

ORDINARY COUNCIL

Thursday 21 March 2024

Ordinary Council Meeting

Thursday, 21 March 2024

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1 Leadership and Governance

What we are trying to achieve

A community that works together in decision making that is defined as ethically, socially and environmentally responsible.

What the result will be

We will have:

- A community that has the opportunity to be involved in decision making
- Open, easy, meaningful, regular and diverse communication between the community and decision makers
- Partnerships and collaborative projects, that meet the community's expectations, needs and challenges
- Knowledgeable, skilled and connected community leaders
- Strong corporate management that is transparent

How we will get there

- 1.1 Inform and engage with the community about what Council does using varied communication channels
- 1.2 Maintain strong partnerships between all stakeholders - local, state and federal — so that they are effective advocates for the community
- 1.3 Demonstrate leadership
- 1.4 Use innovative, efficient and sustainable practices
- 1.5 Ensure strong corporate and financial management that is transparent and accountable

MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW

A GUIDE TO COMPLETING RETURNS OF INTEREST

Introduction

Under the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct), certain council officials are required to disclose their personal interests in publicly available returns of interests.

These operate as a key transparency mechanism for promoting community confidence in council decision making, whether by councillors or by staff or others under delegation.

You must complete and lodge your return of interests in accordance with the requirements in the Model Code of Conduct.

You must not lodge a return that you know or ought to know is false or misleading in a material particular.

Complaints about breaches of these requirements are to be referred to the Office of Local Government (OLG) and may result in disciplinary action by the council, the Departmental Chief Executive, or the NSW Civil and Administrative Tribunal.

Important information

Who must submit a return of interests?

You must complete and lodge a return of interests if you are a councillor or designated person.

Designated persons include:

- the general manager
- senior staff, and
- staff, delegates of councils or members of committees who the council identify as

exercising functions that could give rise to a conflict of interest.

When must I submit a written return of interests?

You must submit a return of interests within three months of being elected or becoming a designated person and submit a new return annually (within three months of the start of each financial year).

You do not need to submit a return of interests if you have already submitted a return in the three months preceding 30 June, or if you ceased to be a councillor or designated person in the three months preceding 30 June.

If, at any time, you become aware of any new interests that need to be disclosed, you must submit a new return within three months of becoming aware of the interests.

Who must I lodge my return of interests with?

All returns of interests are to be lodged with the council's general manager.

A return lodged within 3 months of 30 June must be tabled at the first council meeting after the last day the return was required to be lodged.

A return lodged at any other time must be tabled at the first council meeting after the return was lodged.

Must my return of interests be made publicly available?

Yes. Councils must make all returns of interests publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the NSW Information Commissioner.

The Information Commissioner has issued Information Access Guideline 1 in relation to the publication of information contained in returns of interests. Guideline 1 states that councillors' and designated persons' returns of interests must be made publicly available free of charge on councils' websites, unless there is an overriding public interest against disclosure of the information contained in them or to do so would impose unreasonable additional costs on the council.

It is open to councils to redact information from returns of interests (eg a person's signature and residential address) when publishing returns on their websites where there is an overriding public interest against the disclosure that information.

For more information, see Guideline 1 which is available [here](#) and OLG's guidance on the implementation of Guideline 1 which is available [here](#).

Is there a standard form for submitting a return of interests?

Yes. Written returns of interests are to be in the form set out in Schedule 2 of the Model Code of Conduct.

A copy is attached to this Guide.

How do I complete a return of interests?

For those who are lodging their first return

If you are lodging a return for the first time, you do not need to complete Parts C, D and I of the return.

All other parts should be completed with information based on your circumstances at the date when you became a councillor or designated person.

Note:

- **If you are lodging your first return:**
- **the 'return date' is the date you became a councillor or designated person, and**
 - **leave the return 'period' at the top of the form blank**

If you have acquired any new interests that need to be disclosed in the return in the period between the return date and the date on which you are completing a return for the first time, you should also disclose these in the return to avoid the need to complete a further return disclosing the new interests.

