per event and delivering more than \$36 million in economic output annually.
- 12 The final N500 event under the five year agreement between CN, Supercars Australia and DNSW was delivered in March 2023, attracting the second-highest attendance of the event's history with 167,197 people over three days.
- 13 CN's agreement with Supercars Australia, known as the Services Deed, was executed in December 2016 by the then Interim Chief Executive Officer and includes a clause permitting a five year extension of the event to be enacted 30 days prior to expiration of the agreement.



- 14 CN engaged KPMG to undertake broad and detailed community consultation throughout February to April 2023 on the potential five-year extension of the N500, with results from the statistically valid telephone survey showing 55 percent of residents and 59 percent of businesses supported the extension.
- 15 Support was lower via the online survey, with 37 percent of residents and 41 percent of businesses supporting the extension.
- 16 The community consultation results show the primary perceived benefit of the event was showcasing Newcastle as a tourist destination (41 percent of resident responses) while the primary perceived drawback was the disruption associated with bump-in and bump-out (51 percent of resident responses).
- 17 An extension of the N500 requires in the first instance an agreement between the NSW Government as the event partner and Supercars Australia as the event owner. The two parties were not able to agree on a five year extension in line with the existing agreements.
- 18 The State Member for Newcastle has publicly stated his opposition to any extension of the event.
- 19 The Services Deed expired 30 June 2023, meaning there are no agreements with Supercars Australia or the NSW Government for any future N500 events.
- 20 The N500 has achieved what it had intended to, in delivering unparalleled exposure for our city, with the 2023 event reaching a combined audience of more than 22 million across traditional and social media.
- 21 Between 2013 and 2017, Newcastle averaged six major events per annum, including three of international reach. The N500 has since elevated Newcastle's prominence as a major events city, with an average of eight major events per annum, including five of international reach, despite the significant impacts of COVID-19 on the events industry.
- 22 CN's Council adopted Foreshore Plan of Management 2015 includes Special Events as a key value, such as large-scale music festivals, sporting events etc. CN is in discussions with major event organisers for future opportunities in Foreshore Park in line with the Destination Management Plan.

## **FINANCIAL IMPACT**

- 23 CN's annual budget for the N500 was \$1.6 million from 2017 through to 2023, covering all operational costs relating to the event including staff time, obligations under the Services Deed agreement with Supercars Australia, and the rights fee to DNSW.
- 24 CN's investment in city events is \$2 million for 2023/24, including the Event Sponsorship program, strategic investment in major events such as the RAAF Air

Show and the Venues NSW partnership resulting in events such as the Paul McCartney Got Back tour, delivery of owned events such as New Annual and New Years Eve, and support for hallmark events including Surfest and ANZAC Day.

- 25 There is no financial impact to the 2023/24 CN budget as a result of the recommendations of this report.

## **NEWCASTLE 2040 ALIGNMENT**

- 26 Adopting this report is consistent with the following Newcastle 2040 priorities and objectives:

### **Creative Newcastle**

#### *3.1 Vibrant and creative City*

- 3.1.1 Vibrant events
- 3.1.2 Bold and challenging programs
- 3.1.3 Tourism and visitor economy
- 3.1.4 Vibrant night-time economy

#### *3.2 Opportunities in jobs, learning and innovation*

- 3.2.1 Inclusive opportunities
- 3.2.2 Skilled people and businesses
- 3.2.3 Innovative people and business

#### *3.4 City-shaping partnerships*

- 3.4.1 Optimise city opportunities
- 3.4.2 Government relations and advocacy

### **Achieving Together**

#### *4.2 Trust and Transparency*

- 4.2.1 Genuine engagement
- 4.2.2 Shared information and celebration of success
- 4.2.3 Trusted customer experience

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 27 CN will continue to create a vibrant and active city for residents and visitors to enjoy through its strategy to attract and host major events.
- 28 Should the NSW Government and Supercars Australia propose any multiyear Supercars event in Newcastle beyond 2024, it would be subject to community consultation, a resolution of Council, and new agreements with both parties.
- 29 CN is reviewing its current processes for approving major events in public spaces, including consultation with other NSW councils and event organisers, to ensure it provides an efficient pathway which encourages event organisers to hold events in the LGA.

## RISK ASSESSMENT AND MITIGATION

- 30 Major events carry a range of risks associated with the congregation and transit of large number of people (traffic management, noise) and are typically best located in and around the Newcastle city centre to take advantage of accommodation, public transport and hospitality and retail businesses.
- 31 CN mitigates these risks through the coordination of the Interagency Events Coordination Group (IECG). The IECG membership includes NSW Police, Transport for NSW, NSW Health and other agencies working together to refine event planning and associated resourcing prior to the granting of a CN event licence.

