

# Ordinary Council Meeting



**DATE:** Tuesday, 12 December 2023

**TIME:** 6:00pm

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

7 December 2023

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**City of Newcastle**  
PO Box 489, Newcastle NSW 2300  
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## Agenda

<b>1. ATTENDANCE</b>	
<b>2. ACKNOWLEDGEMENT OF COUNTRY</b>	
<b>3. PRAYER</b>	
<b>4. APOLOGIES / LEAVE OF ABSENCE / ATTENDANCE BY AUDIO VISUAL LINK</b>	
<b>5. DISCLOSURES OF INTEREST</b>	
<b>6. CONFIRMATION OF MINUTES .....</b>	<b>4</b>
6.1. MINUTES - ORDINARY COUNCIL MEETING 28 NOVEMBER 2023 .....	4
<b>7. LORD MAYORAL MINUTE .....</b>	<b>22</b>
<b>8. REPORTS.....</b>	<b>22</b>
8.1. NEWCASTLE ART GALLERY EXPANSION, LOAN CONTRACT DELEGATION.....	22
8.2. ADOPTION OF HUNTER STREET TRIAL CYCLEWAY - STAGE 2 DESIGN .....	26
8.3. ADOPTION OF THE LONGWORTH AVENUE AND MINMI ROAD WALLSEND CONCEPT DESIGNS .....	30
8.4. ADOPTION OF THE COUNCIL PROPERTY LEASE & LICENCE POLICY ..	35
8.5. ANNUAL REVIEW AND ADOPTION OF THE INVESTMENT AND BORROWING POLICY.....	38
8.6. ADOPTION OF THE OUTDOOR DINING POLICY & GUIDELINES .....	41
8.7. ADOPTION OF THROSBY, STYX AND COTTAGE CREEKS FLOOD STUDY .....	45
8.8. ADOPTION OF NEWCASTLE DEVELOPMENT CONTROL PLAN 2023 .....	45
8.9. PUBLIC EXHIBITION OF DRAFT NEWCASTLE AFFORDABLE HOUSING CONTRIBUTIONS SCHEME .....	53
8.10. REQUEST THE MINISTER DETERMINE PLANNING PROPOSAL PP-2021- 2262 FOR LAND AT 505 MINMI ROAD FLETCHER 2287 NOT PROCEED ..	58
8.11. CODE OF CONDUCT ANNUAL STATISTICS.....	65
8.12. TENDER REPORT - EAST END PUBLIC DOMAIN STAGES 2 AND 5 REFURBISHMENT - CONTRACT 2023/169T.....	70
<b>9. NOTICES OF MOTION .....</b>	<b>76</b>
9.1. MEREWETHER BEACH EMERGENCY FIRST RESPONSE SAFETY MEASURES.....	76
9.1.1. REPORT ON NOTICE OF MOTION - NOM 12/12/23 - MEREWETHER BEACH EMERGENCY FIRST RESPONSE SAFETY MEASURES .....	85

**10. CONFIDENTIAL REPORTS .....85**  
10.1. OUR SUSTAINABLE WASTE STRATEGY - MATERIAL RECOVERY  
FACILITY AND ORGANICS PROCESSING FACILITY ..... 85

[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 28 NOVEMBER 2023**

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

## **ATTACHMENTS**

**Attachment A:** 231128 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, 28 November 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-Bartz and M Wood.

J Bath (Chief Executive Officer), D Clarke (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), N Kaiser (Acting Executive Manager Media Engagement and Corporate Affairs), M Hughes (Media Adviser), L Barnao (Councillor Services/Minutes/Meeting Support), J Knight (Councillor Services/Meetings Support) and A Paule-Font (AV Support) and A Clarke (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 Barrie, seconded by Cr Pull

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

**Carried**

**MOTION**

Moved by Cr Barrie, seconded by Cr Mackenzie

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

**Carried**

**5. DISCLOSURES OF INTEREST**

**Councillor Clausen**

Councillor Clausen declared a less than significant, non-pecuniary interest in Item 8.6 - Adoption of the Wickham Public Domain Plan stating that he had a friend who lived in the Wickham area and would manage the interest by remaining in the Chamber for discussion on the item.

**Councillor Mackenzie**

Councillor Mackenzie declared a significant, non-pecuniary interest in Item 9.2 - Request for Joint Briefing with Lake Macquarie Councillors due to his role on the Hunter and Central Coast Regional Planning Panel and would manage the interest by leaving the Chamber for discussion on the item.

**Councillor Winney-Baartz**

Councillor Winney-Baartz declared a significant, non-pecuniary interest in Item 9.2 - Request for Joint Briefing with Lake Macquarie Councillors due to her role on the Hunter and Central Coast Regional Planning Panel and would manage the interest by leaving the Chamber for discussion on the item.

**Councillor Duncan**

Councillor Duncan declared a significant, non-pecuniary interest in Item 8.8 - Broadmeadow to Hamilton East Cycleway stating that the route for the cycleway improvements and changes included her street and she would manage the interest by leaving the Chamber for discussion on the item.

**Councillor Church**

Councillor Church declared a significant, pecuniary interest in Item 8.8 - Broadmeadow to Hamilton East Cycleway stating that he owned property in the Broadmeadow area and would manage the interest by leaving the Chamber for discussion on the item.

**6. CONFIRMATION OF MINUTES**

**6.1. MINUTES - PUBLIC VOICE COMMITTEE 17 OCTOBER 2023**

**6.2. MINUTES - ORDINARY COUNCIL MEETING 31 OCTOBER 2023**

**MOTION**

Moved by Cr Barrie, seconded by Cr Duncan

The minutes as circulated be taken as read and confirmed.

**Carried unanimously**

## **7. LORD MAYORAL MINUTE**

### **7.1. ACKNOWLEDGING MAYOR SHINOZAKI & THE UBE SISTER CITY DELEGATION VISIT TO NEWCASTLE**

#### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Acknowledges our long, rich and mutually beneficial Sister City relationship with Ube City, Japan, which is steeped in history and culture, and built upon our port harbour cities' shared industrial backgrounds;
2. Notes that the Sister City Agreement was signed on 21 November 1980 between Lord Mayor Joy Cummings and Mayor Hideo Futatsugi and that this relationship has cultivated strong connections in education, youth exchange, economics, sport and art between our two cities;
3. Acknowledges that we were honoured to welcome Mayor Keiji Shinozaki, his fellow Ube City Councillors and members of the Ube-Newcastle Sister City Friendship Society to our City between Monday, 20 November to Wednesday, 23 November 2023; to mark both the 43rd Anniversary and acknowledge the important 40th Anniversary our Sister City relationship, which took place during the COVID-19 pandemic;
4. Thanks Ube City for re-confirming their commitment to our Sister City relationship during their recent visit and reaffirms the profound impact of our past interactions and the important of continued exchange across diverse fields for the mutual growth of our cities rooted in mutual trust and cooperation.

**Carried unanimously**

### **7.2. NEWCASTLE WILLIAMTOWN AIR SHOW 2023 SUCCESS**

#### **MOTION**

Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1. Notes that City of Newcastle, in partnership with the Royal Australian Air Force (RAAF), welcomed around 100,000 spectators to the Newcastle Williamtown Air Show 2023 over the weekend, delivering an estimated economic output of \$19.5 million, with hotels reporting a 97% occupancy rate over the weekend.
2. Notes images and footage of Newcastle's spectacular coastline were broadcast to audiences throughout NSW and interstate as part of the Air Show.
3. Congratulates City of Newcastle's Media Engagement Economy and Corporate Affairs team who has been working with the RAAF for more than 12 months to coordinate all on-ground activity as part of the Air Show.

4. Notes that Newcastle continues to shine as a destination thanks to City of Newcastle's ongoing strategic investment into major events like Newcastle Williamtown Air Show 2023.
5. Thank the NSW Government, Transport for NSW, and NSW Police for their support in delivering this incredible event for the community.

**Carried**

## 8. REPORTS

### 8.1. TABLING OF REGISTER OF DISCLOSURES OF INTEREST - 1 AUGUST TO 31 OCTOBER 2023

#### MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

That Council:

1. Notes the tabling of the Register of Disclosures of Interest (for the period 1 August to 31 October 2023) by the Chief Executive Officer.

**Carried**

### 8.2. ADOPTION OF 2024 COUNCIL MEETING CYCLE

#### MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

That Council:

1. Adopts the following schedule for Council and Committee of Council Meetings to be held in the 2024 calendar year with:

	<b>Week 1</b>	<b>Week 2</b>	<b>Week 3</b>	<b>Week 4</b>	<b>Week 5</b>
<b>February</b>	Quarterly Advisory Committee Meetings, as required	Councillor Workshops or other sessions, as required	<b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b>	<b>Ordinary Council Meeting</b>  <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b>	No week 5



<p><b>March</b></p> <ul style="list-style-type: none"> <li>• <i>Good Friday 29th</i></li> <li>• <i>Easter Saturday 30th</i></li> <li>• <i>Easter Sunday 31st</i></li> </ul>	<p>Additional workshops, Councillor professional development or other sessions, as required</p>	<p>Councillor Workshops or other sessions, as required</p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>No week 5</p>
<p><b>April</b></p> <ul style="list-style-type: none"> <li>• <i>Easter Monday 1st</i></li> <li>• <i>ANZAC Day Thursday 25th</i></li> </ul>		<p>Councillor Workshops or other sessions, as required</p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>Councillor Workshops or other sessions, as required</p>
<p><b>May</b></p>		<p>Councillor Workshops or other sessions, as required</p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>No week 5</p>

<p><b>June</b></p> <ul style="list-style-type: none"> <li><i>Kings Birthday Monday 10th</i></li> </ul>		<p>Councillor Workshops or other sessions, as required</p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>No week 5</p>
<p><b>July</b></p>		<p>Councillor Workshops or other sessions, as required</p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>Councillor Workshops or other sessions, as required</p>
<p><b>August</b></p>		<p>Councillor Workshops or other sessions, as required</p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>No week 5</p>
<p><b>September</b></p>		<p>No meetings scheduled</p> <p><i>*NSW Local Government Election Saturday 14 September</i></p>	<p>No meetings scheduled</p>	<p>No meetings scheduled</p>	<p>No week 5</p>

<p><b>October</b></p> <ul style="list-style-type: none"> <li>• <i>Labour Day Monday 7th</i></li> </ul>	<p>No meetings scheduled</p>	<p><b>Ordinary Council Meeting (inaugural meeting of new Council term)</b></p>	<p><b>Public Voice, Public Briefing and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b> <b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p>Councillor Workshops or other sessions, as required</p>
<p><b>November</b></p>	<p>Quarterly Advisory Committee Meetings, as required</p> <p>Additional workshops, Councillor professional development or other sessions, as required</p>	<p>Councillor Workshops or other sessions, as required</p>	<p>No meeting - Local Government NSW Annual Conference</p>	<p><b>Public Voice, Public Briefings, and Development Applications Committee Meetings,</b> <b>Ordinary Council Meeting, as required</b></p>	<p>No week 5</p>
<p><b>December</b></p>	<p><b>Public Voice, Public Briefings, and Development Applications Committee Meetings, as required</b></p>	<p><b>Ordinary Council Meeting</b></p>	<p><i>Recess period</i></p>	<p><i>Recess period</i></p>	<p><i>Recess period</i></p>
<p>Time</p>	<p>6pm unless otherwise provided by City of Newcastle's Code of Meeting Practice (COMP) or Council resolution</p>				
<p>Location</p>	<p>City Administration Centre, 12 Stewart Avenue, Newcastle West unless other provided by City of Newcastle's Code of Meeting Practice or Council resolution, noting the inaugural meeting of the new Council term will be in the former chambers of the City Hall.</p>				
<p>Webcast</p>	<p>Council Meetings are live streamed and attendance may be by audio-visual means in accordance with CN's Code of Meeting Practice.</p>				
<p>Recess</p>	<p>For the purposes of the Instruments of Delegation to the Lord Mayor and CEO, Council's "Recess Period" commences from midnight 10 December 2024 and ceases at midnight on Monday 3 February 2025.</p>				
<p>Cancellation of meetings</p>	<p>If a meeting is not required due to no items of business, notification will be placed on CN's website to inform the public. This will generally only be where there are no items of business.</p>				

**Carried unanimously**

#### **8.4. SEPTEMBER QUARTERLY PERFORMANCE REPORT**

##### **MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

That Council:

1. Receives the 2022-2026 Delivery Program - September Quarterly Performance Report (Report) (Attachment A) and adopts the revised budget as detailed therein.

**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**

#### **8.7. VARIATIONS TO DEVELOPMENT STANDARDS**

##### **MOTION**

Moved by Cr Mackenzie, seconded by Cr McCabe

That Council:

1. Receives the report on approved development variations between 1 July 2023 and 31 October 2023 at Attachment A in accordance with the Department of Planning and Environment's (DPE) concurrence to vary development standards in the Newcastle Local Environmental Plan 2012 (NLEP2012).
2. Notes that Clause 4.6 related to Development Variations reforms commenced on 1 November 2023 that remove the requirement of a quarterly report to Council on the variations.
3. Receives a Councillor memo every quarter outlining the Development Applications approved that contain a development variation, in lieu of the quarterly report to Council.

**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**

#### **8.12. EXECUTIVE MONTHLY PERFORMANCE REPORT**

##### **MOTION**

Moved by Cr Clausen, seconded by Cr Winney-Baartz

That Council:

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

**Carried unanimously**

### **8.3. ENDORSEMENT OF THE 2022/2023 ANNUAL REPORT AND ADOPTION OF THE FINANCIAL STATEMENTS**

#### **MOTION**

Moved by Cr Clausen, seconded by Cr Winney-Baartz

That Council:

1. Endorses CN's 2022/23 Annual Report (Attachment A) and its submission to the NSW Minister for Local Government by 30 November 2023.
2. Receives and adopts CN's Financial Statements and accompanying notes, in respect of the year ended 30 June 2023, together with the Auditor's Report (Attachment B).

**Carried unanimously**

### **8.5. NEW ANNUAL COUNCIL COMMITMENT**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Wood

That Council:

1. Endorses the growing success of City of Newcastle's (CN) New Annual festival as a flagship cultural event for the city.
2. Commits to delivering and funding the New Annual festival for a further five years until at least 2028 in order to provide necessary strategic forward planning to enable future growth.

Councillor Pull foreshadowed the following motion.