For those who are lodging their annual return

Complete all parts of the return if you are lodging a new return for the new financial year.

The return should be completed with information based on your circumstances for the 12-month period beginning on 30 June of the previous year to 30 June of this year.

Note:

- **If you are lodging your annual return:**
- **the 'return date' is 30 June of the calendar year in which the return is made, and**
 - **the return 'period' is from 30 June of the previous year to 30 June of the current year.**

For those who are disclosing new interests

Complete all parts of the return if you are disclosing a new interest that was not disclosed in the last return you lodged with the general manager.

The form should be completed with information based on your circumstances from either 30 June of the previous financial year **or** the date you became a councillor or designated person (**whichever is later**), to the date you became aware of the new interest you are disclosing.

Note:

→ **If you are disclosing new interests:**

- the 'return date' is the date you became aware of the interest(s), and
- the return 'period' is from 30 June of the previous financial year, or the date on which you became a councillor or designated person (whichever is later) to the date you became aware of the interest(s).

What interests do I need to disclose?

You must not lodge a return that you know or ought to know is false or misleading in a material particular.

In completing your return, you must disclose all relevant interests whether or not they are acquired or held in NSW or Australia.

In the case of interests in real property, you must disclose all interests in real property you hold in Australia.

Part A – Real property

In this section, you must disclose the:

- street address of each parcel of real property you had an interest in:
 - on the return date, and
 - since 30 June of the previous financial year, and
- nature of the interest (eg freehold, lease, option to purchase etc).

You do not need to disclose an interest in a parcel of real property if you ceased to have the interest prior to becoming a councillor or designated person.

You also do not need to disclose an interest in a parcel of real property if your interest was:

- as executor of a will, or administrator of an estate, of a deceased person, **and** you were not a beneficiary under the will or intestacy, or
- as a trustee, if the interest was acquired in the course of an occupation that was not related to your duties as a councillor or designated person.

Note:

→ **'Address' is defined in clause 1 of schedule 1 of the Model Code of Conduct**

→ **'Real property' refers to any real property in Australia.**

Part B – Sources of income

In this section you must disclose each source of income you:

- reasonably expect to receive from the first day after the return date to 30 June, and
- received in the period since 30 June of the previous financial year.

In disclosing sources of income from your occupation, you must disclose:

- a description of your occupation, and
- if you are employed or the holder of an office, the name and address of your employer, or a description of the office, and
- if you have entered into a partnership with other persons, the name (if any) of the partnership.

In disclosing sources of income from a trust, you must disclose the name and address of the settlor and trustee.

In disclosing the sources of any other income, you must provide a description that identifies the person you received or reasonably expect to receive the income from, or the circumstances in which you received or reasonably expect to receive the income.

You do not need to disclose a source of income if:

- it did not exceed, or you do not reasonably expect it to exceed, \$500
- you ceased to receive income from that source prior to becoming a councillor or designated person, or
- it is your fee as a councillor.

Part C – Gifts

In this section, you must disclose all gifts you have received since 30 June of the previous financial year.

Gifts include any item, property or money you have been given without consideration or with inadequate consideration, unless it was received under a will.

You must provide a description of the gift and the name and address of the person/organisation that gave you the gift.

You do not need to disclose gifts if:

- they did not exceed \$500 in value, unless it was among gifts totalling more than \$500 from the same person/organisation within the last 12 months
- it was given to you by a relative (see below for a definition of "relative")
- it was a political donation that has been disclosed or is required to be disclosed under the *Electoral Funding Act 2018*, or
- it was received prior to you becoming a councillor or designated person (unless you have received a subsequent gift from the same person/organisation since becoming a councillor/designated person and within a 12-month period and the gifts total more than \$500).