## RELATED PREVIOUS DECISIONS

- 32 On 26 July 2016, Council resolved a Confidential Major Event Matter:
- A *Council work with Destination NSW to bring the Virgin Australia Supercar Championships to the City of Newcastle.*
- B
- i) *Council endorses entering a five (5) year (+ 5 year) Rights Fee Agreement with Destination NSW (DNSW) to conduct the Grand Finale Round of the Virgin Australia Supercar Championships (VASC) on a road circuit in Newcastle from 2017, and delegates authority to the Interim Chief Executive Officer to execute any and all necessary documents.*
  - ii) *Council develop a Memorandum of Understanding (MoU) with DNSW and VASC and delegate authority to the Interim Chief Executive Officer and the Lord Mayor to execute this MOU and advise Council.*
  - iii) *Further advice be provided to Council when details on track layout, community consultation plans and other related matters are known.*
  - iv) *This confidential report relating to the matters specified in s10A(2)(c) of the Local Government Act 1993 be treated as confidential and remain confidential until Council determines otherwise.*
- 33 At the Ordinary Council Meeting held on 23 March 2021, Council resolved to adopt the 2021-2025 Destination Management Plan.
- 34 At the Ordinary Council Meeting of 23 August 2022, Council resolved a Notice of Motion on Community Engagement Plan for Newcastle 500 contract extension:

### **Part 1**

*Subject to approval from the Heritage Council of NSW, the NSW Office of Sport and Destination NSW, Council supports the proposed dates of 10-12 March 2023 to hold the final Newcastle 500 event under the existing agreements between Destination NSW (NSW Government), City of Newcastle and Supercars Australia.*

**Part 2**

*Partner with Destination NSW as the lead agency for major events to prepare and publicly exhibit a community engagement plan in relation to the decision to extend the current Supercars 500 agreement beyond 2023 to expedite extensive and broad community and stakeholder consultation. Council expects this engagement will be led by DNSW.*

**Part 3**

*Delegates authority to the CEO to enter necessary agreements to facilitate the March 2023 Newcastle 500, including a Services Deed, whereby the conditions are equivalent to, or more favourable to CN than the existing agreements. Requires that all modifications to the existing Deed and Agreements to enable the March 2023 event be communicated to Councillors and published on City of Newcastle's website.*

**Part 4**

*Confirms that City of Newcastle's total expenditure for the Newcastle 500 event does not exceed the current budget of \$1.6m, which is consistent with previous events.*

- 35 At the Ordinary Council Meeting on 13 December 2022 Council resolved to place the draft Newcastle 500 Strategy on public exhibition for a minimum of 28 days.
- 36 At the Ordinary Council Meeting on 28 March 2023, Council resolved a Lord Mayoral Minute for City of Newcastle Hosts World-Class Events and that City of Newcastle:
- i) *Notes that many successful events have been held in recent weeks, seeing an increase in local visitation to the City of Newcastle, including:*
    - a. *Country Mayors Association of NSW which met for the very first time outside of Sydney for their recent general meeting and tour of the Port of Newcastle;*
    - b. *International Women's Day Morning Tea 2023 with inspirational guest speaker Vanessa Alexander, an award-winning screenwriter and humanitarian who received a Key to the City of Newcastle after her keynote speech at the annual Lord Mayor's International Women's Day Morning Tea at City Hall speaking about her work to help more than 100 Afghan women and their families at risk of retribution from the Taliban after the fall of Kabul in August 2021, amid the COVID-19 pandemic. This event also raised \$3,200 from Vanessa Alexander's chosen beneficiary, refugee support service Talent Beyond Boundaries;*
    - c. *Supercars Newcastle 500 which saw thousands of locals and visitors alike enjoying the race;*
    - d. *Surfest, the largest festival of surfing in the Southern Hemisphere, which Newcastle has sponsored since its inception, with Joel Vaughan and*