That Council:

1. Notes that New Annual 2023 saw a significant reduction in unique attendees compared to previous years.
2. Notes that residents are experiencing more significant cost of living pressures now than in previous years.
3. Supports the return of New Annual in 2024, noting that 2024 figures will provide more clarity as to the ongoing viability of New Annual.
4. Resolves to reconsider a five-year commitment after a 2024 wrap up report is provided to Council.

The motion moved by Councillor Duncan and seconded by Councillor Wood was put to the meeting.

**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**

The foreshadowed motion moved by Councillor Pull lapsed.

## **8.6. ADOPTION OF THE WICKHAM PUBLIC DOMAIN PLAN**

### **MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

That Council:

1. Adopts the Wickham Public Domain Plan at Attachment A.

**Carried unanimously**

## **8.8. BROADMEADOW TO HAMILTON EAST CYCLEWAY**

Councillors Church and Duncan left the Chamber for discussion on the item.

### **MOTION**

Moved by Cr Winney-Baartz, seconded by Cr Mackenzie

That Council:

1. Approves the cycleway treatments between Chatham Street Broadmeadow and Gordon Avenue Hamilton, as shown in Attachment A.

**Carried**

Councillors Church and Duncan returned to the Chamber at the conclusion of the item.

## **8.9. JESMOND CYCLEWAY IMPROVEMENTS**

### **MOTION**

Moved by Cr Winney-Baartz, seconded by Cr Mackenzie

That Council:

1. Approves the cycleway treatments for the Jesmond cycleway, along William Street and Blue Gum Road, Jesmond, as shown in Attachment A.

**Carried unanimously**

## **8.10. LAMAN STREET, COOKS HILL - PEDESTRIAN IMPROVEMENTS AND TRAFFIC CALMING**

### **MOTION**

Moved by Cr Mackenzie, seconded by Cr McCabe

That Council:

1. Approves the pedestrian improvements and traffic calming infrastructure in Laman Street Cooks Hill, at the intersection with Auckland Street, as shown at Attachment A.

### **PROCEDURAL MOTION**

Moved by Cr Clausen, seconded by Cr Pull

This item lay on the table until conclusion of the revision of the Cooks Hill Local Area Traffic Management Plan as well as the Civic Public Domain Plan, which are both underway presently.

The procedural motion moved by Councillor Clausen and seconded by Councillor Pull was put to the meeting.

**Carried unanimously**

## **8.11. CITY OF NEWCASTLE PLANNING FOR HOUSING AND THE NATIONAL HOUSING ACCORD**

In moving the motion Councillor Adamczyk moved additional points 3-6 at Part B.

### **MOTION**

Moved by Cr Adamczyk, seconded by Cr Clausen

That Council:

#### **Part A**

1. Note the letter of 30 October 2023 from the Minister for Planning and Public Spaces (the Minister) about continued efforts to address the NSW housing crisis (Attachment A).
2. Note CN is recognised as a leading council in planning for and prioritising low and mid-rise housing types, such as multi dwelling housing and residential flat buildings, in the R2 low density and R3 medium density residential zones.

#### **Part B**

3. Recognise the leadership of City of Newcastle in the modernisation project for our Development Control Plan in raising the quality, liveability and sustainability of design, and the protection of biodiversity, heritage, and culture in new development in the city,
4. Congratulate City of Newcastle planning staff on the PIA Award-winning Accelerated Development Application (ADA) pathway that streamlines lower risk developments, freeing up staff time for more complex proposals to determine medium to high residential developments faster, which was passed at Local Government NSW Conference to advocate for facilitating faster housing approvals through a Statewide roll out,

5. Note CN unanimous resolutions resolved by Australian Local Government Association (ALGA) in June 2023 and Local Government NSW Conference in November 2023, advocating for policy and regulatory reform and increased funding and investment, to meet dwelling need through safe and healthy housing for every person, and
6. Note that based on the Newcastle LEP, adopted Local Strategic Planning Statement, and the Local Housing Strategy, and confirmed by analysis undertaken by the Department of Planning, City of Newcastle has sufficient zoned land to meet and exceed State dwelling targets for both 2026 and 2041, primarily through urban redevelopment of our renewal corridors and Broadmeadow.

**Carried unanimously**

### **8.13. TENDER REPORT - GREGSON PARK HAMILTON PLAYSPACE AND AMENITIES UPGRADE - 2023/061T**

#### **MOTION**

Moved by Cr Duncan, seconded by Cr Mackenzie

That Council:

1. Accept the tender of Regal Innovations Pty Ltd in the amount of \$2,778,147 (excluding GST) for the Gregson Park Hamilton Playspace and Amenities Upgrade for Contract No. 2023/061T.
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.

**Carried**

### **9. NOTICES OF MOTION**

#### **9.1. RESTORATION OF ROADS AND PUBLIC DOMAIN - NEWCASTLE EAST**

#### **MOTION**

Moved by Cr Clausen, seconded by Cr Duncan

That Council:

1. Notes Council's resolution of 31 October 2023 concluding the City's relationship with Supercars, and instead resolved to support Cessnock City Council with the proposed Wine Country 500 as an alternative major event for the Hunter region.
2. Given Council's decision, commences road and public domain restoration works in Newcastle East, as previously committed to the community and Heritage NSW, prioritising the replacement of temporary pedestrian crossings with permanent infrastructure.
3. Receives a memo advising of next steps, including proposed community consultation before further works in the Heritage Conservation Area are undertaken.



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

**Against the Motion:** Councillor Pull.

**Carried**

## **9.2. REQUEST FOR JOINT BRIEFING WITH LAKE MACQUARIE COUNCILLORS**

Councillors Mackenzie and Winney-Baartz left the Chamber for discussion on the item.

### **MOTION**

Moved by Cr Adamczyk, seconded by Cr Clausen

### **PART A:**

That Council:

1. Notes that development on land sold to Winten received concept approval by the NSW Planning and Assessment Commission in 2013 for a subdivision of up to 2,000 lots straddling the Lake Macquarie and Newcastle LGA boundary along the Newcastle Link Road.
2. Notes that since that time, development applications have been submitted to both Lake Macquarie and Newcastle City Councils for assessment that seek to vary the approved Concept Plan.
3. Notes the Hunter Central Coast Joint Regional Planning Panel is reviewing these applications and has stated its preference for both the Lake Macquarie and Newcastle reviews to be determined simultaneously.
4. Notes advice from Newcastle officers that the Newcastle application is unable to be determined until early 2024 due to the need to re-exhibit changes to the proposal, that were requested by the applicant, consistent with the EP&A Act.
5. Reiterates the need to consider the interests of existing and future residents as a foremost consideration, ahead of the interests of any individual council.
6. Explores options including the joint-ownership of future public amenities such as community halls, recreation spaces, and sporting facilities by both Councils to ensure that new amenities are located in close proximity to any new homes, noting the success of existing collaborations between the two councils at Glendale.
7. Request a joint briefing with Councillors from both Lake Macquarie and Newcastle Councils, and relevant planning Directors, prior to Council exhibition endorsement of any Voluntary Planning Agreement.

### **PART B:**

That Council:

1. Notes that extensive community consultation was undertaken to inform the Concept Plan for any future development in Minmi to protect the existing village

character, cultural, environmental and social amenity, while accommodating limited residential growth.

2. Notes that the City of Newcastle *Local Housing Strategy (2021)* sets limited targets for 'greenfield' development including in this area and the City of Newcastle *DCP (2012)* sets controls to guide development consistent with the Concept Plan.
3. Notes continued concerns regarding the potential loss of environmental amenity and biodiversity, and the council's continued commitment to protecting and conserving environmental land and to ecologically sustainable development in the city.

**Carried unanimously**

Councillors Mackenzie and Winney-Baartz returned to the Chamber at the conclusion of the item.

### **9.3. CELEBRATING STEAD CYCLES' 100TH BIRTHDAY**

#### **MOTION**

Moved by Cr Adamczyk, seconded by Cr Richardson

That City of Newcastle:

1. Notes that 2023 marks 100 years since Charles Stead opened Stead Cycles in Mayfield, which moved to its purpose-built premises in Beresfield over four decades ago;
2. Notes the contribution of Stead Cycles to the Newcastle community and economy as a local, fourth-generation, family-owned and operated business;
3. Notes the important role Stead Cycles has played in supporting active transport, healthy lifestyles and safe cycling for generations of Novocastrians, with many locals having purchased their first bicycle from Stead Cycles;
4. Commends Stead Cycles for one hundred years of celebrating cycling routes and events in the city and beyond, and in supporting raising money through cycling for dementia and cancer research, and local organisations Hunter Medical Research Institute and Dog Rescue Newcastle; and
5. Congratulates the Stead family on celebrating the 100th birthday of Stead Cycles in 2023, and recognises its contribution to our community.

**Carried unanimously**

### **9.4. PROTECTING AND VALUING NEWCASTLE'S HERITAGE**

#### **MOTION**

Moved by Cr Wood, seconded by Cr Duncan

## Part A

That the City of Newcastle values the unique heritage and character of its buildings, streetscapes and landscapes, noting that:

1. Schedule 5 of the Newcastle Local Environment Plan 2012 identifies certain areas of townscape and landscape that collectively have special heritage qualities, as Heritage Conservation Areas (HCAs);
2. Each HCA is described at Part E of the City of Newcastle Development Control Plan and includes a Statement of Heritage Significance and a desired Future Character Statement. These Statements identify the existing urban fabric and the key character elements of each HCA which are to be preserved and will act as a guide as to how future development may achieve contextual fit, enhancing the existing qualities of each area;
3. In addition, Character Statements for the suburbs of Tighes Hill and Kotara have been included at Part E of the City of Newcastle Development Control Plan. These sections describe the current and future desired character of each suburb. The objective of the Character Statements is to ensure that the design of new buildings, structures, additions and alterations reflects and complements existing and future local character;
4. Further, Part F of the City of Newcastle DCP includes specific controls for Places and Precincts, including Wickham (consistent with the adopted Wickham Masterplan), the renewal corridors (Mayfield, Adamstown, Broadmeadow, Hamilton, and Islington), and Minmi precincts, noting unique heritage aspects of each of these precincts.
5. The Newcastle City Centre Heritage Conservation Area is the subject of a review with the draft report of the proposed changes on public exhibition from 6 November to 18 December 2023.

## Part B

It is noted that the City of Newcastle is undergoing a growth in its population and a diversification and densification of its housing types. Consistent with our adopted Heritage Strategy and accompanying Heritage Policy, further work needs to be done to protect the heritage and character of the city's buildings, streetscapes and landscapes by identifying Heritage Conservation Items, Heritage Conservation Areas and preparing Character Statements of suburbs.

Council requests a Memo and Workshop from Officers which:

1. Explore the heritage significance of the item at 14 Sunderland Street, Mayfield. Priority should be given to the investigation and assessment noting that a Development Application was lodged last month which proposes its demolition.
2. Outline the intended work plan for the remainder of 2023/24 and 2024/25 of investigations and assessment of significant heritage buildings and streetscapes, noting Council's commitment to explore Cameron's Hill (meeting of April 2023) and recently raised matters at Carrington

3. Outline the intended work plan for the remainder of 2023/24 and 2024/25 of development of further Character Statements, including options to develop bespoke character statements for Wallsend and New Lambton.

**Carried unanimously**

#### **9.5. 2023 YOUTH MOCK COUNCIL**

A memo in relation to Item 9.5 - 2023 Youth Mock Council was circulated to Councillors proposing an alternate recommendation.

In moving the motion, Councillor Pull moved the recommendation of Council Officers as outlined in the memo and included an additional point 6 as follows.

#### **MOTION**

Moved by Cr Pull, seconded by Cr Barrie

That Council:

1. Congratulates the Newcastle Youth Council on the Youth Mock Council held in July 2023.
2. Notes that the Youth Mock Council developed and adopted motions on the following:
  - a. Youth Mental Health Advocacy
  - b. Housing and Homelessness
  - c. Environment and Climate Change.
3. Notes that at the LGNSW Annual Conference earlier this month, the City of Newcastle supported a successful motion that LGNSW write to the Federal Health Minister, expressly stating its objection to the Federal Government's decision to reduce the number of free counselling sessions from twenty to ten.
4. Notes that at the LGNSW Annual Conference earlier this month, the City of Newcastle supported a successful motion that LGNSW advocates for local councils to be given stronger powers to cap the number of days per year that a property can be used for non-hosted short term rental accommodation.
5. Further, that City of Newcastle also supported a successful motion that LGNSW commissions a study to report on the impact that short-term rental accommodation is having on rental affordability and availability and tourist accommodation in NSW.
6. Considers lighting, visibility and safety upgrades in future works on the Fernleigh Track, in consultation with Lake Macquarie City Council.

**Carried unanimously**

At the conclusion of the meeting the Chief Executive Officer read the resolution of the partial confidential report (refer resolution at 8.13).

**The meeting concluded at 9.24pm.**

## **7. LORD MAYORAL MINUTE**

*To be tabled at the meeting.*

## **8. REPORTS**

### **8.1. NEWCASTLE ART GALLERY EXPANSION, LOAN CONTRACT DELEGATION**

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

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#### **PURPOSE**

To approve the Chief Executive Officer (CEO) to execute the loan contract for the expansion of the Newcastle Art Gallery.

#### **RECOMMENDATION**

That Council:

- 1 Approves the CEO to review, accept and execute a loan contract with NSW Treasury Corporation (TCorp) for \$12.6 million with funds to be utilised toward the Newcastle Art Gallery expansion project.

#### **KEY ISSUES**

- 2 At the Ordinary Council meeting held on 27 July 2021, Council adopted borrowing up to \$22.6 million by way of a low-cost loan over 10 years as the preferred funding pathway for the expansion of the Newcastle Art Gallery.
- 3 At the Ordinary Council meeting held on 22 June 2022, Council adopted the Operational Plan for 2022/23. The Operational Plan included the proposed new borrowings of \$12.6 million for the Newcastle Art Gallery expansion.
- 4 The value of required borrowings has reduced from the original proposed total due to CN's success in obtaining a combined \$10 million grant from the State and Federal Governments towards the Art Gallery project.
- 5 In May 2023 an application for the \$12.6 million loan was submitted to TCorp.
- 6 In November 2023, TCorp approved CN's application to borrow \$12.6 million. As part of the approval, TCorp have requested an updated Council resolution in support of the loan given the length of time that has passed.