Note:

- **The amount of a gift (other than money) is equal to the monetary value of the gift**
- **'Relative' is defined in clause 1 of schedule 1 of the Model Code of Conduct. Relatives include your:**

- spouse or de facto partner
- parents, grandparents, brothers, sisters, uncles, aunts, nephews, nieces, lineal descendants or adopted children and any of those persons' spouses or de facto partners, and
- spouse's or de facto partner's parents, grandparents, brothers, sisters, uncles,

aunts, nephews, nieces, lineal descendants or adopted children and any of those persons' spouses or de facto partners.

Part D – Contributions to travel

In this section you must disclose the:

- name and address of any person who has made a financial or other contribution to the expenses of any travel you have undertaken since 30 June of the previous financial year
- dates on which you undertook the travel, and
- names of the states and territories and of the overseas countries where the travel was undertaken.

You do not need to disclose a contribution to travel if:

- it was made from public funds
- it was made by a relative (see above for a definition of "relative")
- it was made in the ordinary course of your occupation that was not related to your functions as a councillor or designated person
- it was under \$250, unless it was among gifts totalling more than \$250 from the same person/organisation within the last 12 months
- it was a political donation that has been disclosed or is required to be disclosed under the *Electoral Funding Act 2018*
- it was made by a political party you are a member of and you undertook the travel for the purpose of political activity of the party in NSW, or to represent the party within Australia, or
- you received the contribution prior to becoming a councillor or designated person (unless you have received a subsequent gift or contribution from the same person/organisation since becoming a councillor/designated person and within a 12 month period and the gifts/contributions total more than \$250).

Note:

- **The amount of a contribution (other than money) is equal to the monetary value of the contribution.**

Part E – Interests and positions in corporations

In this section, you must disclose:

- the name and address of each corporation in which you held an interest or position (whether remunerated or not) on the return date and since 30 June of the previous financial year
- the nature of the interests or positions held in each corporation, and
- a description of the principal objects (if any) of each corporation, except if it is a listed company.

You do not need to disclose an interest or position in a corporation if the corporation:

- is formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, **and**
- it is required to apply its profits or other income for the purpose of promoting its objects, **and**
- it is prohibited from paying any dividend to its members.

You also do not need to disclose an interest in a corporation if it is a beneficial interest in shares in the corporation that does not exceed 10 per cent of the voting rights in the corporation.

You also do not need to disclose an interest or position in a corporation if you ceased to hold the interest or position prior to becoming a councillor or designated person.

Part F – Are you a property developer or close associate of a property developer?

In this section, you must disclose if you are a 'property developer' or a close associate of an individual or corporation that is a 'property developer' for the purposes of the *Electoral Funding Act 2018*.

A person or a corporation is a 'property developer' if they carry out a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, **and** in the course of that business:

- one 'relevant planning application' has been made by or on behalf of the individual or corporation and is pending, or
- three or more 'relevant planning applications' made by or on behalf of the individual or corporation have been determined within the preceding seven years.

You will be a close associate of a person who is a property developer if:

- you are the spouse of the person, or
- where the person has made a 'relevant planning application' that is pending, you are in a joint venture or partnership with the person in connection with the 'relevant planning application' and you are likely to obtain a financial gain if it is approved or carried out.

You will be a close associate of a corporation that is a property developer if:

- you or your spouse are a director or officer of the corporation
- you or your spouse have voting power in the corporation or a related body corporate of the corporation that is greater than 20%
- where the corporation is a trustee, manager or responsible entity in relation to a trust, you hold more than 20% of the units in the trust (in the case of a unit trust) or you are a beneficiary of the trust (in the case of a discretionary trust), or
- where the corporation has made a 'relevant planning application' that is pending, you are in a joint venture or partnership with the corporation in connection with the 'relevant planning application' and you are likely to obtain a financial gain if it is approved or carried out.

Note:

→ **'Relevant planning application' is defined in section 10.4 (Disclosure of political donations and gifts) of the *Environmental Planning and Assessment Act 1979*.**

Part G – Positions in trade unions and professional or business associations

In this section, you must disclose:

- the name of each trade union and of each professional or business association in which you held any position (whether remunerated

or not) on the return date and since 30 June of the previous financial year, and

- a description of the position.