- Bronte Macauley claiming victory at the Burton Automotive & Speaking in Colour Pro World Surf League Qualifying Series;*
- e. *Come from Away which saw more than 21,500 theatregoers attending from across the Hunter and beyond, who flocked to the Civic Theatre during the three-week extended run to share in the incredible real-life story of the 7,000 air passengers from around the world who were grounded in Newfoundland Canada in the wake of 9/11.*
  - ii) *Notes that as part of the Supercars Newcastle 500, City of Newcastle was able to facilitate the raising of more than \$40,000 for its partner charities Got Your Back Sista and Nova for Women and Children, which will support victims of family and domestic violence (with more than \$100,000 now raised since 2017 for domestic violence charities from this event alone).*
  - iii) *Congratulates Freeman of the City of Newcastle, Mr Warren Smith, upon his receipt of the Peter Troy Lifetime Achievement Award at the 2023 Surfing Australia Awards for his lifelong dedication to the sport of Surfing, in particular, for his commitment to Surfest, the largest festival of surfing in the Southern Hemisphere.*
  - iv) *Acknowledges City of Newcastle has also won the right to host two further large scale business events this October, with more than 500 delegates to descend on the city injecting more than \$1.6 million into the local visitor economy, being the highly-coveted 2023 Australian Regional Tourism convention at City Hall and will welcome the nation's best town planners for the Planning Institute of Australia's regional conference.*
  - v) *Extends our gratitude and thanks the work of local businesses, City of Newcastle employees and the Newcastle community for their support and cooperation in hosting these successful events and promoting our beautiful city.*

## **CONSULTATION**

- 37 CN consulted with key stakeholders in the development of its Destination Management Plan, including but not limited to Business Hunter, Newcastle Tourism Industry Group and the Guraki Committee prior to the document being placed on Public Exhibition between November 2020 and February 2021, attracting more than 170 submissions.
- 38 CN undertook broad and detailed consultation on a potential five-year extension of the N500. The Community Consultation Strategy was developed and implemented by global firm KPMG and was placed on Public Exhibition for six weeks between December 2022 and January 2023, attracting 152 submissions in total.
- 39 CN's N500 Community Consultation program ran between February and April 2023, with a multi-faceted methodology which allowed for a mix of statistically-valid research, broad and open consultation, and qualitative insights.

- 40 The Community Consultation included an online survey which was anonymous and open for anyone to complete, a statistically valid telephone survey, and four focus group discussions with residents, businesses and stakeholders.
- 41 Support for the five-year extension was mixed, with 55 percent of residents and 59 percent of businesses expressing support via the telephone survey. Support was lower via the online survey, with 37 percent of residents and 41 percent of businesses supporting the extension. KPMG noted that a limitation of the online survey was that people could make multiple submissions.
- 42 Participants were not surveyed on whether a one year only extension would be supported.
- 43 CN's annual Community Satisfaction Survey includes a question on promotion of Newcastle as a tourist destination. The 2023 survey was conducted in June and saw 60 percent of respondents either satisfied or very satisfied with CN's promotion of Newcastle as destination, up from 48 percent in 2022.

## **BACKGROUND**

- 44 The first Newcastle 500 was held in November 2017, followed by 2018 and 2019. Due to COVID-19, the 2020 event was cancelled and the 2021 race was postponed first until March 2022 and then again until March 2023. The 2023 event was the last to be held under existing agreements.
- 45 The Newcastle 500 operated under a three-way agreement between the NSW Government (Event Partner), Supercars Australia (Event Owner) and CN (Host City).
- 46 CN held agreements with both the NSW Government and Supercars Australia to host the event. The Services Deed with Supercars Australia outlined the services CN would provide to facilitate each event and the benefits Supercars would provide in return. The agreement with the NSW Government's tourism arm DNSW was called the Letter of Commitment, which confirmed Newcastle as host city for the event and quantified CN's contribution to DNSW for the event's 'Rights Fee'.
- 47 NSW Legislation provides the legal framework for motor racing events not held on licensed tracks, with the NSW Motor Sports Events Act 2022 adopted in April 2022 and superseding the NSW Motor Racing (Sydney and Newcastle) Act 2008.
- 48 CN's unanimously adopted Destination Management Plan 2021-25 includes events as a key theme, noting their importance to the visitor economy for direct economic contribution and building destination awareness. CN's Media Engagement Economy and Corporate Affairs unit actively works to attract signature events to the city, including through a strategic partnership with Venues NSW, which has resulted in international acts performing at McDonald Jones Stadium with concerts by Elton John and Paul McCartney in 2023 and Pink in 2024.

- 49 An assessment of major events in Newcastle over the last decade has shown the largest event prior to the first N500 in 2017 with more than 167,000 people was Newcastle's hosting of AFC Asian Cup international football matches in 2015 which saw a total attendance of 58,550. Since hosting the N500, Newcastle has seen an increase in the scale of major events locally. For example the Van Gogh Alive Exhibition at Foreshore Park in 2022 attracted the highest visitation outside of N500 events with 83,751 visitors.
- 50 CN issues event approvals under Section 68, Part D of the Local Government Act. Major events are approved in consultation with the Newcastle Interagency Events Coordination Group to ensure strategic coordination of transport management, policing and other services.