- 7 Main construction works for the Newcastle Art Gallery expansion have commenced on site and accordingly loan funds are now required to supplement other funding sources for the financial delivery of the project.
- 8 The Council resolution is required to authorise the borrowing of money given it is a function that cannot be delegated to the General Manager (CEO) in accordance with Section 377(1)(f) of the *Local Government Act 1993*.

### **FINANCIAL IMPACT**

- 9 The loan offer from TCorp is based on a fixed interest rate loan over ten years at an indicative interest rate of 5.24% for the entire loan term (indicative as at 29 November 2023). The actual rate will be set on the date that the loan is drawn down.
- 10 Although interest rates have moved in the time since the 2021 Council resolution, market conditions remain favorable for CN to borrow new funds on the basis that CN is securing interest rates for its defensive investments which are above the indicative borrowing rate.
- 11 The financial impacts of the \$12.6 million loan have been incorporated into CN's Operational Plan for 2023/24 and ongoing in CN's long term financial plan (LTFP) utilising indicative TCorp 10 year rates at the time of formulation.

### **Financial Covenant Undertakings**

- 12 Standard financial covenant undertakings are a condition of the loan approval. These are standard contractual inclusions for all NSW Councils that borrow from TCorp. These will require annual compliance reporting by CN utilising audited financial statements data.
- 13 The financial covenant undertakings are:
  - a) Debt Service Cover Ratio. Must be at least 1.50:1,
  - b) Interest Cover Ratio. Must be at least 3.00:1, and
  - c) Unrestricted Cash Expense Cover Ratio. Must be at least 2 months.
- 14 Covenants 12a) and 12c) are existing performance measures that CN reports upon within its financial statements. The loan contracted minimum requirements for these are less restrictive than existing Office of Local Government (OLG) mandated benchmarks.

### **NEWCASTLE 2040 ALIGNMENT**

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

## **Achieving Together**

### 4.1 Inclusive and integrated planning

#### 4.1.1 Financial sustainability

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 16 In accordance with CN's Investment and Borrowing Policy, the CEO is required to ensure that the raising of new borrowings is on the most financially attractive terms and conditions for CN.

## **RISK ASSESSMENT AND MITIGATION**

- 17 CN will review the borrowing contract prior to execution by the CEO to ensure all terms and conditions are fully understood.
- 18 TCorp only provide access to lending facilities on a fixed rate basis thereby providing certainty surrounding the ongoing financing obligations.
- 19 CN will regularly review borrowing rates to determine whether it is financially beneficially to refinance the loan, noting the break cost is relatively minor.

## **RELATED PREVIOUS DECISIONS**

- 20 At the Ordinary Council meeting held on 27 July 2021, Council adopted borrowing up to \$22.6 million by way of a low-cost loan over 10 years as the preferred funding pathway for the expansion of the Newcastle Art Gallery.

## **CONSULTATION**

- 21 Nil

## **BACKGROUND**

- 22 The Ordinary Council meeting of 27 July 2021 included a resolution that CN would seek a Low Cost Loan Initiative interest rate subsidy from the Department of Planning and Environment. The NSW Government has not reopened the program since July 2021 and accordingly CN was not able to lodge an application.

## **OPTIONS**

### **Option 1**

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

### **Option 2**

- 24 Council does not adopt the recommendation as at Paragraph 1. This is not the recommended option.



**REFERENCES**

**ATTACHMENTS**

Nil.

## 8.2. ADOPTION OF HUNTER STREET TRIAL CYCLEWAY - STAGE 2 DESIGN

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

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### PURPOSE

To adopt the proposed Hunter Street Cycleway Stage 2 design (The Cycleway), between National Park Street Newcastle West and Ivy Street Islington.

### RECOMMENDATION

That Council:

- 1 Adopt the Cycleway Stage 2 design on Hunter Street and Maitland Road between National Park Street Newcastle West and Ivy Street Islington, as shown at **Attachment A**.

### KEY ISSUES

- 2 The Cycleway was supported in principle by the Newcastle City Traffic Committee (NCTC) in September 2023, to support the project being taken to public consultation.
- 3 Concept plans were placed on public exhibition from 11 October 2023 to 8 November 2023 as shown at **Attachment A**. Details were published on City of Newcastle's (CN's) website and copies of the flyer distributed to residents and mailed to non-resident owners. Proposed works include:
  - i. Construction of a conventional running separated cycleway on either side of the road
  - ii. Kerb build out at bus stops, and
  - iii. Reconfiguration of travel lanes to accommodate the cycleway, including moving the median on the bridge south east of Hamilton Station.
- 4 The exhibition process received 281 submissions, with a full engagement report provided under **Attachment B**. Of these submissions, 211 (75%) supported the proposed infrastructure, 42 (15%) supported the proposal with changes, and 28 (10%) of submissions did not support the traffic changes. The key issues raised by community members have been reviewed, and preliminary responses provided under **Attachment C**.
- 5 The results of the consultation were tabled to the NCTC in November 2023, including a summary of the main issues and the recommended response. Based on the information provided, the NCTC supported the progression of the project to Council for determination.

- 6 Final construction plans will be presented to the NCTC at their meeting in February 2024 for formal adoption of the regulatory signage and line marking, and will include the outcomes of the proposed signalised intersection updates in coordination with Transport for NSW who remains the authority for any works associated with signals.

## **FINANCIAL IMPACT**

- 7 The Cycleway is estimated to cost \$3.5 million. This will be funded through a \$1.5 million TfNSW grant, and \$2 million by CN within the 2023/2024 and 2024/2025 Capital Works Cycleway Program.

## **NEWCASTLE 2040 ALIGNMENT**

- 8 The Cycleway is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan as follows:

### **Liveable**

- 1.1 Enriched neighbourhoods and places
  - 1.1.1 Great Spaces
  - 1.1.2 Well-designed spaces
- 1.2 Connected and Fair Communities
  - 1.2.1 Connected communities
  - 1.2.2 Inclusive communities
  - 1.2.3 Equitable communities
  - 1.2.4 Healthy communities
- 1.3 Safe, active and linked movement across the City of Newcastle
  - 1.3.1 Connected cycleways and pedestrian networks

### **Sustainable**

- 2.1 Action on Climate Change
  - 2.1.1 Towards net zero emissions

### **Achieving together**

- 4.3 Collaborative and innovative approach
  - 4.3.2 Innovation and continuous improvement
  - 4.3.3 Data-driven decision-making and insights

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 9 The proposal is consistent with positions outlined in the Newcastle Transport Strategy and CN's Cycling Plan to improve conditions for cyclists, improve adoption of active transport modes, and reduce dependence on private vehicles.
- 10 Approval of the upgrade is not delegated to City of Newcastle (CN) officers and must be referred to Council for determination.

## **RISK ASSESSMENT AND MITIGATION**

- 11 The Cycleway will address risks to cyclist safety and will be designed and installed in accordance with relevant Australian Standards, Austroads, and TfNSW guidelines.
- 12 The project introduces changes to the existing rail bridge configuration requiring relocation of the current central median, redistribution of the lane allocations, and inclusion of the cycleways. Initial discussions with Transport for NSW have raised implementation risks relating to approvals and engineering review which may require alteration or involve cost impact to the project. Appropriate alternative approaches can address these risks, and will be resolved under the detailed design process.

## **RELATED PREVIOUS DECISIONS**

- 13 The Council NOM 27/11/18 - Inner City Cycleway on Hunter Street requested resolution of cycling within the inner city, specifically within the West End. CN developed the West End Streetscape – Stage 2 in August 2019, proposing a series of improvements from Wickham Park along Hunter Street to Union Street, and including improvements along Steel Street.
- 14 The Hunter Street Stage 1 Trial was approved by Council as a component of the COVID-19 Infrastructure Stimulus package. This approval was facilitated through changes to the planning requirements from the NSW Government, to target active transport projects to improve conditions and maintain local expenditure during the COVID-19 period.

## **CONSULTATION**

- 15 The Cycleway has been tabled with the Newcastle Cycle Working Party (NCWP), most recently at the June 2023 and September 2023 meetings. These discussions included an update of the project, noted key design components, and included feedback and learnings from Stage 1 of the cycleway. Updates on the project will continue to be provided to the NCWP as the design is developed, and feedback is received from Transport for NSW relating to the approved signal layouts.
- 16 Initial planning review of the project proposed three alternate approaches to the cycleway, including a bi-directional cycleway on the northern side, a bi-directional cycleway on the southern side, or a separate conventional running single lane cycleways. The three options were reviewed by the NCTC at the September 2023 meeting with support for progression of the recommended option.
- 17 Concept plans for the proposed cycleway were placed on public exhibition from 11 October to 8 November 2023. The online survey was completed by 281 community members and received majority support.

## **BACKGROUND**

- 18 Implementation of an integrated cycling network in the city centre is a key element in the City Centre Revitalisation Program, and is critical to increased mode share for active transport, revitalisation of Hunter Street, and delivery on the Newcastle 2040 Community Strategy Plan objective for linked networks of cycle and pedestrian paths.
- 19 Separated cycleways in Hunter Street were proposed as part of the Hunter Street Revitalisation Masterplan Strategic Framework and NSW Government's Newcastle Urban Renewal Strategy 2012.

## **OPTIONS**

### **Option 1**

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

### **Option 2**

- 21 Do not adopt the proposed trial cycleway. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

- Attachment A:** Concept Plans  
**Attachment B:** Community Engagement Report  
**Attachment C:** Summary of Public Exhibition Submissions

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

### 8.3. ADOPTION OF THE LONGWORTH AVENUE AND MINMI ROAD WALLSEND CONCEPT DESIGNS

**REPORT BY:** CITY INFRASTRUCTURE  
**CONTACT:** EXECUTIVE DIRECTOR CITY INFRASTRUCTURE /  
EXECUTIVE MANAGER ASSETS AND FACILITIES

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#### PURPOSE

To adopt the Longworth Avenue and Minmi Road upgrade concept designs.

#### RECOMMENDATION

That Council:

- 1 Adopt the Longworth Avenue and Minmi Road widening concept designs, as shown in **Attachments A and B**.

#### KEY ISSUES

- 2 Minmi Road and Longworth Avenue are identified as critical transport links for the suburbs of Wallsend, Maryland, Fletcher, and Minmi, and are the two highest priorities for road renewal in the Western Corridor.
- 3 The Western Corridor Urban Release is the most significant remaining residential land release within the Newcastle local government area (LGA) and is projected to accommodate over 30,000 residents by 2036.
- 4 Significant upgrade works are required on Longworth Avenue and Minmi Road, to accommodate for current and future planned development, improved traffic flow, and reduced congestion.
- 5 The recommended concept designs for both roads will see an increase to two travel lanes in each direction to improve traffic flow and alleviate traffic congestion.
- 6 Cycle and footpath provision on both sides of Minmi Road will enable two lanes of traffic in each direction, along with a median and turning lanes to maximise safe and efficient traffic flow and enhance cyclist and pedestrian safety.

#### FINANCIAL IMPACT

- 7 In early 2023 City of Newcastle (CN) secured \$7,607,400 funding from the NSW Department of Planning and Environment under the Accelerated Infrastructure Fund - Round 3, requiring project completion by 30 June 2026. The combined preliminary cost estimate for the project is \$12,270,000. Subject to Council approval, a contribution of \$4,662,600 will be funded from the 2023/2024, 2024/2025 and 2025/2026 Capital Works Programs.

- 8 Funding for additional early works, temporary and permanent traffic management works, and work not included in the Accelerated Infrastructure Fund grant will be managed within CN's annual Operational Plan.
- 9 The Longworth Avenue and Minmi Road projects are eligible for use of Development Contribution funding held for Traffic and Transport Infrastructure under the Section 7.11 Western Corridor Local Infrastructure Contributions Plans, and previous Contribution Plans.

## **NEWCASTLE 2040 ALIGNMENT**

- 10 The Longworth Avenue and Minmi Road concept designs are consistent with the priorities of the Newcastle 2040 Community Strategic Plan:

### **Liveable**

#### 1.2 Connected and fair communities

##### 1.2.1 Connected communities

##### 1.2.2 Equitable communities

##### 1.2.3 Healthy communities

#### 1.3 Safe, active, and linked movement across the city

##### 1.3.1 Connected cycleways and pedestrian networks

##### 1.3.2 Road Networks

- 11 The upgrades are aligned with the following CN plans:
  - i) Wallsend Public Domain Master Plan and associated Traffic Management Plan adopted by Council 20 May 2018,
  - ii) Cycle Plan 2021 to 2030,
  - iii) Section 7.11 Western Corridor Local Infrastructure Contributions Plan 2013 (Updated 2020),
  - iv) Western Corridor Traffic and Transport Study 26 August 2019,
  - v) CN Section 94 Contributions Plans No.4 - Transport Facilities in Blue Gum Hill (Plan No.4, 1997), and,
  - vi) Development Contributions Plan No 4 2006 - Transport Facilities in Blue Gum Hills.

## **IMPLEMENTATION PLAN IMPLICATIONS**

- 12 Detailed design is scheduled to commence in 2024. Construction is scheduled in 2024/2025 and 2025/2026 for both Longworth Avenue and Minmi Road upgrades.

## RISK ASSESSMENT AND MITIGATION

- 13 Site specific management plans will be developed pre-construction to formally identify and mitigate risks and monitoring will continue throughout the delivery of works. This will include a Review of Environmental Factors.

## RELATED PREVIOUS DECISIONS

- 14 On 25 February 2020, an updated Section 7.11 Western Corridor Contributions Plan was presented to Council following a public exhibition period and was subsequently adopted.
- 15 On 22 February 2022 a Lord Mayoral Minute noted the issues along Minmi Road and the upgrades required to alleviate traffic congestion for residents, noting it is a crucial piece of city infrastructure. The two projects specifically mentioned are Longworth Avenue and Minmi Road, between Maryland Drive and Summerhill Road.
- 16 On 20 November 2023 the Newcastle City Traffic Committee approved the recommended concept designs for Longworth Avenue and Minmi Road.