You do not need to disclose a position in a trade union or a professional or business association if you ceased to hold that position prior to becoming a councillor or designated person.

Part H – Debts

In this section, you must disclose the name and address of each person you are/were liable to pay a debt to on the return date, and at any time since 30 June of the previous financial year.

You must disclose a liability to pay a debt whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year.

You do not need to disclose a liability to pay a debt if:

- the debt arose from a loan you have with a deposit taking institution (eg a bank) or other authorised deposit taking institution which lends money, and the loan was part of the institution's ordinary course of business
- the amount to be paid did not exceed \$500, **unless** the debt was one of two or more debts owed to the same person, and the combined value of the debts exceed \$500.
- the debt was owed to a relative (see above for a definition of "relative")
- in the case of a debt for the supply of goods or services:
 - the goods or services were supplied to you within the 12 months before the return date, or at any time since 30 June of the previous financial year, or
 - the goods or services were supplied to you in the ordinary course your occupation that is not related to your duties as a councillor or designated person, or
- the debt was discharged prior to you becoming a councillor or designated person, unless the debt was one of two or more debts you owe to the same person, and the value of the combine debts exceeds \$500.

Part I – Dispositions of real property

In this section you must disclose details of each disposition of real property by you (including the street address of the property) since 30 June of the previous financial year if you wholly or partly retained the use and benefit of the property, or the right to re-acquire it.

You must also disclose details of each disposition of real property to another person under an arrangement with you (including the street address of the property), since 30 June of the previous financial year under which you obtained wholly or partly the use of the property.

You do not need to disclose a disposition of real property if it was made prior to you becoming a councillor or designated person.

Part J – Discretionary disclosures

In this section, you may voluntarily disclose any other interests, benefits, advantages or liabilities you may have, whether or not they are pecuniary, which you have not been required to disclose elsewhere in the return.

DISCLOSURE OF INTERESTS FORM

REQUIRED TO BE LODGED UNDER CLAUSE 4.21
OF THE MODEL CODE OF CONDUCT FOR
LOCAL COUNCILS IN NSW



Disclosure of pecuniary interests and other matters by *[full name of councillor or designated person]*
as at *[return date]* in respect to the period from *[date]* to *[date]*.

Signed: *[councillor's or designated person's signature]*
Date: *[date]*

A. Real Property

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
<i>[address]</i>	<i>[details]</i>

B. Sources of income

1. Sources of income I:
- reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June, and
 - received from an occupation at any time since 30 June:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
<i>[description]</i>	<i>[name and address]</i>	<i>[name]</i>

2. Sources of income I:

- reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June, and
- received from a trust since 30 June:

Name and address of settlor	Name and address of trustee
<i>[name and address]</i>	<i>[name and address]</i>

3. Sources of other income I:

- reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
- received at any time since 30 June:

Sources of other income
<i>[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]</i>

C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
<i>[details]</i>	<i>[name and address]</i>

D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Names of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
<i>[name and address]</i>	<i>[dates]</i>	<i>[names]</i>

E. Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
<i>[name and address]</i>	<i>[details]</i>	<i>[details]</i>	<i>[details]</i>

F. Property development

Were you a property developer or a close associate of a property developer on the return date?

[Yes/No]

G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position
<i>[name]</i>	<i>[details]</i>

H. Debts

Name and address of each person to whom I was liable to pay any debts at the return date/at any time since 30 June
<i>[name]</i>

I. Disposition of property

- | |
|--|
| 1. Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time |
|--|

<i>[details]</i>

- | |
|---|
| 2. Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property |
|---|

<i>[details]</i>

J. Discretionary disclosures

[details]