### **OPTIONS**

- 51 The recommendations at Paragraphs 1 to 9 be noted.

### **REFERENCES**

### **ATTACHMENTS**

Nil.

### 8.13. EXECUTIVE MONTHLY PERFORMANCE REPORT

**REPORT BY:** CORPORATE SERVICES  
**CONTACT:** EXECUTIVE DIRECTOR CORPORATE SERVICES & CHIEF FINANCIAL OFFICER / EXECUTIVE MANAGER FINANCE, PROPERTY & PERFORMANCE & DEPUTY CFO

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#### PURPOSE

To report on City of Newcastle's (CN) monthly performance. This includes:

- a) Monthly financial position and year to date (YTD) performance against the 2023/24 Operational Plan as at the end of September 2023.
- b) Investment of temporary surplus funds under section 625 of the *Local Government Act 1993* (Act), submission of report in accordance with the Act and clause 212 of the Local Government (General) Regulation 2005 (Regulation).

#### RECOMMENDATION

That Council:

- 1 Receives the Executive Monthly Performance Report for September 2023.

#### KEY ISSUES

- 2 At the end of September 2023 the consolidated YTD actual operating position is a surplus of \$6.8m which represents a positive variance of \$4.4m against the budgeted YTD surplus of \$2.3m. This budget variance is due to a combination of income and expenditure variances which are detailed in **Attachment A**. The adopted budget for 2023/24 is a surplus of \$6.9m.
- 3 The net funds generated as at the end of September 2023 is a surplus of \$10.7m (after capital revenues, expenditure and loan principal repayments). This is a positive variance to the YTD budgeted position of \$3.5m. This is primarily due to a timing variance in the delivery of CN's works program with a delay in the spend of project expenditure (both capital and operational expenditures).
- 4 CN's temporary surplus funds are invested consistent with CN's Investment Policy, Investment Strategy, the Act and Regulations. Details of all CN funds invested under section 625 of the Act are provided in the Investment Policy and Strategy Compliance Report (section 4 of **Attachment A**).

#### FINANCIAL IMPACT

- 5 The variance between YTD budget and YTD actual results at the end of September 2023 is provided in the Executive Monthly Performance Report.



## **COMMUNITY STRATEGIC PLAN ALIGNMENT**

- 6 This report aligns to the Newcastle 2040 Community Strategic Plan under the strategic direction:

### **Achieving Together**

- 4.1.1 Financial sustainability

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 7 The distribution of the report and the information contained therein is consistent with:
- i) CN's adopted annual financial reporting framework,
  - ii) CN's Investment Policy and Strategy, and
  - iii) Clause 212 of the Regulation and section 625 of the Act.

## **RISK ASSESSMENT AND MITIGATION**

- 8 No additional risk mitigation has been identified this month.

## **RELATED PREVIOUS DECISIONS**

- 9 At the Ordinary Council Meeting held on 25 September 2018 Council adopted to receive an Executive Monthly Performance Report for July to May no later than one month after the month being reported as part of the annual financial reporting framework.
- 10 The Investment Policy Compliance Report included in the Executive Monthly Performance Report includes a specific confirmation in regard to compliance with Part E of the Investment Policy.

## **CONSULTATION**

- 11 A monthly workshop is conducted with Councillors to provide detailed information and a forum to ask questions.

## **BACKGROUND**

- 12 The presentation of a monthly Executive Performance Report to Council and a workshop addresses the Council resolution for monthly reporting and exceeds the requirements of the Act.

## **OPTIONS**

### **Option 1**

- 13 The recommendation as at Paragraph 1. This is the recommended option.

**Option 2**

- 14 Council resolves to vary the recommendations in the adoption of the report. This is not the recommended option.

**REFERENCES**

**ATTACHMENTS**

**Attachment A:** Executive Monthly Performance Report – September 2023

**Attachment A distributed under separate cover**

## **8.14. TENDER REPORT – CELL NINE STAGE 2 - UPPER BATTER – CONTRACT NO 2024/016T**

**REPORT BY: CITY INFRASTRUCTURE**  
**CONTACT: EXECUTIVE DIRECTOR CITY INFRASTRUCTURE /  
EXECUTIVE MANAGER PROJECT MANAGEMENT OFFICE**

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### **PURPOSE**

To accept a tender for the scope requirements and deliverables for the construction of the Cell 9 Stage 2 upper batter component of the Cell 9 landfill.