## CONSULTATION

- 17 Community consultation for the Longworth Avenue upgrade concept plan was undertaken from 26 June to 31 July 2023. The proposed concept designs and supporting information were placed on CN's website which included a Have Your Say survey, with 172 submissions. An on-site community information session was held on 12 July 2023 at Wallsend Library.
- 18 The community consultation results were supportive of the Longworth Avenue upgrades. The consultation report is shown at **Attachment C**. Feedback in relation to proposed changes to right hand turns will be considered in the development of the detailed design.
- 19 Community consultation for the Minmi Road upgrade concept plans was undertaken from 20 October to 17 November 2023. The proposed concept designs and supporting information were placed on CN's website including a Have Your Say survey, with 605 respondents. A letter box drop was completed to neighbouring residents. On-site community information sessions were held at Wallsend Library and Fletcher Village Shopping Centre.
- 20 The community consultation results were strongly supportive of the recommended option for Minmi Road. The consultation reports are shown at **Attachment D**.
- 21 Minmi Road concept designs were presented to the Infrastructure Advisory Committee on Monday 6 November 2023. The Committee is made up of Councillors, community representatives and stakeholder members from Transport NSW, Keolis Downer, Hunter Water Corporation and Ausgrid.



- 22 Councillor Workshops were held on 14 February, 10 October, and 5 December 2023.
- 23 A communications and engagement plan has been developed which includes web pages to keep the community informed throughout the project.

## **BACKGROUND**

- 24 The recommended option for Minmi Road provides separate cycle provision on both sides of the road. The two-way shared path on the southern side, and a cycleway and footpath on the northern side. This enables two lanes of traffic in each direction, along with a median and turning lanes to maximise safe and efficient traffic flow and enhance cyclist and pedestrian safety.
- 25 This design option is the safest and only option to provide separate cycle ways on both sides of the road. It is the only Austroads compliant option, and does not require cyclists to 'take the lane' to proceed westbound, or cross the road to travel eastbound.
- 26 The proposed upgrades to off-road cycle bypasses at the Minmi and Summerhill Road roundabout will improve cyclist safety and reduce conflict with through traffic.
- 27 The installation of protected right turn lanes on Minmi Road and additional pedestrian refuges within the Summerhill Road roundabout provides significant improvement to pedestrian safety.
- 28 CN has previously completed various works along Longworth Avenue and Minmi Road, including signalisation, widening and intersection upgrades along the corridor.
- 29 Current developer works are underway on Minmi Road, between Outlook Estate at Brookfield Avenue to Blue Gum Hills Regional Park, which will deliver some of the required widening, roadworks and pathways identified as part of the Minmi Road upgrades.

## **OPTIONS**

### **Option 1**

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

### **Option 2**

- 31 Do not adopt the Longworth Avenue and Minmi Road widening concept designs. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Longworth Avenue Wallsend Final Concept Plan

**Attachment B:** Minmi Road Wallsend Final Concept Plan

**Attachment C:** Longworth Avenue Consultation Report

**Attachment D:** Minmi Road Consultation Report

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

## 8.4. ADOPTION OF THE COUNCIL PROPERTY LEASE & LICENCE POLICY

**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 adopt the draft Council Property Lease and Licence Policy.

### RECOMMENDATION

That Council:

- 1 Adopts the Council Property Lease and Licence Policy (Policy) as at **Attachment A**.

### KEY ISSUES

- 2 The Draft Policy was put on public exhibition for 28 days to seek community and tenant feedback.
- 3 All comments and feedback on the Draft Policy have been considered as at **Attachment B**.
- 4 Leasing and licensing of Community Land is governed by the *Local Government Act*. Crown Land (where CN is Crown Land Manager) is governed by the *Crown Land Management Act (2016)*.
- 5 CN owns a wide range of land and buildings ("Council Property") which help the diverse needs of its community. 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.
- 6 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.

### FINANCIAL IMPACT

- 7 The Policy sets out the method for determination of rent to be paid by Lessees.
- 8 CN recognises the 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.

## **NEWCASTLE 2040 ALIGNMENT**

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

### **Liveable**

- 1.2 Connected and fair communities  
1.2.1 Connected communities

### **Creative**

- 3.4 City-shaping partnerships  
3.4.1 Optimise city opportunities

### **Achieving Together**

- 4.1 Inclusive and integrated planning  
4.1.1 Financial Sustainability  
4.3 Collaborative and innovative approach  
4.3.2 Collaborative organisation

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 10 This Policy enables the delivery of all CN plans and strategies involving the leasing of CN land and property.
- 11 The Policy applies to all new Leases and Licences that are within the scope of the Policy. The Policy does 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**

- 12 There are no risks identified by the adoption of the Policy.

## **RELATED PREVIOUS DECISIONS**

- 13 At the Ordinary Meeting on 31 October 2023, Council resolved to place the Draft Policy on public exhibition.

## **CONSULTATION**

- 14 Councillors were briefed on the Draft Policy at a workshop on 17 October 2023.
- 15 The Asset Advisory Committee was briefed on the Draft Policy in August and October 2023.
- 16 The Draft Policy was placed on Public Exhibition for a period of 28 days from 2 November until 30 November 2023.

- 17 One late submission was received from a current Not for Profit Childcare provider.

## **BACKGROUND**

- 18 The intent of the 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.

## **OPTIONS**

### **Option 1**

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

### **Option 2**

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

## **REFERENCES**

## **ATTACHMENTS**

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

**Attachment B:** Submission Feedback and Resolutions

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

## 8.5. ANNUAL REVIEW AND ADOPTION OF THE INVESTMENT AND BORROWING POLICY

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

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### PURPOSE

To adopt the Investment and Borrowing Policy (Policy).

### RECOMMENDATION

That Council:

- 1 Adopts the Investment and Borrowing Policy at **Attachment A**.

### KEY ISSUES

- 2 The prevailing *Local Government Act 1993* (NSW), Investment Order dated 12 January 2011 (Order) stipulates that all Councils should by resolution adopt an investment policy that is consistent with the Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet.
- 3 Investment Policy Guidelines issued by the Department of Premier and Cabinet, May 2010, recommend that a Council's investment policy be reviewed, and any amendments approved, by Council resolution at least annually.
- 4 The Policy is a key control document for City of Newcastle (CN) that mitigates risk. The Policy is critical to supporting effective decision making and ensures that the Investment and Borrowing functions of CN comply with relevant legislation and guidelines. Policies are more effective when they are regularly reviewed and updated.
- 5 Information on CN's cash and investments is reported to Council on a monthly basis.
- 6 Proposed changes are either in accordance with legislative and/or related requirements, or minor in nature. They are:
  - a) Section 6.4.6 provides clarification on how CN applies Long Term Credit Ratings. The proposed change will align CN's approach with the methodology applied by CN's Treasury Management software provider and with APRA's 'Standardised Approach to Credit Risk' applicable for the Australian banking industry. While the APRA legislation does not apply to councils, it does add credence to support this change.

- b) Section 14.2 has been amended to update wording from "Annual Loan Borrowing Program" to "New Borrowings". CN does not have an annual borrowing program, instead borrowing funds only when there is a resolution of the Council supporting a loan for a specific project.
- c) Within section 14.2 changes have been made to provide clarification that a council resolution is required for each new borrowing, and that resolution is required to delegate approval to the CEO to enter into new loan contracts.
- d) The requirement for three quotes prior to entering into a new investment has been relocated within the policy, moved from section 5.1.3 Investments, Authorised Investments to section 14.6.3 Roles and responsibilities, CN staff.
- e) Section 14.7.1 Delegation of authority has been updated to refer to the "Authorised CN Officers" in place of individually specifying each position. This removes duplication and potential inconsistencies within the policy document.
- f) Section 14.7.2 has been amended to make reference to the term "Authorised CN Officers" rather than simply "Officers".
- g) Section 14.7.3 previously in the policy has been removed as it was a duplication of the requirement in section 16.6.3b). This section referred to the requirement for written authority from two CN staff with delegation for any new capital contribution or withdrawal from a Tcorp IM Growth Fund.
- h) The Annexure A definitions of both "Authorised CN Officers" and "Delegated Officer" now refer to the position titles listed in Annexure B, removing the requirement to list positions in multiple sections of the policy document.

## **FINANCIAL IMPACT**

- 7 There are no budget implications in adopting this Policy.

## **NEWCASTLE 2040 ALIGNMENT**

- 8 Adopting this policy is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

### **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**

9 The adopted Policy is published on CN's website.

## **RISK ASSESSMENT AND MITIGATION**

10 Reviewing policies regularly ensures that policies remain up to date and relevant.

11 Risks are mitigated by ensuring policies are drafted in accordance with legislative requirements, Ministerial Orders and model policies as specified by the Office of Local Government.

## **RELATED PREVIOUS DECISIONS**

12 At the Ordinary Council meeting held on 13 December 2022, Council adopted the current Policy.

## **CONSULTATION**

13 Consultation has occurred with CN's independent investment advisor.

14 Public exhibition of the Policy is not required.

## **BACKGROUND**

15 Nil.

## **OPTIONS**

### **Option 1**

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

### **Option 2**

17 Council does not adopt the recommendation as at Paragraph 1. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Draft Investment and Borrowing Policy

**Attachments A distributed under separate cover**



## 8.6. ADOPTION OF THE OUTDOOR DINING POLICY & GUIDELINES

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

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### PURPOSE

Adopt the Outdoor Dining Policy 2023, Outdoor Dining Guidelines 2023 and proposed annual fee for permanent fixtures and repeal the Outdoor Trading Policy 2020.

### RECOMMENDATION

That Council:

- 1 Adopts the Outdoor Dining Policy 2023 and Outdoor Dining Guidelines 2023 (**Attachments A and B**).
- 2 Approves an annual fee of \$4,000 (venues with outdoor dining of 10.0 metres or less in length) and \$7,000 (venues with outdoor dining of 10.01 metres or more in length) to be charged if the venue wishes to install permanent fixtures in the public footway.
- 3 Repeals the Outdoor Trading Policy 2020.

### KEY ISSUES AND BACKGROUND

- 4 CN's Outdoor Trading Policy 2020 does not allow furniture to be placed on the public footway after a business has ceased trading. Upon closing, a business is expected to securely store its furniture within its premises.
- 5 A number of venues have approached CN seeking permission to install large, heavy furniture on the public footway, having the effect of making the furniture permanent.
- 6 As a result, CN revised the Outdoor Dining Policy and Outdoor Dining Guidelines to enable venues to secure their furniture to the public footway, regardless of whether the venue is open to trade. An annual fee of either \$4,000 or \$7,000 is proposed to be charged to such businesses. The draft Policy continues to allow businesses to make use of the public footway without the payment of a fee (for the purpose of outdoor dining) on the condition that they remove their furniture at the close of trade.
- 7 The draft Policy and Guidelines was placed on public exhibition for 28 days, closing on 25 October 2023. A total of 19 submissions were received during the exhibition period and are summarised in **Attachment C**.

- 8 The Outdoor Dining Guidelines 2023 includes changes based on the outcome of the submissions received from the public. The proposed changes are provided in a marked-up version in **Attachment D**. Key changes are included below.
- 9 The proposed annual fee for permanent fixtures includes refinements based on the outcome of the submissions received.
- 10 Concerns were raised via submission that the Guidelines had the unintended effect of limiting outdoor dining to only allowing alcohol to be served with the consumption of food. On review, it is considered more appropriate that the consumption of alcohol within a premises be consistent with the venues' liquor licence. Furthermore, since the exhibition of the Guidelines, the NSW Government has announced reforms to noise complaints for licenced venues. This will involve the Independent Liquor and Gaming Authority (ILGA) being the sole agency to respond to noise complaints. ILGA has the authority to revoke or amend any liquor licence if valid complaints are made about a venue's operations. Under the reforms, CN can request ILGA take compliance action on a venue if it has concerns about their business operation.
- 11 An annual fee is proposed for the placement and retainment of permanent structures only in the public footway. The fees will be included in CN's Fees and Charges 2024-2025, which will be exhibited in April 2024.
- 12 As the Fees and Charges 2023-2024 has already been adopted by Council it was proposed (and exhibited) to introduce an annual fee of \$7,000 (prorated) per application for the placement of permanent fixtures in the public footway for any renewal permits or new applications that are lodged between the date of adoption of the Policy and Guidelines and 30 June 2024. This fee includes CN's costs for the assessment, inspections and administration costs of the application, as well as defray the nil cost charged to businesses that remove their furniture from the footway at the close of trading hours. An additional bond amount may be required and will be assessed on merit and will depend on the location and the requirements for installation.
- 13 The proposed fees were placed on exhibition and submissions were received on the high cost and the impact on small businesses. The feedback has been considered and it is now proposed to introduce two fees rather than the \$7,000 blanket fee. A smaller fee of \$4,000 is proposed for venues with an outdoor dining length of 10.0m or less and \$7,000 for venues with 10.1m or greater of outdoor dining. This only applies to the areas where the provision of permanent furniture is proposed in the public footway and is based on a lineal measurement, along the frontage of a venue.
- 14 Concerns were raised via submissions over the closing time of outdoor dining at 10pm, which is not consistent with the After Dark Strategy. The Guidelines have been amended to allow the hours to be assessed on merit and now state that the trading hours for outdoor dining cannot extend outside of the hours permitted under the associated venue's DA conditions.

- 15 There are no changes proposed to the Outdoor Dining Policy 2023 after exhibition of the Policy.

### **FINANCIAL IMPACT**

- 16 The costs to finalise the Outdoor Dining Policy and Guidelines are met under the adopted operational budget.

### **NEWCASTLE 2040 ALIGNMENT**

- 17 The Policy and Guidelines are consistent with the strategic directions of the Newcastle 2040 Strategic Plan.

#### **Liveable**

- 1.1 Enriched neighborhood and places
  - 1.1.1 Great spaces
  - 1.1.2 Well designed places

#### **Creative**

- 3.1.3 Tourism and visitor economy
- 3.1.4 Vibrant night-time economy

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 18 Adopted Council policies are published on CN's website. If the Policy and Guidelines are adopted, the Outdoor Trading Policy 2020 will be repealed.

### **RISK ASSESSMENT AND MITIGATION**

- 19 The Policy and Guidelines are consistent with the amendments made to the outdoor dining framework that the NSW Government introduced to streamline applications for outdoor dining and encourage activation of the public domain.

### **RELATED PREVIOUS DECISIONS**

- 20 At the Ordinary Council Meeting of 26 September 2023, the Draft Outdoor Dining Policy 2023, Draft Outdoor Dining Guidelines 2023 and proposed annual fee for permanent fixtures was endorsed for exhibition.
- 21 At the Ordinary Council Meeting held on 26 October 2021, a Lord Mayoral Minute was moved to support alfresco dining in Newcastle.
- 22 At the Ordinary Council Meeting held on 25 February 2020, the current Outdoor Trading Policy was adopted by Council.