Monthly Investment Review



As at February 2024

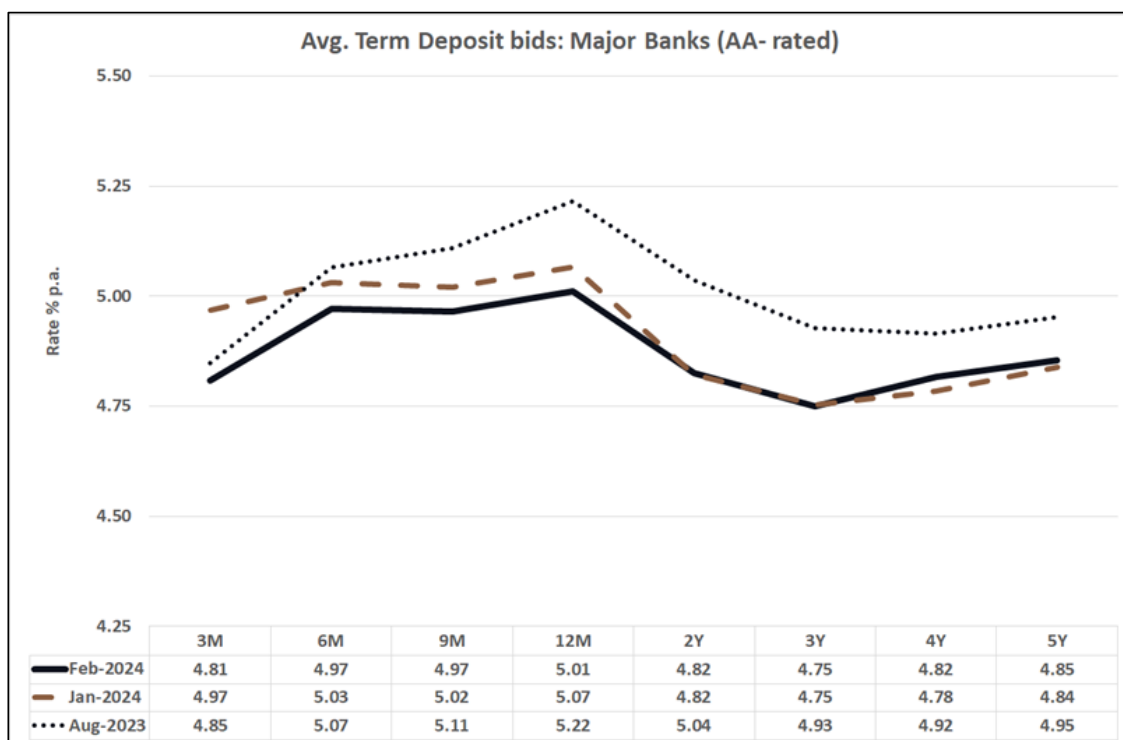
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Market Update Summary

Financial markets continued their rally in February largely reflective of the overall continued easing in inflation globally. Focus remains on when central banks will begin their interest rate cuts this year.

Over February 2024, movements for major bank term deposit rates were mixed compared to the previous month (January 2024). Major bank deposit rates dropped by as much as 16bp across the shorter-tenors (3-12 months), whilst flat across the medium term (2-3 years), and was slightly up by around 2-3bp across the longer-tenors (4-5 years). Interestingly, major bank deposit rates are approximately 10-22bp lower than what they were 6 months ago (August 2023), clearly pricing in the future rate cuts expected later this year.



Source: Imperium Markets

With a global economic downturn and multiple interest rate cuts being priced in coming years, investors should consider taking an 'insurance policy' against a potentially lower rate environment by investing across 2-5 year fixed deposits, targeting rates above or close to 4%-5% p.a. (small allocation only).



Port Macquarie–Hasting Council's Portfolio Summary

Compliance

Compliance Measure	Within Policy Limits (Y/N)	Reason if Not Compliant
Term to Maturity	Yes – Compliant	n/a
Counterparty	Yes – Compliant	n/a
Credit Quality	Yes – Compliant	n/a

Performance

As at 29/02/2024	1m (actual)	1m (% p.a.)	FYTD (actual)	FYTD (% p.a.)
AusBond Bank Bill Index	0.34%	4.43%	2.88%	4.34%
Council's Portfolio[^]	0.25%	3.19%	1.96%	2.95%
Relative Performance	-0.11%	-1.24%	-0.92%	-1.39%

[^]Total portfolio performance excludes Council's cash account holdings.