Due to the estimated total value of the contract exceeding \$1 million, the Chief Executive Officer's delegation requires a resolution of Council to accept the tenders.

### **REASON FOR CONFIDENTIALITY**

The confidential attachments have been classified confidential in accordance with the provisions of the *Local Government Act 1993* (the Act) as follows:

- Section 10A(2)(d) of the Act provides that Council can close a meeting to consider commercial information of a confidential nature that would if disclosed prejudice the commercial position of the person who supplied it.
- Section 10B(1)(a) and (b) of the Act provides that the discussion of the item in a closed meeting must only:
  - (a) include as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
  - (b) occur if the Council is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

### **GROUNDS FOR CLOSING PART OF THE MEETING**

In respect to section 10D(2) of the Act, the grounds on which part of a meeting is to be closed for the discussion of the particular item must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. Accordingly, an appropriate resolution to proceed is required first.

### **MOTION TO PROCEED**

The discussion of the confidential attachments take place in a closed session, with the press and public excluded, for the following reasons:

- A The matter relates to tenders for Cell 9 Stage 2 upper batter component of the Cell 9 landfill project for Contract No 2024/016T.

- B It is contrary to the public interest to discuss tenders in an open meeting because the information provided to Council by tenderers is provided on the basis that it will be commercial-in-confidence. A practice of disclosing sensitive commercial information to the public, including competitors, could result in the withholding of such information by tenderers. This would lead to a reduction in the supply of information relevant to Council's decision. A disclosure of confidential information by Council could result in Council being the subject of litigation for breach of confidence.
- C The closed session involves only as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security.

## RECOMMENDATION

- 1 At **Attachment A**.

## KEY ISSUES

### Tender

- 2 The tender is for the construction of the Cell 9 Stage 2 upper batter component of the Cell 9 landfill.

### Contract Term

- 3 The contract term is for six months with a defect liability period of 12 months.

### Advertising of Tenders

- 4 The tender was advertised nationally on the Tenderlink website on Thursday, 10 August 2023 and closed at 2pm on Tuesday, 26 September 2023.

### Tenders Received

- 5 Tender submissions were received from:

- i) Synergy Resource Management Pty Ltd,
- ii) N. Moit & Son (NSW) Pty Ltd, and
- iii) Ironbuilt Infrastructure Pty Ltd.

### Evaluation Process

- 6 The tenders were assessed against the following criteria:
- i) Tender Price 40%
  - ii) Methodology 10%
  - iii) Contract Program 10%

iv) Management and Staff, Previous Experience and Referees	18%
v) Supplier Diversity	5%
vi) Sub-Contractors	5%
vii) WHS and Management Systems	12%

7 The tenders were assessed by a Tender Assessment Panel consisting of City of Newcastle (CN) Officers. The panel was selected based on experience and knowledge of the project.

8 Probity oversight was provided by the Contact Management Unit in accordance with CN's Procurement Policy.

**Recommended Tenderer**

9 The recommended tenderer demonstrated a thorough understanding of the construction requirements of this contract, whilst offering a competitive price and ultimately best value for money outcome.

**FINANCIAL IMPACT**

10 The total estimated cost of this project including the proposed contract amount, allowances for project management, contingency and other associated project costs is within the amount included in the 2023/24 adopted budget for this project.

**IMPLICATIONS**

**Policy Implications**

11 This proposed contract aligns with the following Newcastle 2040 Community Strategic Plan objectives:

**Liveable**

- 1.2 Connected and fair communities
- 1.2.4 Healthy communities

**Creative**

- 3.4 City-shaping partnerships
- 3.4.1 Optimise city opportunities

**Achieving Together**

- 4.3 Collaborative and innovative approach
- 4.3.2 Innovation and continuous improvement

12 This project aligns with Pillar 3 (Prosperity) and Priority 7 (Financial Strength) of CN's Our Sustainable Waste Strategy 2023.

**Environmental Implications**

- 13 The recommended tenderer has an ISO accredited environmental management system to address environmental risks associated with construction activities. All contractors are required to comply with CN's work health safety and environmental requirements during project delivery.

**IMPLEMENTATION**

- 14 Delivery of this project will not impact day-to-day operations at Summerhill Waste Management Centre (SWMC) or community service delivery.

**CONSULTATION/COMMUNICATION**

- 15 Public exhibition was undertaken through the development application process for Landfill Cells 9-13 in 2011.