### **CONSULTATION**

- 23 The Draft Outdoor Dining Policy 2023, Draft Outdoor Dining Guidelines 2023 and the proposed annual fee were exhibited for 28 days. This included a dedicated

'Have Your Say' webpage, with an online written submission form. A total of 19 submissions were received as part of the exhibition.

- 24 A number of meetings were held with submitters in response to requests to discuss the Policy, Guidelines and proposed fees.

## **OPTIONS**

### **Option 1**

- 25 Council resolves to adopt the recommendation as at paragraphs 1 - 3. This is the recommended option.

### **Option 2**

- 26 Council resolves not to adopt the recommendation. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Outdoor Dining Policy

**Attachment B:** Outdoor Dining Guidelines

**Attachment C:** Table of Submissions

**Attachment D:** Marked edits to Outdoor Dining Guidelines

**Attachment A–D distributed under separate cover**

## 8.7. ADOPTION OF THROSBY, STYX AND COTTAGE CREEKS FLOOD STUDY

*To be distributed under separate cover*

## 8.8. ADOPTION OF NEWCASTLE DEVELOPMENT CONTROL PLAN 2023

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

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### PURPOSE

To adopt Newcastle Development Control Plan 2023 (NDCP 2023) and repeal Newcastle Development Control Plan 2012 (NDCP 2012).

### RECOMMENDATION

That Council:

1. Adopts Newcastle Development Control Plan 2023 (NDCP) (**Attachment A**)
2. Resolves that NDCP 2023 is operational on 1 March 2024
3. Resolves to repeal Newcastle Development Control Plan 2012.
4. Notes the table of submissions (**Attachment B**) received during public exhibition.

### KEY ISSUES

5. Public exhibition of the third and final stage of NDCP 2012's review closed in October 2023. The 74 submissions received during the exhibition are summarised in **Attachment B**.
6. NDCP 2023 includes refinements incorporating the outcome of a review of the submissions received. The proposed changes are provided in a marked-up version in **Attachment C**. Key changes are summarised below:

### **Section D1 Subdivision and lot consolidation and Section D3 Residential development**

*Control - Waste disposal buffer area*

7. Four submissions on the proposed waste disposal buffer area were received from potentially affected landowners and the Urban Development Institute of Australia (UDIA). Matters raised were on the extent, and appropriateness of a buffer in a development control plan. In response, NDCP 2023 allows site specific considerations (odour, noise, and visual impacts). Subdivision and development

should consider the buffer, within the prescribed distance to approved landfill cells at the Summerhill Waste Management Centre.

### **Section F9 Minmi**

8. The exhibited Draft NDCP 2023 included Section F9 Minmi. Only one set of development controls can apply to an area of land. Controls that apply to development on land outside the existing Minmi village have urban design guidelines (approved by the Department of Planning and Environment). Controls not applicable to this section are therefore redundant and have been removed from NDCP 2023.

### **Section D3 Residential development**

#### *Control - Amenity – indoor air quality*

9. Support was shown in 17 submissions for all-electric buildings and more broadly applied development controls. NDCP 2023 reflects best practice and draws on wording from the Lane Cove DCP. Strengthened objectives and controls restrict indoor gas usage within residential development for better health outcomes and to avoid unnecessary financial burdens.

### **Section C13 Liveable housing**

10. NDCP 2023 requires Final-as-Built Certification for development required to meet Livable Housing Australia (LHA) Silver Level and Platinum Level. Certification is to be issued by a registered LHA Assessor prior to occupation. This refinement reflects feedback from the Urban Design Review Panel (UDRP).

### **Section C3 Vegetation preservation and care (exhibited as C3 Vegetation preservation)**

11. NDCP 2023 incorporates feedback from three submissions, including one from the Institute of Australian Consulting Arboriculturists - Managing Urban Trees. A new objective reads to "manage and care for Newcastle's urban forest and maximise urban greening, resulting in a healthy, green and biodiverse city that provides economic, ecological and social benefits". This aligns with *Newcastle Environment Strategy 2023* and *Newcastle 2040 Community Strategic Plan*.
12. Revised wording provides more clarity on how the *Biodiversity and Conservation State Environmental Planning Policy 2021* regulates the clearing of (declared) vegetation not linked to development requiring consent, done via a permit. Greater clarity is made on the three approval pathways (exemptions, permits for declared vegetation and development consent) for vegetation clearing.

## **C12 Open space and landscaping**

### *Control - Deep soil*

13. The exhibited Draft DCP 2023 had no minimum dimension for a deep soil zone for single dwellings and residential development. Feedback on this led to a new minimum width in NDCP 2023 of 3m. This is considered adequate to support trees and canopy and is consistent with other residential development controls.

## **Urban Design Review Panel**

14. The UDRP's comments below informed NDCP 2023:

- Exterior reflective heat from walls should be quite distinct from controls aimed at comfort conditions within the space.
- Two phase certifications (at design stage and prior to occupation) are required to ensure residential development meets liveable housing design level.
- An equitable mix of apartment types should be liveable and accessible with platinum apartments having wider/longer car parks as per LHA Design Guideline.
- Green walls require specialised design and maintenance. A tree or large shrub planted in deep soil is a much simpler, cheaper and fail-safe means of achieving shade and comfort than landscaping on a structure.
- Digital / illuminate signage should have clear controls (regarding size, curfew, light spillage, and for heritage and residential areas).
- The perception of safety is as important as actual safety in public spaces.
- *Newcastle After Dark Strategy - Night-time Economy Strategy 2018* reiterates that a developer responsible for building a residential complex needs to 'design in' reasonable noise mitigation (for example double glazing). Conversely, a late-night venue seeking to extend venue space or hours of live performance would need to ensure noise impacts are appropriately managed and further defined through a council approved Plan of Management.
- Having public art designed by local artists where possible is challenging. Recommend a collaborative approach where an out-of-town artist collaborates with a local artist.

## **FINANCIAL IMPACT**

15. The costs to finalise NDCP 2023 are met under the operational budget.

## COMMUNITY STRATEGIC PLAN ALIGNMENT

16. NDCP 2023 is consistent with *Newcastle 2040 Community Strategic Plan* and implements the following priorities and objectives:

### 1. Liveable

- 1.1.1 Great spaces
- 1.1.2 Well-designed places
- 1.1.3 Protected heritage places

### 1.2 Connected and fair communities

- 1.2.1 Connected communities
- 1.2.2 Inclusive communities
- 1.2.3 Equitable communities
- 1.2.4 Healthy communities

### 1.3 Safe, active and linked movement across the city

- 1.3.1 Connected cycleways and pedestrian networks
- 1.3.2 Road networks
- 1.3.3 Managed parking
- 1.3.4 Effective public transport

### 2. Sustainable

- 2.2.2 Expand the urban forest
- 2.2.3 Achieve a water sensitive city

### 3. Creative

- 3.1.4 Vibrant night-time economy
- 3.3.3 Culture in every day life

### 4. Achieving Together

- 4.3.1 Collaborative organisation
- 4.3.3 Data-driven decision-making and insights.

## IMPLEMENTATION PLAN/IMPLICATIONS

17. NDCP 2023 will be finalised in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)*. If approved, City of Newcastle (CN) will publish notice of Council's decision on the website within 28 days after the decision is made.

18. The public notice will specify that NDCP 2023 will come into effect on 1 March 2024 and repeal NDCP 2012.



## Local Strategic Planning Statement

19. CN's Local Strategic Planning Statement (LSPS) commits to an integrated and accessible transport network, green and liveable city, and smart and innovative economy.
20. The following LSPS land use actions informed and guided NDCP 2023:
  - 1.2 Review & update provisions for movement networks, car parking and active transport to facilitate use of active transport
  - 2.3 Review & update planning controls to support the uptake and use of electric vehicles, shared transport schemes and more efficient car parking management to support a transition to more sustainable forms of transport
  - 3.1 Identify opportunities to improve planning provisions, ensuring they align with best practice for universal housing design principles
  - 4.1 Review provisions for landscaped and impervious area, shade and vegetation management including opportunities to use green roofs & walls
  - 5.4 Review provisions for stormwater and landscaping to incorporate best practice mechanisms to reduce the impact of stormwater runoff on bushland, waterways and wetlands
  - 6.4 Review provisions for waste management with an emphasis on reduce, reuse and recycling
  - 7 Review controls for ground floor retail in mixed-used developments to provide flexible spaces and focus retail energy along existing retail spine
  - 7.2 Review and update planning controls to enable new development to respond to hazard and risk information as it becomes available
  - 7.3 Investigate opportunities to incorporate provisions to address urban heat island impacts & reduce UV exposure
  - 16.2 Investigate opportunities to better support the night-time economy, reduce land use conflict and support live music and performance in key locations.

## RISK ASSESSMENT AND MITIGATION

21. The Draft NDCP 2023 was exhibited for 28 days in accordance with the *Environmental Planning and Assessment Act 1979*, *EP&A Regulation 2021* and *CN's Community Participation Plan, 2019*.
22. Comments from the UDRP and the Department of Planning & Environment's Apartment Design Guide were considered in respect to controls for residential development.

## RELATED PREVIOUS DECISIONS

23. At the Ordinary Council Meeting of 26 September 2023, Draft NDCP 2023 was endorsed for exhibition, subject to inclusion of an additional control (section 11 of section C3 Vegetation Preservation).
24. At the Ordinary Council Meetings of 27 September 2022 and 26 April 2023, Council resolved to amend NDCP 2012 to incorporate Stage 1 (Bushfire Protection, Mine Subsidence, Safety and Security and Traffic, Parking and Access) and Stage 2 (Renewal Corridors).

## CONSULTATION

25. Draft NDCP 2023 was exhibited from 28 September to 27 October 2023. This included a dedicated 'Have Your Say' webpage, with an online written submission form, promotion of the exhibition in Development eNews (sent 5 October), targeted emails to over 150 stakeholders (individuals, organisations and advocacy groups), media release and newspaper advertisement (published 30 September). Development eNews was delivered to 888 subscribers and at the end of the exhibition period opened 2542 times by 568 unique users. The link to Draft NDCP 2023 was clicked 113 times, by 48 unique users.
26. Information was provided face to face, over the phone or via emails in response to individual requests. Information sessions were held with the UDIA, Property Council, and HIA to provide opportunities for any questions and assist with further explanation of CN's intent.

## Section C3 Vegetation preservation and care (exhibited as C3 Vegetation preservation)

### *Control - High environmental value land*

27. Four submissions were received on this proposed control from potentially affected landowners and UDIA. The control supports the Hunter Regional Plan 2041 objective to minimise potential development impacts on areas of high environmental value. The objections questioned whether the control should be in a development control plan. The *Biodiversity Conservation Act 2016* considers native vegetation removal along with its supporting framework to avoid, minimise and offset native vegetation. The control remains unchanged in NDCP 2023. It provides guidance and reflects CN's position on avoidance, given an appropriate level of local avoidance is not specified in State legislation. It also responds to feedback on the *draft Newcastle Environment Strategy 2023*, for protection of existing native vegetation and biodiversity corridors.
28. Internal review during the exhibition period led to refinements to Draft NDCP 2023 post exhibition. These refinements correct anomalies, improve overall usability, clarify and/or strengthen provisions to embed CN land use and development priorities:

- Section C1 Traffic, parking and access - Car share parking to be considered (in a car parking assessment) with development in Newcastle city centre, Renewal corridors, The Junction and Hamilton B2 Local Centre zone and Darby Street mixed use zone. There is no requirement for share car parking with development outside these areas.
- Section C8 Social impact - Additional guidance to inform a social impact comment or assessment.
- Section C9 Advertising and signage - Additional controls to ensure that a temporary sign or mural conserves environmental heritage.
- Section C13 Liveable housing - Co-living housing is to meet Platinum Level under the *Liveable Housing Design Guidelines*.
- Sections E5 Newcastle City Centre and D4 Commercial - Greater alignment with the Newcastle After Dark vision. The objectives were strengthened for concentrated night time/after dark activity in the seven nightlife precincts, as outlined in the *Newcastle After Dark, Night-time Economy Strategy*. The night-time economy is considered to be of sufficient strategic importance to require provisions for commercial development to come into immediate effect.
- Sections E3 Tighes Hill local character and E4 Kotara local character have been informed by community engagement as part of pilot studies, and are considered to be of sufficient strategic importance to require provisions for development in the character areas to come into immediate effect.

### **DCP Working Party**

29. CN's DCP Working Party provided input to inform and finalise NDCP 2023. The DCP Working Party and Liveable Cities Advisory Committee have endorsed finalisation of the NDCP 2023.

### **BACKGROUND**

30. NDCP 2012's comprehensive review considered the currency and relevance of controls, and whether they reflected best practice and CN land use and development priorities.

### **OPTIONS**

#### **Option 1**

31. The recommendation as at Paragraphs 1 - 4. This is the recommended option and allows finalisation of NDCP 2023.

## **Option 2**

32. The recommendation that Council does not support finalisation of Draft NDCP 2023. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Newcastle Development Control Plan 2023

**Attachment B:** Table of submissions

**Attachment C:** Marked edits to Draft Newcastle Development Control Plan 2023

**Attachment A – C distributed under separate cover**

## 8.9. PUBLIC EXHIBITION OF DRAFT NEWCASTLE AFFORDABLE HOUSING CONTRIBUTIONS SCHEME

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

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### PURPOSE

To commence the statutory process to amend the Newcastle Local Environmental Plan 2012 to progress the draft Affordable Housing Contribution Scheme.

### RECOMMENDATION

That Council:

- 1 Endorses the Affordable Housing Contribution Scheme Planning Proposal (planning proposal) (**Attachment A**) to amend *Newcastle Local Environmental Plan 2012* (NLEP 2012) to allow City of Newcastle (CN) to levy affordable housing contributions under the Affordable Housing Contribution Scheme (draft scheme) (**Attachment B**).
- 2 Forwards the planning proposal to the Department of Planning and Environment (DPE) for Gateway determination under the *Environmental Planning and Assessment Act 1979* (the Act), including a request for Council to be the Local Plan Making Authority.
- 3 Notes the Gateway determination will outline the community and agency consultation for the planning proposal as it progresses, and it is anticipated that the planning proposal and draft scheme will be publicly exhibited for a minimum of 28 days.
- 4 Receives a report on the planning proposal and draft scheme, following public exhibition.