Council's Portfolio & Compliance

Asset Allocation

The portfolio is predominately directed to fixed term deposits (89.27%). The remainder of the portfolio is directed to fixed bonds with the Northern Territory Treasury Corporation (4.72%) and the overnight cash account with Westpac (6.01%).

Senior FRNs remain relatively attractive as spreads have generally widened over the past ~2 years – new issuances should now be considered again on a case by case scenario. In the interim, staggering a mix of fixed deposits between 9–12 months to 3 years remains a more optimal strategy to maximise returns over a longer-term cycle.

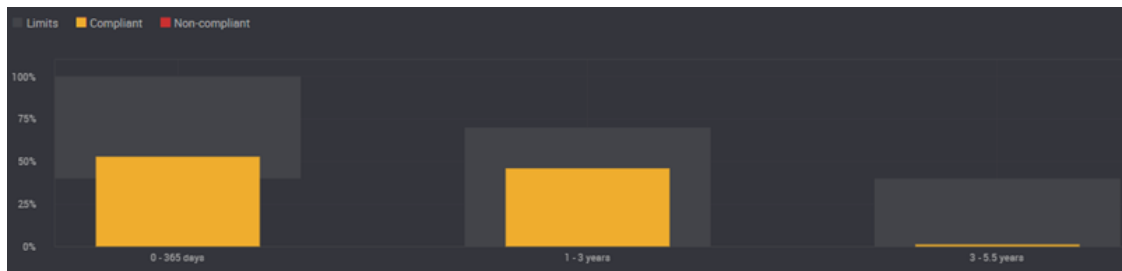
With interest rate cuts and a global economic downturn being priced in coming years, investors can choose to allocate a small proportion of longer-term funds and undertake an insurance policy against any potential future rate cuts by investing across 2–5 year fixed deposits, locking in and targeting yields close to or above 5% p.a.





Term to Maturity

All maturity limits (minimum and maximum) comply with the Investment Policy. Short-Medium Term (1-3 years) assets account for around 46% of the total investment portfolio, with capacity of around \$102m remaining. Future investments should be directed to the 1-3 year horizon as this is where we currently see the best value to maximise returns over a longer-term cycle.



Where there is (counterparty) capacity to invest in attractive 1-3 year investments, we recommend this be allocated to new any remaining attractive fixed term deposits or potentially newly issued senior FRNs (refer to respective sections below).

Compliant	Horizon	Invested (\$)	Invested (%)	Min. Limit (%)	Max. Limit (%)	Available (\$)
✓	0 – 1 year	\$224,060,765	52.84%	40%	100%	\$200,000,000
✓	1 - 3 years	\$195,000,000	45.98%	0%	70%	\$101,842,536
✓	3 – 5½ years	\$5,000,000	1.18%	0%	40%	\$164,624,306
✓	5½ - 10 years	\$0	0.00%	0%	10%	\$42,406,077
		\$424,060,765	100.00%			



Counterparty

As at the end of February 2024, Council did not have an overweight position to any single ADI. Overall, the portfolio is diversified across the investment grade credit spectrum (rated BBB- or higher).