**BACKGROUND**

- 16 SWMC is licensed by the NSW Environment Protection Authority (EPA) to receive a wide variety of 'General Solid Waste (Putrescible and Non-putrescible) and Special Waste'. Currently, landfilling activities are being undertaken in landfill Cell 9. Cell 9 was designed to be delivered in several stages, with Stage 1 being completed in 2017 and two thirds of Stage 2 being completed in 2020. Contract 2024/016T includes the scope requirements and deliverables for the construction of the remainder of Stage 2 – Upper Batter component of the Cell 9 landfill.
- 17 The completion of the Stage 2 – Upper Batter component of the Cell 9 landfill is expected to provide continuity of CN's red bin collection service until early 2026.
- 18 The calling of tenders was in accordance with the requirements of section 55 of the Act. The process followed was in accordance with Part 7 of the Regulation. Council is required to accept tenders in accordance with clause 178 of the Regulation (see Options).

**OPTIONS****Option 1**

- 19 The recommendation as at **Attachment A**. This is the recommended option.

**Option 2**

- 20 Council defers a decision at this time to allow further consideration of the tenders received. This is not the recommended option.

**Option 3**

- 21 Council resolves not to accept any tender and invite fresh tenders. This is not the recommended option.

**Option 4**

22 Council resolves not to accept any tender and enter into negotiations with any party with a view to entering into a contract. Council must state a reason for this in its resolution. This is not the recommended option.

**Option 5**

23 Council resolves not to accept any tender and not proceed with the contract. Council must state a reason for this in its resolution. This is not the recommended option.

**ATTACHMENTS**

**Attachment A:** Confidential Recommendation

**Attachment B:** Confidential Tender Evaluation Matrix - Summary

***(Refer Confidential Council Meeting Agenda 31 October 2023 for Attachments A and B)***

## 9. NOTICES OF MOTION

### 9.1. HILLCREST TENNIS CLUB

**COUNCILLORS: D CLAUSEN, N NELMES, C DUNCAN, P WINNEY-BAARTZ, M WOOD, D RICHARDSON AND E ADAMCZYK**

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#### PURPOSE

*The following Notice of Motion was received on Wednesday 11 October 2023 from the abovementioned Councillors.*

#### MOTION

That Council:

- 1 Congratulates the Hillcrest Tennis Club, Mayfield on celebrating its 85th anniversary on Saturday 23 September 2023, recognising its contribution to our community.
- 2 Acknowledges the significant volunteer efforts made by members of the Hillcrest Tennis Club, particularly under the leadership of President Elva Osborne and Secretary Ross McGovern. Their unwavering commitment has played a pivotal role in maintaining and enhancing the Club's facilities and operations, as well as securing funds to ensure its continued existence.
- 3 Recognise the remarkable journey of Hillcrest Tennis Club, which began in 1938 as a recreational facility for the workers of Lysaghts sheet steel manufacturer. Over the years, the club has evolved to include modern amenities, an upgraded clubhouse, toilet facilities, and two synthetic courts, making it a valuable publicly owned asset to our community.
- 4 Recognise the positive impact of Hillcrest Tennis Club on the Mayfield community, fostering a sense of belonging, promoting physical fitness, and facilitating social interaction. The Club's ability to adapt to changing circumstances, such as during the COVID-19 pandemic, by introducing online bookings and maintaining affordability, underscores its commitment to inclusivity and accessibility.
- 5 Commits to the protection of the Hillcrest Tennis Courts, and continued partnership with Tennis NSW and the Tennis Club in the development of a Tennis Strategy as an action of the 10-year Strategic Sports Plan.
- 6 Wishes the Club continued success and anticipates with excitement the celebration of 100 years of Tennis in Mayfield at the Club's 2038 centennial festivities.





**BACKGROUND**

Nil.

**ATTACHMENTS**

Nil.

## **9.2. CALL TO RESTORE THE NEWCASTLE MINES GROUTING FUND**

**COUNCILLOR: C PULL**

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### **PURPOSE**

*The following Notice of Motion was received on Wednesday 18 October 2023 from the abovementioned Councillor.*

### **MOTION**

That Council:

- 1 Notes that the New South Wales Government has announced that it will wind up the Newcastle Mines Grouting Fund.
- 2 Notes that Mine Grouting Works can be expensive and difficult to predict, and that the fund provided security for investors and developers against potential cost blowouts on mine grouting works.
- 3 Notes that the Newcastle Mine Grouting Fund only had minimal impact on the State Budget, but provided significant benefits and assurance to the redevelopment and revitalisation of Inner-City Newcastle.
- 4 Calls on the NSW Government to restore the Newcastle Mines Grouting Fund.