### KEY ISSUES

- 5 The Act and *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) set the legislative framework that guides the preparation of affordable housing contribution schemes in NSW.
- 6 CN's Council adopted Housing Policy and Local Housing Strategy commits to preparing an affordable housing contribution scheme. A planning proposal is required as the first stage of ultimately implementing the scheme.
- 7 The planning proposal includes two new clauses and a new map layer relating to affordable housing. These will embed the draft scheme in NLEP 2012

allowing CN to impose conditions of consent on new development for contributions for affordable housing.

- 8 The draft scheme sets out how contributions for affordable housing will be levied on new development and provides worked examples. It was prepared in accordance with the NSW Government's (DPE) Guideline for Developing an Affordable Housing Contribution Scheme. It is one of the ways CN is addressing its commitment to increase the range and supply of housing to meet the growing needs of the community.
- 9 The draft scheme identifies Broadmeadow (Part A and Part B), Stockton North and the Western Corridor as areas where an affordable housing contribution will apply. The draft scheme's applicability in these areas is subject to future rezoning by the Council.
- 10 The draft scheme proposes a 1% contribution rate to apply to all residential and mixed-use development that results in an additional dwelling and more than 200sqm of residential gross floor area (GFA) on the site in all other areas in the LGA. Further feasibility testing will be undertaken on the 1% rate prior to public exhibition, which is post Gateway, to ensure development will remain viable across the city, including consideration to the disaggregation of the applicable rate across the LGA.
- 11 DPE requires councils to show evidence (and any assumptions used) to determine the proposed affordable housing contribution rates. DPE assesses and reviews the rates to ensure they are viable and do not impact development feasibility and overall housing supply. The evidence and assumptions form part of the draft scheme and will be publicly exhibited.
- 12 The draft scheme outlines the types of development that are exempt from affordable housing contributions. The scheme will not apply to:
  - a) Exempt development per State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
  - b) Development for non-residential floorspace.
  - c) Development that would result in the creation of residential GFA of less than 200sqm.
  - d) Development that does not result in an additional dwelling, or land lots with the potential of a dwelling.
  - e) Development of residential accommodation that is used to provide social or affordable housing.
  - f) Development for the purposes of community facilities, public roads or public utility undertakings.

- 13 Boarding house development is exempt from the affordable housing contribution scheme as this is a form of affordable housing under the Housing SEPP. Other forms of housing under the Housing SEPP such as co-living and build-to-rent are not exempt from the scheme.

### **FINANCIAL IMPACT**

- 14 Affordable housing contributions is proposed to be provided as monetary contributions, or the dedication of land, or the dedication of completed dwellings to CN. Any dedication of land or dwellings to CN is at CN's discretion. Consideration will be given to the acceptability of the location of any land or dwelling proposed to be dedicated.
- 15 Monetary contributions received under the scheme will be pooled and used for purpose-built affordable housing. Such developments may be undertaken solely by CN or in collaboration with a Community Housing Provider or government entity experienced in the delivery of affordable housing.
- 16 The preparation of the planning proposal and draft scheme is funded under the CN 2023/24 operational budget.

### **NEWCASTLE 2040 ALIGNMENT**

- 17 The planning proposal and draft scheme are consistent with the Newcastle 2040 Community Strategic Plan and will contribute to the implementation of the following priority and objectives:

#### **Liveable Newcastle**

##### **1.2 Connected and fair communities**

1.2.1 Connected communities

1.2.3 Equitable communities

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 18 The planning proposal and draft scheme implement the outcomes of the following Council adopted strategies, plans and policies:
- i) **Newcastle Local Strategic Planning Statement**, including Planning Priority 12: Sustainable, affordable and inclusive housing.
  - ii) **Newcastle Local Housing Strategy**, including Action 2.1 to prepare a housing policy and Action 4.1 to prepare an affordable housing contributions scheme.
  - iii) **Newcastle Housing Policy**, including the commitment to implement an affordable housing contributions scheme.
- 19 CN may use monetary contributions received to purchase suitable properties or to manage the affordable housing portfolio.

- 20 Governance structures regarding the management of contributions received and criteria to inform the dedication of land or dwellings to CN will be further developed post Gateway determination.
- 21 Any decisions regarding the use of the affordable housing contributions once the scheme is in effect will be subject to further Council endorsement.
- 22 The application of Section 7.11 and Section 7.12 development contributions are not affected by the introduction of the AHCS.

### **RISK ASSESSMENT AND MITIGATION**

- 23 The draft scheme provides a transparent statutory framework to levy affordable housing contributions, recognising affordable housing as key social infrastructure.
- 24 The draft scheme was prepared in accordance with the Act and DPE's Guideline for Developing an Affordable Housing Contribution Scheme.
- 25 The planning proposal was prepared in accordance with the Act and DPE's Local Environmental Plan Making Guideline.

### **RELATED PREVIOUS DECISIONS**

- 26 Council adopted the Local Housing Strategy on 24 November 2020. It contains actions to prepare a housing policy and an affordable housing contributions scheme.
- 27 Council resolved at the Ordinary Council meeting held 27 April 2021 (among other actions) the following:

*Supports the Governance Directorate, through Regulatory, Planning and Assessment, to expedite the development of the City of Newcastle Affordable Housing Contributions Scheme and endorses the provision of adequate resourcing to do so.'*

- 28 Council first adopted the Newcastle Housing Policy on 26 October 2021. It outlines CN's commitment to prepare and implement an affordable housing contributions scheme to allow levying of contributions for affordable housing. The Housing Policy was readopted with amendments in December 2022.
- 29 CN's Liveable Cities Advisory Committee resolved to establish the Newcastle Affordable Housing Working Party on 1 March 2022. The party provides strategic guidance on policies and initiatives to boost affordable housing supply, including the draft scheme.

### **CONSULTATION**

- 30 The draft scheme was unanimously endorsed by the Affordable Housing Working Party at its meeting on 1 November 2023.



- 31 CN engaged with the DPE's Housing Policy Team during the preparation of the draft scheme to ensure it is in accordance with their guideline.
- 32 The Gateway determination will outline the community and agency consultation for the planning proposal as it progresses.
- 33 It is anticipated that the planning proposal and draft scheme will be publicly exhibited for a minimum of 28 days.
- 34 A Councillor Workshop was held on the planning proposal and draft scheme on 21 November 2023. The workshop provided an overview of the draft scheme and the process to implement the scheme via the planning proposal.

## **BACKGROUND**

- 35 The preparation of the scheme is consistent with CN's commitments to increase the range and supply of housing to meet the growing needs of the community.
- 36 The planning proposal seeks to amend NLEP 2012 to embed the draft scheme and allow CN to levy new development for contributions for affordable housing.

## **OPTIONS**

### **Option 1**

- 37 The recommendation as at Paragraph 1 – 4. This is the recommended option.

### **Option 2**

- 38 That Council does not progress the draft Affordable Housing Contribution Scheme. This would be inconsistent with previous commitments of Council and will not allow CN to levy affordable housing contributions. This is not the recommended option.

## **ATTACHMENTS**

**Attachment A:** Newcastle Affordable Housing Contribution Scheme planning proposal

**Attachment B:** Draft Affordable Housing Contribution Scheme

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

## 8.10. REQUEST THE MINISTER DETERMINE PLANNING PROPOSAL PP-2021-2262 FOR LAND AT 505 MINMI ROAD FLETCHER 2287 NOT PROCEED

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

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### PURPOSE

To provide an update on the planning proposal for 505 Minmi Road Fletcher to rezone the land from C4 Environmental Living zone to part R2 Low Density Residential and part C2 Environmental Conservation zones (see **Attachment A**).

### RECOMMENDATION

That Council:

- 1 Notes, as the planning proposal authority, City of Newcastle (CN) will be requesting the Minister not to proceed with the planning proposal for land at 505 Minmi Road Fletcher.
- 2 Notes CN's statutory obligations for this planning proposal are met.
- 3 Notes the request not to proceed is due to the proponent not having satisfied the Department of Planning and Environment's (DPE) Gateway determination conditions.

### KEY ISSUES

- 4 CN resolved to not support the 505 Minmi Road Fletcher planning proposal in 2020. Following this decision, the proponent submitted it for review to the Hunter and Central Coast Regional Planning Panel (the panel).
- 5 The panel review found the planning proposal demonstrated strategic and site-specific merit and could be submitted for Gateway determination. The panel did not endorse the proposed zone boundaries, as they were not satisfied, onsite biodiversity values had informed them (see **Attachment B**).
- 6 CN accepted the planning proposal authority (PPA) role and submitted the planning proposal to DPE for Gateway determination in May 2022.
- 7 DPE issued the planning proposal Gateway determination on 10 January 2023 allowing it to proceed subject to conditions relating primarily to biodiversity, density, and timeframe requirements (see **Attachment C**).
- 8 CN has continued to work with the proponent as required as PPA. However, the pre-exhibition conditions are not met or close to resolution. In particular, the biodiversity and density matters are not adequately addressed.

- 9 As the proponent has failed to provide the required information to facilitate the assessment, it is now not possible to meet DPE's timeframe to complete the LEP by 20 January 2024. It is appropriate to request the planning proposal be withdrawn before the timeframe expires.
- 10 As PPA, CN found the proponent's revised planning proposal of 4 May 2023 has not met the Gateway determination conditions as follows:
- **Condition 1(e)** requiring an updated Aboriginal cultural heritage assessment.
  - **Condition 3** requiring public authority and government agency consultation and/or to comply with the requirements of the applicable directions of the Minister under the *Environmental Planning and Assessment Act 1979* (EP&A Act).
  - **Condition 4** requiring (once agency comments received) consideration of an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.
- 11 On 26 May 2023 CN requested further information to satisfy these conditions with a focus on land use efficiency and avoiding areas of the site with high environmental value to improve biodiversity outcomes (see **Attachment D**).
- 12 CN's further information request aligns with the Biodiversity Conservation Division's (BCD) advice 15 February 2023 (see **Attachment E**). This included:
- The planning proposal's inconsistency with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation.
  - The planning proposal's failure to take all appropriate avoidance and minimisation measures for Biodiversity Conservation Act 2016 (Biodiversity Act) listed endangered ecological community (EEC) Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. To adhere to the Biodiversity Act, BCD advised further consideration be given to ensure this EEC is sufficiently avoided or impacts minimised.
- 13 CN requested (item 1 of **Attachment E**) a revised Urban Design Study to investigate various housing typologies to demonstrate an appropriate level of avoidance under the Biodiversity Act.
- 14 To date the proponent has not demonstrated consideration of appropriate zone boundaries options to address matters raised in Gateway determination Condition 4 (**Attachment C**). Without adequate information on biodiversity and

density options Ministerial Direction 3.1 and Gateway determination condition 3 are not addressed (**Attachment C**).

- 15 Under Section 3.35 of the EP&A Act, a PPA may vary proposals (S3.35(1)) or request the Minister determine the matter not proceed (S3.35(4)).
- 16 The option to vary the proposal has been considered, however without the requested revised Urban Design Study, and adequate biodiversity information, there is insufficient information to vary the proposal. Therefore, the most appropriate action for CN as PPA is to request the Minister determine the matter not to proceed pursuant to section 3.35(4).

## FINANCIAL IMPACT

- 17 The proponent's planning proposal fees are in accordance with CN's Fees and Charges 2020/21.

## NEWCASTLE 2040 ALIGNMENT

- 18 A request to the Minister to determine the planning proposal not proceed is consistent with strategic directions of Newcastle 2040 Community Strategic Plan.

### Liveable

- 1.1 ***Enriched neighbourhoods and places***
  - 1.1.1 Great spaces
  - 1.1.2 Well-designed places
  - 1.1.3 Protected heritage places
- 1.2 ***Connected and fair communities***
  - 1.2.1 Connected communities
  - 1.2.2 Inclusive communities
  - 1.2.3 Equitable communities
  - 1.2.4 Healthy communities
- 1.3 ***Safe, active and linked movement across the city***
  - 1.3.1 Connected cycleways and pedestrian networks
  - 1.3.2 Road networks
  - 1.3.4 Effective public transport

### 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 Not proceeding with the planning proposal will ensure its amendments to the Newcastle LEP 2012 are not inconsistent with CN's planning priorities and

objectives of its Local Strategic Planning Statement, Local Housing Strategy, and Newcastle Environment Strategy.

## **RISK ASSESSMENT AND MITIGATION**

- 20 The Minister has the power to remove CN as PPA if, in the Minister's opinion, CN failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner.
- 21 CN has complied with its obligations under the EP&A Act, working with the proponent including monthly meetings and providing advice in the lead up to exhibition deadline. CN provided further advice in the information request dated 26 May 2023. The advice outlined what was required from the proponent to satisfy the conditions of the Gateway determination.
- 22 CN allowed additional time for the proponent to undertake further studies and amend its' proposal accordingly in response to both BCD's recommendations and CN's advice.

## **RELATED PREVIOUS DECISIONS**

### **2009 Planning Proposal**

- 23 At the Council Meeting held on 18 December 2012, Council resolved to forward a planning proposal for 505 Minmi Road to the Minister for Planning and Infrastructure for Gateway determination.
- 24 Council resolved at its meeting on 25 August 2015, to publicly exhibit the draft Planning Agreement for the offsite environmental land offset for 505 Minmi Road, Fletcher for 28 days.
- 25 Council resolved at its meeting on 8 December 2015, not to proceed with the planning proposal for the site and requested the Minister for Planning and Environment allow CN to discontinue the proposed amendments.

### **2020 Planning Proposal**

- 26 Council resolved at its meeting on 8 December 2020, not to endorse the planning proposal to rezone 505 Minmi Road Fletcher and maintain current zoning for the site (E4 Environmental Living) as per the Newcastle LEP 2012.

## **CONSULTATION**

- 27 The Gateway determination required consultation with the following public authorities and government agencies:
  - Transport for NSW;
  - Biodiversity and Conservation Division (BCD);

- Ausgrid;
- Heritage NSW;
- NSW Rural Fire Service;
- Subsidence Advisory NSW;
- Awabakal Local Aboriginal Land Council; and
- Department of Education.

28 Consultation with the BCD is ongoing. Their initial assessment found the planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. Their advice was that to adhere to the Biodiversity Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.

## **BACKGROUND**

- 29 On 1 May 2020 CN formally accepted lodgment of a proposal to rezone land at 505 Minmi Road Fletcher from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation.
- 30 On 8 December 2020 Council resolved to not support the proposal for Gateway determination. Following this, the proponent requested an independent review. The Hunter Central Coast Regional Planning Panel (the panel) performed this function.
- 31 On 23 September 2021 DPE advised CN, the panel's review found that the planning proposal demonstrated strategic and site specific merit and could be submitted for Gateway determination.
- 32 DPE issued Gateway determination on 10 January 2023 subject to conditions, including LEP timeframes. The planning proposal is to be exhibited within 90 days of Gateway Determination with the LEP completed by 20 January 2024.