Compliant	Issuer	Rating	Invested (\$)	Invested (%)	Max. Limit (%)	Available (\$)
✓	NAB	AA-	\$81,000,000	19.10%	30.00%	\$46,218,230
✓	North. Territory	AA-	\$20,000,000	4.72%	30.00%	\$107,218,230
✓	Westpac	AA-	\$69,060,765	16.29%	30.00%	\$58,157,464
✓	ICBC Sydney	A	\$67,000,000	15.80%	20.00%	\$17,812,153
✓	ING Bank	A	\$56,000,000	13.21%	20.00%	\$28,812,153
✓	Aust. Military	BBB+	\$7,000,000	1.65%	10.00%	\$35,406,077
✓	Australian Unity	BBB+	\$10,000,000	2.36%	10.00%	\$32,406,077
✓	BankVIC	BBB+	\$10,000,000	2.36%	10.00%	\$32,406,077
✓	BOQ	BBB+	\$17,000,000	4.01%	10.00%	\$25,406,077
✓	Bendigo-Adelaide	BBB+	\$20,000,000	4.72%	10.00%	\$22,406,077
✓	Hume Bank	BBB+	\$7,000,000	1.65%	10.00%	\$35,406,077
✓	AMP Bank	BBB	\$3,000,000	0.71%	10.00%	\$39,406,077
✓	Auswide Bank	BBB	\$13,000,000	3.07%	10.00%	\$29,406,077
✓	MyState Bank	BBB	\$5,000,000	1.18%	10.00%	\$37,406,077
✓	P&N Bank	BBB	\$39,000,000	9.20%	10.00%	\$3,406,077
			\$424,060,765	100.00%		

We welcomed Council's recent decision to re-establish a new deposit account with Bendigo-Adelaide Bank (BBB+), not only to diversify its banking counterparties and increase the overall returns of the portfolio, but also reduce the exposure to the Fossil Fuel industry.



Fossil Fuel Investments

What is Council's current exposure to institutions that fund fossil fuels?

Using the following link <http://www.marketforces.org.au/banks/compare>, based on the Council's investment portfolio balance as at 29/02/2024 (\$424.06m), we can roughly estimate that ~70% of the investments have some form of exposure.

Council's exposure is summarised as follows:

Counterparty	Credit Rating	Funding Fossil Fuel
NAB	AA-	Yes
NTTC	AA-	Yes
WBC	AA-	Yes
ICBC, Sydney	A	Yes
ING Bank Australia	A	Yes
Australian Military	BBB+	No
Australian Unity	BBB+	No
BankVIC	BBB+	No
BoQ	BBB+	No
Bendigo-Adelaide	BBB+	No
Hume Bank	BBB+	No
AMP Bank	BBB	Yes
Auswide	BBB	No
MyState Bank	BBB	No
P&N Bank	BBB	No

Source: <https://www.marketforces.org.au/info/compare-bank-table/>

Funding Fossil Fuel	Amount	Invested %	Wgt. Avg. Yield % p.a.
Yes	\$296,060,765	70%	2.79%
No	\$128,000,000	30%	4.20%
Total / Wgt. Avg.	\$424,060,765	100%	3.22%

Transition to investments without major exposure to fossil fuels

Council has not made a decision to divest from the current portfolio of investments which have exposure to fossil fuels. To do so would have unfavourable implications to the credit quality, rating and interest income forecasts.

However, where possible, and within the ministerial and policy guidelines, Council will continue to favour newly issued fossil fuel free investment products, providing it does not compromise the risk and return profile.

In time it is Councils intention to move to a more balanced portfolio which has less exposure to fossil fuels, providing it is prudent to do so.

**What would be implications on our portfolio credit rating?**

By adopting a free fossil fuel policy or an active divestment strategy, this would eliminate the major banks rated “AA-” as well as some other “A” rated banks (e.g. Macquarie and ING). Council would be left with a smaller sub-sector of banks to choose to invest with.

What would be risks and implications on Council’s portfolio performance?

Some implications include:

- High concentration risk – limiting Council to a selected number of banks;
- Increased credit/counterparty risk;
- May lead to a reduction in performance (e.g. most of the senior FRN issuances are with the higher rated ADIs);
- Underperformance compared to other Councils which could result in a significant loss of income generated – could be in excess of hundreds of thousands or millions of dollars per annum.

It may actually be contrary to Council’s primary objective to preserve capital as the investment portfolio’s risk would increase (all things being equal). Council may not be maximising its returns – this is one of the primary objectives written in the Investment Policy.



Credit Quality

The portfolio remains diversified from a credit ratings perspective. The portfolio is mainly directed to the investment grade ADIs (BBB- or higher). There is high capacity to invest in the higher rated ADIs (A or higher).