### **BACKGROUND**

The Newcastle Mines Grouting Fund was established in 2015 to provide security to Developers and Investors looking to build developments in Newcastle.

The fund effectively insured inner-city developers against unpredictable and expensive mine grouting works which need to be undertaken under the sites of planned residential and office developments.

Acting Minister for the Hunter Yasmin Catley said that the fund had to be wrapped up to “direct funding to the projects [NSW Labor] promised at the election.”

\$1.2 million had been paid out of the fund over the last eight years – a tiny portion of the New South Wales State Budget, which helped to support the revitalization of Newcastle’s CBD.

The axing of the fund has garnered some media attention in recent weeks from developers who believe they will now no longer be able to proceed with projects. Links to these stories and analysis pieces are below for further reading.

## **ATTACHMENTS**

**Attachment A:** <https://www.newcastleherald.com.au/story/8373167/major-housing-projects-wont-go-ahead-after-mine-grout-fund-axing/>

**Attachment B:** <https://www.newcastleherald.com.au/story/8383745/high-rise-plans-for-newcastle-a-hole-lot-riskier/>

### 9.3. COMMUNITY PREPARATIONS TO ENSURE A SAFE SUMMER

**COUNCILLORS: E ADAMCZYK, D CLAUSEN, C DUNCAN, C NELMES,  
D RICHARDSON, P WINNEY-BAARTZ AND M WOOD**

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#### **PURPOSE**

*The following Notice of Motion was received on Thursday 19 October from the abovementioned Councillors.*

#### **MOTION**

That Council:

- 1 Acknowledges the recent announcements issued by fire and emergency agencies, and by the Australian Bureau of Meteorology in declaring a combined El Niño and positive Indian Ocean Dipole event, which, combined with ongoing climate change impacts, is expected to bring dangerous weather conditions to our region this summer.
- 2 Notes that such warnings and declarations have highlighted the elevated risks associated with drought in the upcoming summer season, of bushfires, grass fires, storm activity, floods, and heatwaves, and that large parts of the Hunter region including the city of Newcastle have already been declared as experiencing drought.
- 3 Notes that the risks and impacts of these events can be more deeply and disproportionately felt by different communities and social groups in our city, whether according to gender, age, culture, income, mobility, ability, and / or geography, and commends the emergency preparedness actions undertaken to increase disaster resilience in vulnerable communities locally including by Zara's House, the Red Cross, and the SES.
- 4 Reaffirms its unwavering commitment to prioritise the safety of the city's residents, by taking proactive steps to educate and prepare our community for potentially dangerous weather conditions and events, and to equip the city in responding to local climate risks, including via: the development and implementation of flood studies and flood risk management plans and coastal management programs, bridge replacements, improved planning controls for thermal buildings and to address the urban heat island effect, the city Emergency Control Centre, creek rehabilitation works, increasing tree canopy and the urban forest, participation in the Hunter JO's Hunter Resilience Program and the implementation of our *Newcastle Environment Strategy*.
- 5 Encourages all levels of government to collaborate in addressing the root causes of climate change which contribute to the increased frequency and severity of extreme weather events, and to assist in community preparedness in times of local climate risks.

- 6 When developing our Climate Risk and Resilience Action Plan, to support the delivery of our *Newcastle Environment Strategy* 'Action on Climate Change', include an education program to empower our community with the knowledge, skills, and confidence to effectively prepare for, respond to, and recover from climate risks and severe weather events, in collaboration with our community, organisations, service providers, landlords and real estate agents, university, and businesses.

## BACKGROUND

This Notice of Motion is a plea for preparedness, and intended to ensure the safety of our community during the upcoming summer season, and to empower residents with the knowledge and resources necessary to protect ourselves, our families, and our properties from the potential risks and threats posed by heatwaves, bushfires, and storm activity.

In order to do so, it is important to understand the risks:

- 1 Heatwaves: With the El Niño event upon us, we anticipate more prolonged and intense heatwaves than usual. Extreme temperatures can pose significant health risks, particularly to the elderly, young children, and those with pre-existing medical conditions. We must prepare for extended periods of high temperatures and take precautions to stay cool and hydrated.
- 2 Bushfires: The dry and hot conditions associated with El Niño increase the risk of bushfires. We have witnessed the devastating impacts of bushfires in recent years, and it is imperative that we are well-prepared. Residents living near bushland areas should have a bushfire survival plan in place, clear their properties of potential fuel sources, and stay informed about fire danger ratings and evacuation routes.
- 3 Storm Activity: El Niño can also bring about an increased likelihood of severe storms, including heavy rainfall, lightning, and strong winds. We need to be prepared for possible power outages, flooding, and damage to property. Ensure that your emergency kits are up to date, and be vigilant in monitoring weather forecasts and warnings.