## **OPTIONS**

### **Option 1**

- 33 Note the recommendation as at Paragraph 1 to 3. This is the recommended option.

### **Option 2**

- 34 The recommendations as at Paragraph 1 to 3 are not noted. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

<b>Attachment A:</b>	Proposed Zones Map – May 2023
<b>Attachment B:</b>	Rezoning Review Decision – September 2021
<b>Attachment C:</b>	Gateway determination – January 2023
<b>Attachment D:</b>	CN Information Request – May 2023
<b>Attachment E:</b>	Biodiversity and Conservation Division Recommendations – February 2023

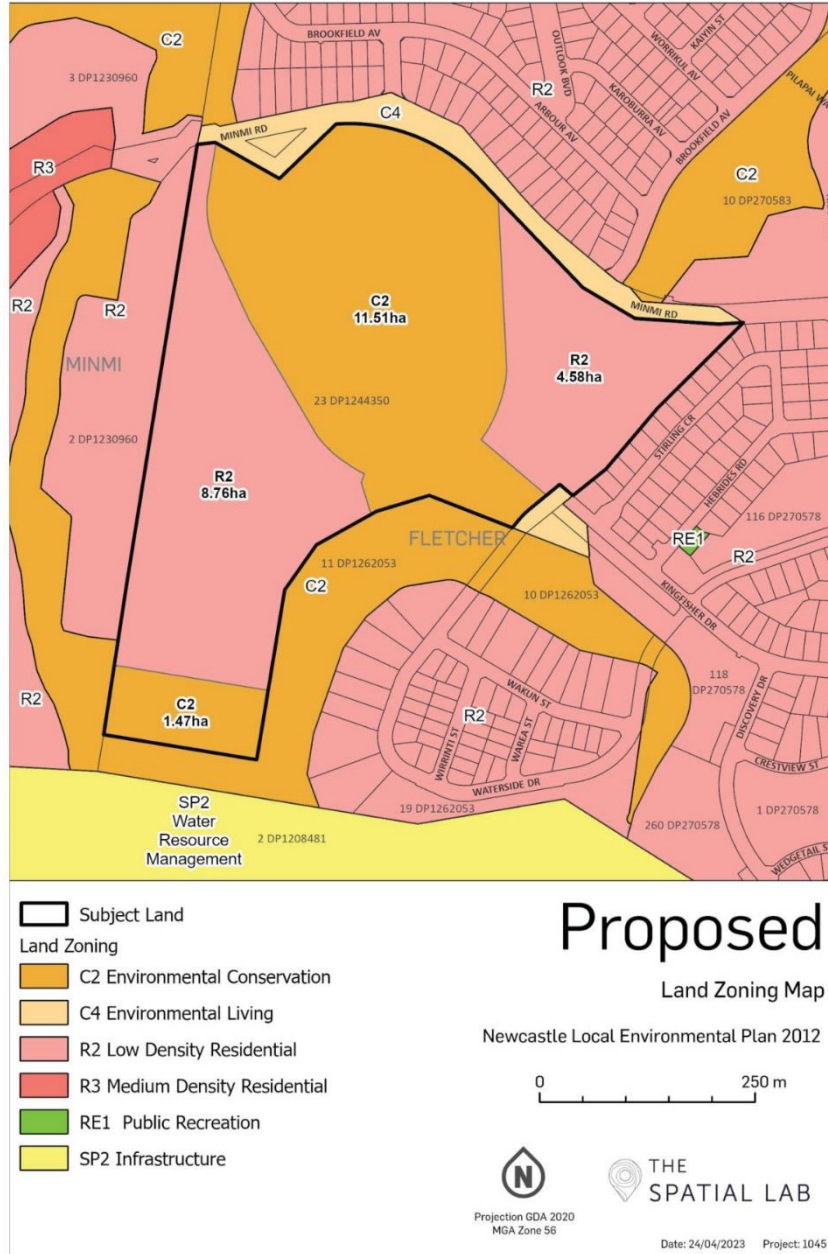
**Attachments B - E distributed under separate cover**

Attachment A



LEP Amendment Request – 505 Minmi Road, Fletcher – May 2023

Map 7 – Proposed Zones





## 8.11. CODE OF CONDUCT ANNUAL STATISTICS

**REPORT BY: EXECUTIVE MANAGEMENT**  
**CONTACT: COMPLAINTS COORDINATOR**

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### PURPOSE

To report City of Newcastle's (CN) Code of Conduct complaints statistics for the period 1 September 2022 to 31 August 2023 in accordance with Office of Local Government (OLG) requirements.

### RECOMMENDATION

That Council:

- 1 Notes City of Newcastle's Code of Conduct Complaints Statistics Report for the period 1 September 2022 to 31 August 2023 at **Attachment A**.

### KEY ISSUES

- 2 Part 11 of CN's Procedure for the Administration of the Code of Conduct (Procedure) requires the Complaints Coordinator (Manager Legal and Governance) to report the following to Council and the OLG for the period 1 September to 31 August each year:
  - i) the total number of Code of Conduct complaints made about Councillors and the Chief Executive Officer under the Code of Conduct in the year to September;
  - ii) the number of Code of Conduct complaints referred to a Conduct Reviewer;
  - iii) the number of Code of Conduct complaints finalised by a Conduct Reviewer at the preliminary assessment stage, and the outcome of those complaints;
  - iv) the number of Code of Conduct complaints investigated by a Conduct Reviewer;
  - v) without identifying particular matters, the outcome of investigations completed under the Procedure;
  - vi) the number of matters reviewed by the OLG and, without identifying particular matters, the outcome of those reviews; and
  - vii) the total cost of dealing with Code of Conduct complaints made about Councillors and the Chief Executive Officer in the year to September, including staff costs.

## **FINANCIAL IMPACT**

- 3 The cost of dealing with Code of Conduct complaints, including staff costs, is met by the approved operating budget.

## **NEWCASTLE 2040 ALIGNMENT**

- 4 The noting of the Code of Conduct complaints statistics is consistent with the strategic directions of the Newcastle 2040 Community Strategic Plan.

### **Achieving Together**

#### 4.2 Trust and Transparency

- 5 Due to the ongoing nature of matters, CN did not receive invoices from external Conduct Reviewers during the period.

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 6 The Code of Conduct complaints statistics are submitted to the OLG and made publicly available on its 'Your Council' website.

## **RISK ASSESSMENT AND MITIGATION**

- 7 Noting and submitting Code of Conduct complaints statistics to the OLG ensures CN complies with legislative requirements. Following these requirements reduces the risk of damage to public confidence in local government associated with complaints and breaches of the Code of Conduct.

## **RELATED PREVIOUS DECISIONS**

- 8 At the Ordinary Council meeting held on 13 December 2022, Council noted CN's Code of Conduct complaints statistics for the period 1 September 2021 to 31 August 2022.

## **CONSULTATION**

- 9 No consultation was required as this is a statutory process under the Procedure.

## **BACKGROUND**

- 10 CN's Code of Conduct for Councillors and associated Procedure are consistent with the Model Code of Conduct for Local Councils in NSW, produced by the OLG in accordance with the Local Government (General) Regulation 2005.

## **OPTIONS**

### **Option 1**

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

## **Option 2**

- 12 Council does not adopt the recommendation. CN has a legislative obligation to lodge the report with the OLG and it is appropriate for Council to note this. This is not the recommended option.

## **REFERENCES**

Procedure for the Administration of the Code of Conduct

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

## **ATTACHMENT**

**Attachment A:** Annual report on City of Newcastle's Code of Conduct Complaints Statistics for the period 1 September 2022 to 31 August 2023.

**Attachment A:**

Model Code of Conduct Complaints Statistics 2022-23 Newcastle City Council		
Number of Complaints		
1	The total number of complaints <b>received</b> in the reporting period about councillors and the General Manager (GM) under the code of conduct from the following sources:	
i	Community	2
ii	Other Councillors	2
iii	General Manager	0
iv	Other Council Staff	0
2	The total number of complaints <b>finalised</b> about councillors and the GM under the code of conduct in the following periods:	
i	3 Months	1
ii	6 Months	0
iii	9 Months	1
iv	12 Months	0
v	Over 12 months	0
Overview of Complaints and Cost		
3 a	The number of complaints <b>finalised at the outset</b> by alternative means by the GM or Mayor	0
b	The number of complaints <b>referred to the Office of Local Government (OLG)</b> under a special complaints management arrangement	0
c	The number of code of conduct complaints <b>referred to a conduct reviewer</b>	3
d	The number of code of conduct complaints <b>finalised at preliminary assessment</b> by conduct reviewer	0
e	The number of code of conduct complaints <b>referred back to GM or Mayor</b> for resolution after preliminary assessment by conduct reviewer	0
f	The number of finalised code of conduct complaints <b>investigated by a conduct reviewer</b>	0
g	Cost of dealing with code of conduct complaints via preliminary assesment	0
h	Progressed to <b>full investigation by a conduct reviewer</b>	3
i	The number of finalised complaints investigated where there was found to be <b>no breach</b>	0
j	The number of finalised complaints investigated where there was found to be <b>a breach</b>	0
k	The number of complaints referred by the GM or Mayor <b>to another agency</b> or body such as the ICAC, the NSW Ombudsman, OLG or the Police	
i	ICAC	0
ii	NSW Ombudsman	0
iii	OLG	0
iv	Police	0
v	Other Agency (please specify)	0
	<input type="text"/>	
l	The number of complaints being investigated that are <b>not yet finalised</b>	3
m	The <b>total cost</b> of dealing with code of conduct complaints within the period made about councillors and the GM including staff costs	5,993

4	The number of complaints determined by the conduct reviewer at the preliminary assessment stage by each of the following actions:	
a	To take no action (clause 6.13(a) of the 2020 Procedures)	<input type="text" value="0"/>
b	To resolve the complaint by alternative and appropriate strategies (clause 6.13(b) of the 2020 Procedures)	<input type="text" value="0"/>
c	To refer the matter back to the GM or the Mayor, for resolution by alternative and appropriate strategies (clause 6.13(c) of the 2020 Procedures)	<input type="text" value="0"/>
d	To refer the matter to another agency or body such as the ICAC, the NSW Ombudsman, OLG or the Police (clause 6.13(d) of the 2020 Procedures)	<input type="text" value="0"/>
e	To investigate the matter (clause 6.13(e) of the 2020 Procedures)	<input type="text" value="0"/>
f	Other action (please specify)	<input type="text" value="0"/>
	<input type="text"/>	
<b>Investigation Statistics</b>		
5	The number of investigated complaints resulting in a determination that there was <b>no breach</b> , in which the following recommendations were made:	
a	That the council revise its policies or procedures	<input type="text" value="0"/>
b	That a person or persons undertake training or other education (clause 7.40 of the 2020 Procedures)	<input type="text" value="0"/>
6	The number of investigated complaints resulting in a determination that there <b>was a breach</b> in which the following recommendations were made:	
a	That the council revise any of its policies or procedures (clause 7.39 of the 2020 Procedures)	<input type="text" value="0"/>
b	In the case of a breach by the GM, that action be taken under the GM's contract for the breach (clause 7.37(a) of the 2020 Procedures)	<input type="text" value="0"/>
c	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 (clause 7.37(b) of the 2020 Procedures)	<input type="text" value="0"/>
d	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 and that the matter be referred to OLG for further action (clause 7.37(c) of the 2020 Procedures)	<input type="text" value="0"/>
7	Matter referred or resolved after commencement of an investigation (clause 7.20 of the 2020 Procedures)	<input type="text" value="0"/>
<b>Categories of misconduct</b>		
8	The number of investigated complaints resulting in a determination that there was a breach with respect to each of the following categories of conduct:	
a	General conduct (Part 3)	<input type="text" value="0"/>
b	Non-pecuniary conflict of interest (Part 5)	<input type="text" value="0"/>
c	Personal benefit (Part 6)	<input type="text" value="0"/>
d	Relationship between council officials (Part 7)	<input type="text" value="0"/>
e	Access to information and resources (Part 8)	<input type="text" value="0"/>
<b>Outcome of determinations</b>		
9	The number of investigated complaints resulting in a determination that there was a breach in which the council:	
a	Adopted the independent conduct reviewers recommendation	<input type="text" value="0"/>
b	Failed to adopt the independent conduct reviewers recommendation	<input type="text" value="0"/>
10	The number of investigated complaints resulting in a determination where:	
a	The external conduct reviewers decision was overturned by OLG	<input type="text" value="0"/>
b	Council's response to the external conduct reviewers recommendation was overturned by OLG	<input type="text" value="0"/>
11	Date Code of Conduct data was presented to council	<input type="text" value="12-Dec-23"/>

## **8.12. TENDER REPORT - EAST END PUBLIC DOMAIN STAGES 2 AND 5 REFURBISHMENT - CONTRACT 2023/169T**

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

### **PURPOSE**

To determine a way forward for the East End Public Domain Stages 2 and 5 Refurbishment in accordance with Contract No. 2023/169T.

Due to the estimated total value of the contract exceeding \$1M, 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.

### **GROUND 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 East End Public Domain Stages 2 and 5 Refurbishment for Contract No: 2023/169T.
- 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 treated by Council as 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 East End Public Domain Plan construction of Stages 2 and 5.

### **Contract Term**

- 3 The term of the contract is proposed to be nine months, with a defect liability period of 12 months.

### **Advertising of Tenders**

- 4 The tender was advertised nationally on the TenderLink website on Friday, 21 July 2023.

### **Tenders Received**

- 5 Tenders closed at 2pm on Tuesday, 12 September 2023. Tender submissions were received from:
- i) Daracon Contractors Pty Ltd, and
  - ii) Plateau Trees Pty Ltd.

### **Evaluation Process**

- 6 The tenders were assessed against the following criteria:
- |                          |     |
|--------------------------|-----|
| i) Tender Price          | 40% |
| ii) Methodology          | 15% |
| iii) Contract Program    | 10% |
| iv) Management and Staff | 5%  |
| v) Referees              | 5%  |

- |       |   |     |
|-------|---|-----|
| vi)   | Previous Experience   | 5%  |
| vii)  | Supplier Diversity  | 5%  |
| viii) | Work Health and Safety  | 10% |
| ix)   | Environmentally Sustainable<br>Development, Quality Assurance<br>and Industrial Relations | 5%  |
- 7 Tenders were assessed by a Tender Assessment Panel of City of Newcastle (CN) officers selected based on relevant experience and knowledge of the project.
- 8 Probity oversight was provided by an external probity advisor, who was present during all panel meetings and included in all relevant correspondence in accordance with CN's Procurement Policy.