Residents can adhere to the following recommended precautions to safeguard themselves and their properties:

- a. Create a Personal Evacuation Plan: Create a detailed bushfire or storm survival plan that includes evacuation routes, a designated safe meeting point, and a list of essential items to take with you.
- b. Stay Informed: Regularly check weather forecasts and emergency alerts from the Australian Bureau of Meteorology. Sign up for local emergency alerts and follow the advice of local authorities.
- c. Property Preparedness: Reduce the risk of bushfire damage by clearing your property of dry vegetation, leaves, and debris. Install ember guards on your windows and doors and ensure your home is equipped with a reliable water source and firefighting equipment.

- d. Heatwave Precautions: During heatwaves, stay hydrated, avoid strenuous activities during the hottest parts of the day, and check on vulnerable neighbors and family members.
- e. Personal Emergency Kits: Prepare an emergency kit with essential supplies, including non-perishable food, water, a flashlight, batteries, a first aid kit, prescriptions, animal care, and important documents.
- f. Report Hazards: Promptly report any potential fire hazards, flooding, damaged power lines, or fallen trees to the relevant authorities.

The City of Newcastle encourages and supports our community to take these warnings seriously, and make preparations now, before summer arrives to ensure we all enjoy a happy and safe summer.

## **ATTACHMENTS**

Nil

## 9.4. RECOGNITION OF CARERS

**COUNCILLORS: E ADAMCZYK, D CLAUSEN, C DUNCAN, N NELMES, D RICHARDSON, P WINNEY-BAARTZ AND M WOOD**

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### PURPOSE

*The following Notice of Motion was received on Monday 23 October 2023 from the abovementioned Councillors.*

### MOTION

That Council:

#### Part A:

1. Reiterates that we value the contribution of informal and family carers in caring for loved ones across our community and recognises the role of carers by:-
  - a. Hosting celebrations with carers to mark Carers Week in October 2023 - holding a community morning tea and film event at Civic Playhouse Theatre on 20 October and a lunch and learn event for City of Newcastle employees on 18 October.
  - b. Supporting the NSW Carers Charter and providing information about the Charter, carer entitlements and services on the City's intranet.
  - c. Collecting data to better understand the needs of carers at the City of Newcastle, noting that at least 17% of employees identify as carers of loved ones over the age of 18.
  - d. Supporting flexible work arrangements for employees.
  - e. Implementing the City's Inclusion, Diversity and Equity Strategy for employees.

#### Part B:

1. Welcomes the important work being done by the Federal Labor Government in relation to unpaid carers and the care and support economy, in particular the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the operation of the Carer Recognition Act 2010 and the Senate Select Committee on Work and Care 2022-2023.
1. Notes that reforming the Commonwealth Carer Recognition Act should include: -
  - a. Conferring rights on carers consistent with Australia's obligations under UN conventions such as the International Covenant on Economic, Social and Cultural Rights.
  - b. Imposing greater obligations on all public service agencies with improved reporting and accountability and the introduction of formal complaints mechanisms.

2. Supports the development of a National Carer Strategy and Implementation Plans (noting that there has been no National Strategy since 2013) which provide a whole of government approach to supporting carers.
3. Supports the creation of a national carer advisory body to provide advice on the development and implementation of a National Carer Strategy, including input from individuals with diverse experiences of caring.
4. The provision of better supports for working carers, including expanding carer leave entitlements under the National Employment Standards.

## **BACKGROUND**

Almost 2.65 million Australians provide unpaid care to people with a disability, those with a medical condition, mental illness or are frail and aged.

In 2020 the value of unpaid care was estimated at \$77.9 billion and the lost earnings of unpaid carers was about \$15.3 billion.

The need for both informal and paid care will increase significantly over the next 40 years when it is expected that over 23% of the population will be aged 65 and over.

The impact of caring on workforce participation and employment is significant.

Women are more likely to take on intensive caring roles, and are also more likely to take time out of work, exit the labour force, work part time and work in casualised, lower paid occupations in order to care. In 2021 an estimated 1.4 million Australians were providing informal care while also working. In 2021 caring responsibilities affected the labour force participation for over 900,000 people.

Of those individuals, 80% were women. The gender imbalance in the distribution of unpaid work as a carer contributes significantly to women's economic and social disempowerment.

## **ATTACHMENTS**

Nil

## **10. CONFIDENTIAL REPORTS**

Nil