## **FINANCIAL IMPACT**

- 9 The conforming tender submission exceeded the allocated construction budget which was determined by a Quantity Surveyor (QS) estimate prior to the tender being advertised.
- 10 The conforming tenderer has priced all in-ground works as a provisional sum, subject to re-pricing once their proposed investigation works are completed.
- 11 The conforming tenderer has qualified that all works are subject to escalation at any time, citing volatile market conditions.
- 12 The tender evaluation period was prolonged due to the conforming tender containing numerous proposed contract and scope of work departures and qualifications. The conforming tenderer nominated a tender validity period of 30 days from date of close of tenders which has now expired. The tendered price is now subject to re-pricing.
- 13 The total estimated cost of this project including the proposed contract amount, allowances for project management, contingency and other associated project costs exceeds the project budget.

## **IMPLICATIONS**

### **Policy Implications**

- 14 This contract aligns with the Newcastle 2040 Community Strategic Plan as follows:

#### **Livable**

- 1.1 Enriched neighbourhoods and places



- 1.1.1 Great spaces
- 1.1.2 Well-design places
- 1.2 Connected and fair communities
  - 1.2.2 Inclusive communities
  - 1.2.3 Equitable communities

### **Achieving Together**

- 4.2 Trust and transparency
  - 4.2.1 Genuine engagement

### **Environmental Implications**

- 15 All contractors are required to comply with CN's work health safety and environmental requirements during project delivery. The tenderer referenced in **Attachment A** has an environmental management system, which is certified to the relevant Australian Standard. This environmental management system will address environmental risks associated with construction activities.

### **IMPLEMENTATION**

- 16 In situations where all tender submissions exceed the budget, the Regulation allows Council to reject all tenders under Section 178(1). Under Section 178(3) of the Regulation. If Council chooses to reject all tenders it has the choice of:
- i) Cancelling the project and not proceeding (as per s.178(3)(a));
  - i) Calling for fresh tenders (as per s.178(3)(b), (c), or (d));
  - ii) Entering into negotiations with a party with a view of entering into a contract (as per s.178(3)); or
  - iii) CN carrying out the works of the tender itself (as per s.178(3)(f)).
- 17 If a Council resolves to enter into negotiations with a party, under Section 178(4) of the Regulation, the Council resolution must state the following:
- i) Council's reasons for declining to invite fresh tenders; and
  - i) Council's reasons for determining to enter into negotiations with a party to form a contract.

### **CONSULTATION/COMMUNICATION**

- 18 Community consultation has been carried out as part of the East End Public Domain Plan, which was adopted by Council in 2018. Communication with key user groups and local residents has been in the form of onsite signage, letter box

drop, a dedicated webpage and engagement activates via CN's social media and communication channels

## **BACKGROUND**

- 19 The East End Public Domain Plan encompasses Hunter Street from Brown Street through to Newcomen Street. It includes surrounding streets as shown on the East End Staging Plan in **Attachment C**. The project will improve and enhance the public domain in the East End within the Hunter Street Mall and adjoining streets. Stage 1 of the plan was delivered in mid-2022. Stage 9 of the plan is currently under construction and is being delivered by CN's Civil, Construction and Maintenance team.
- 20 The project's complexity of services, civil works, coordination and resourcing has required CN to procure stages 2 and 5 of the project from the market.
- 21 CN intends to refurbish Hunter Street within a timeframe to closely align with the completion of the mixed-use development by Iris Capital, also known as Stage 2.
- 22 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**

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

### **Option 2**

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

### **Option 3**

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

### **Option 4**

- 26 Council resolves not to accept any tender and to not 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**

- 27 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
- Attachment C:** East End Staging Plan

***Refer Confidential Council Agenda 12 December 2023 for Attachments A - C***

## 9. NOTICES OF MOTION

### 9.1. MEREWETHER BEACH EMERGENCY FIRST RESPONSE SAFETY MEASURES

COUNCILLOR: CR J BARRIE

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#### PURPOSE

*The following Notice of Motion was received on Thursday 30 November 2023 from the abovementioned Councillor.*

#### MOTION

- That City of Newcastle review and install surf safety signage "**DANGEROUS RIP - NO SWIMMING**" to be a soft barrier to non-swimmers who continually swim at Merewether Beach in the dangerous swimming area where there is a permanent rip. Due to there have been a high number of multiple rescues that occur after hours and on public holidays, between 6pm and 7pm when lifeguards have finished, and patrols are over in busy summer school holidays and public holidays.
- **Location for signage:** "The rock platform in front of Merewether Surf House that includes the historic Ladies Pool"; near the rocks on the southern edge of Merewether Beach near the Merewether Ocean Baths; on the rock shelf further south of Merewether's patrolled beach.
- Notes that City of Newcastle extend paid City of Newcastle Lifeguards on all beaches in the City of Newcastle to work a split shift working in conjunction with volunteers of Hunter Branch Surf Life Saving. Initially in this Notice of Motion City of Newcastle work with the Merewether Surf Lifesaving Club volunteers to cover 7 days a week, working up to 7.00pm throughout the busy summer holiday period. This would include all the main public holidays and the duration of the school holiday period in December until NSW school resumes in February.
- Notes the proposed time frame would be to commence from 22/12/2023–31/1/2024, and that the City of Newcastle investigate and submit a budget to Council for the entire daylight savings period from 7.00am to 7.00pm throughout October 2024 to March 2025 in the next financial year 2024/2025.
- Notes that City of Newcastle review the best option for "after hours rescue equipment" on all six city beaches that have an operational Surf Lifesaving Club and volunteers; (refer to photo example – Attachment A currently used in Sawtell, Coffs Harbour, Gerringong) and in many other NSW Local Government areas including Northern Beaches. As City of Newcastle is the caretaker / landowner of Crown Land, options for the installation of after-

hours lifesaving rescue equipment be installed in collaboration and explore funding of the rescue equipment with NSW Surf Life Saving, Hunter Surf Life Saving Branch, and the Merewether Surf Life Saving Club due to the increased numbers of **after-hours rescues** off the southern end of Merewether Beach.

- Notes the rescue equipment to be used could be a floatation rescue tube, a buoy and in connection with defibrillation devices located outside for use in an emergency.
- Notes this is to ensure that lifesaving rescue equipment is readily available to the public after hours when the beaches are no longer patrolled.
- Notes this would be in conjunction with what other NSW Surf Lifesaving clubs/local councils are using to ensure that best practice surf signage and supply of suitable equipment is followed. Naturally additional safety signage would need to be installed at Merewether Beach to ensure anyone using the equipment would be using it at their own risk and to call first the 000-emergency phone number before entering the water and at becoming yet another drowning statistic.

## **BACKGROUND**

Notes that the council paid lifeguards, work alongside in collaboration with Merewether Surf Life Saving volunteers, who both patrol Merewether Beach and are required to rescue people regularly from the area of the dangerous rip located south of the Merewether Surf Club, on this hugely popular beach.

Notes local members of the community and visitors to Merewether Beach who are often from outside the City of Newcastle, all enjoy a late afternoon swim at Merewether Beach throughout daylight savings. When the alarm is raised the council lifeguards, surf lifesaving volunteers and members of the public are all bravely rescuing swimmers who become in need due to imminent danger. Many swimmers are just innocent bystanders, community minded beachgoers who react quickly to the immediate danger of another person who is swept out to sea. These brave people who attempt to rescue other swimmers after hours, then endanger their own lives when trying to rescue other swimmers in an emergency without the right rescue equipment, resuscitation or first aid training. This happens regularly when either trained council lifeguards or Surf Life Saving volunteers have left for the day's patrol.

### **Case History of two rescues in the "permanent rip" area, performed by untrained community members, after hours off Merewether Beach:**

1 of 2: Notes on **Sunday, 17/9/23 at 5.20pm** after the Merewether Beach council lifeguards had finished, three fully dressed teenage males were swimming and were swept across to the Ladies Pool - rocky area where there is a permanent rip; fortunately, two surfboard riders paddled out to the swimmers and took them all back to the shoreline.

2 of 2: Notes on the evening of **Christmas Day, 25/12/22**, at approx. 7.00pm a group of young men were swimming at Merewether Beach, all of them started to struggle as they could not swim and ended up in a dangerous rip at Merewether Beach and had to be rescued by members of the public. Lisa Whitbourn who was a visitor from Albury, noticed that one of the three people was in trouble and raised his hand, the rip had a strong hold, dragging him underwater, his two mates called for help, without thinking Lisa jumped into the surf, and swam out to help the young man who was being swept out to sea.

Lisa pulled the person out of water and as Lisa pulled him up and tried to put him on his back, he panicked and pulled Lisa under the water multiple times, until Lisa helped the frightened, young man onto his back. The man who was being rescued became calmer, Lisa assisted, and the man was floating, and held him up and let the rip take them both out further in the ocean. For this brave lady who had no formal lifesaving training and who works as a theatre nurse, Lisa is no stranger to saving and the preservation of life, still to this day for Lisa it was a dramatic event.

Luckily for both Lisa and the young person whose life was at immediate risk, more people acted, including members of the Brent family, who went out on a boogie board, and the Kish family who arrived on surfboards. Lisa, the Kish and Brent families are all to be thanked, as there were on the beach with family on Christmas Day and who were all enjoying this beautiful location, then quickly all who acted, including taking surf boards from the Merewether Surf Life Saving Club to assist in this rescue. Four lives saved, one who was admirably rescuing another, ensuring all parties went back safely onto Merewether Beach on Christmas Day without becoming a drowning incident was indeed a blessing on this public holiday.

At this time, there was no access to life-saving equipment, nor signage to suggest that the current swimming conditions were dangerous. It took five people to rescue the young man who got washed out in the rip and when the **ambulance arrived to treat him, the NSW Ambulance officers, mentioned that they had already been called out to this beach rip multiple times on Christmas Day 2022.**

Notes that Christmas Day 2023 is only two weeks away, it would be advisable to warn visitors and City of Newcastle residents of the dangers of swimming in the permanent rip located south of Merewether Beach Surf Club.

Notes all beaches in the City of Newcastle do not have rescue equipment located on the beach for after-hours rescues. Merewether Surf Life Saving Club volunteers who patrol the beach and perform rescues are Bronze Medallion trained Patrol Captains must be 15 years old and are trained by the Director of Education, Anthony Tietze.

Notes at a meeting of Hunter Branch Surf Life Saving, held on 13 November, Nick Newton, President, Merewether Surf Club requested surf safety signage to be installed at Merewether Beach, to act as a preventative measure to warn in-experienced swimmers to stay away, from the area south of the Merewether Surf Life Saving Club where the permanent rip is a danger to all swimmers.

Notes In the period of December 2022 to February 2023 sadly there were 28 people who died due to drowning along the NSW coast, an 18 year high for the holiday period.

**Notes any emergency should be reported to 000 immediately.** An emergency 000 call is then distributed to the nearest Surf Life Saving club. Experienced emergency first responders from the nearest Surf Life Saving Club, are directed from NSW Surf Life Saving/Hunter Surf Lifesaving Branch, for two club volunteers on are on call on a Surf Life Saving Club roster to immediately attend and to assist in a lifesaving rescue wherever and whenever the closest Surf Life Saving volunteer is located to the person who is in immediate danger and under the threat of drowning.

Notes that removable signage is used on beaches when there are dangerous swimming conditions on other NSW beaches. These signs are placed close to dangerous surf conditions and are taken off the beach and can stay up after hours. These signs are erected on days to avoid people being caught in dangerous swimming conditions when there is no longer a council lifeguard or surf lifesaving volunteer patrol on the beach, as is the practise on beaches located all along the NSW coastline. When it is safe to swim on the beach it is best to swim between the “red and yellow beach flags” and to use common sense.

All beaches in the City of Newcastle do not have rescue equipment for after-hours rescues. Merewether Surf Life Saving Club volunteers patrol the beach and perform rescues are Patrol Captains who are trained by the Merewether Surf Life Saving Club.

Notes The Merewether Surf Lifesaving Club is the pillar stone of surf safety in the local area. All lifesaving members are volunteers who are trained to be emergency first responders and who bravely enter the ocean to save the lives of others who are in immediate danger of drowning or who may also need medical assistance from an injury in the ocean or for an urgent medical emergency.

## **ATTACHMENTS**

**Attachment A:** Photos of Beach Rescue Equipment in use at other local government beachside areas, e.g.in Sawtell & Gerringong

**Attachment B:** Photos of Merewether Beach – Rocks – dangerous area and a day at Merewether when it is safe to swim between the flags.

**ATTACHMENT A – PHOTO NO. 1 OF 3**





**ATTACHMENT A – PHOTO NO. 2 OF 3**



**ATTACHMENT A – PHOTO NO. 3 OF 3 – EXAMPLE OF LIFE SAVING BUOY FOR EMERGENCY USE ONLY**



**ATTACHMENT B: MEREWETHER BEACH SOUTHERN END DANGEROUS -  
NOTE THE PERSON ON THE ROCKS.**



**ATTACHMENT B:  
PHOTO OF THE HISTORIC MEREWETHER LADIES POOL – AREA OF ROCKS  
SOUTH OF SURF CLUB.  
SWIMMERS ARE SWEEPED OUT TO SEA WHEN CAUGHT IN THE DANGEROUS  
PERMANENT RIP AND ARE DRAGGED TOWARD THE ROCKS.**



**MEREWETHER BEACH – SAFE TO SWIM BETWEEN THE FLAGS WHEN LIFEGUARDS/SLSC VOLUNTEERS ARE ON PATROL.**



**9.1.1. REPORT ON NOTICE OF MOTION - NOM 12/12/23 - MEREWETHER  
BEACH EMERGENCY FIRST RESPONSE SAFETY MEASURES**

*To be distributed under separate cover.*

**10. CONFIDENTIAL REPORTS**

**10.1. OUR SUSTAINABLE WASTE STRATEGY - MATERIAL RECOVERY  
FACILITY AND ORGANICS PROCESSING FACILITY**

***Refer Confidential Ordinary Council Meeting Agenda 12 December 2023***