There is some capacity to invest with the “BBB” rated ADIs (~\$17m remaining as at the reporting date). From a ratings perspective, the “BBB” rated banks now generally dominate the number of ADIs issuing deposits within the investment grade space. There has been some signs of appetite growing in the wholesale deposit market as additional lower rated (“BBB” and unrated) ADIs have come to market to raise ‘new’ money.

Over coming years, we may start to see a more ‘normalised’ environment where the lower rated banks start to offer higher rates compared to the higher rated banks as the competition for deposits grow. As more of these banks become more competitive for funds, Council may look to allocate additional funds amongst this sector, particularly with those ADIs that are not lending to the Fossil Fuel industry i.e. the more ‘ethical’ banks.

If there are any attractive deposits being offered in the “BBB” rated sector, we will inform Council to take advantage and invest accordingly, but we note this is now approaching the upper threshold of 35% of the Policy limits. This may be revised upwards in the next policy review to give Council further options to reduce its overall exposure to the ‘unethical’ ADIs in the long-run.

All ratings categories are within the current Policy limits:

Compliant	Credit Rating	Invested (\$)	Invested (%)	Max. Limit (%)	Available (\$)
✓	AA Category	\$170,060,765	40.10%	100%	\$254,000,000
✓	A Category	\$123,000,000	29.01%	60%	\$131,436,459
✓	BBB Category	\$131,000,000	30.89%	35%	\$17,421,268
✓	Unrated ADIs	\$0	0.00%	5%	\$21,203,038
		\$424,060,765	100.00%		



Performance

Council's performance for the period ending February 2024 is summarised as follows:

Performance (Actual)	1 month	3 months	6 months	FYTD	1 year	2 years	3 years
Official Cash Rate	0.34%	1.07%	2.10%	2.80%	4.09%	2.94%	1.99%
AusBond Bank Bill Index	0.34%	1.09%	2.12%	2.88%	4.10%	2.92%	1.95%
Council's T/D Portfolio	0.26%	0.79%	1.54%	2.02%	2.86%	2.33%	2.12%
Council's Bond Portfolio	0.10%	0.30%	0.60%	0.80%	1.20%	1.20%	-
Council's Portfolio^	0.25%	0.76%	1.50%	1.96%	2.79%	2.28%	2.08%
Rel. Performance	-0.09%	-0.32%	-0.63%	-0.92%	-1.32%	-0.64%	0.13%

[^]Total portfolio performance excludes Council's cash account holdings.

Performance (% p.a.)	1 month	3 months	6 months	FYTD	1 year	2 years	3 years
Official Cash Rate	4.35%	4.35%	4.27%	4.22%	4.09%	2.94%	1.99%
AusBond Bank Bill Index	4.43%	4.43%	4.31%	4.34%	4.10%	2.92%	1.95%
Council's T/D Portfolio	3.29%	3.19%	3.12%	3.04%	2.86%	2.33%	2.12%
Council's Bond Portfolio	1.24%	1.21%	1.21%	1.20%	1.20%	1.20%	-
Council's Portfolio^	3.19%	3.10%	3.02%	2.95%	2.79%	2.28%	2.08%
Rel. Performance	-1.24%	-1.34%	-1.28%	-1.39%	-1.32%	-0.64%	0.13%

[^]Total portfolio performance excludes Council's cash account holdings.

As at February 2024, the total portfolio (excluding cash) provided a solid return of +0.25% (actual) or +3.19% p.a. (annualised), underperforming the benchmark AusBond Bank Bill Index return of +0.34% (actual) or +4.43% p.a. (annualised). The relative 'underperformance' over the past few years has been due to the unexpected aggressive rate hikes undertaken by the RBA since May 2022. Whilst this 'underperformance' may continue in the short-term, we do anticipate this to be fairly temporary with hopes that the RBA is approaching the peak of its rate hike cycle. Council should also remind itself it has consistently 'outperformed' over longer-term time periods as demonstrated by the longer-term returns of the overall investment portfolio (+3yr tenors).

We are pleased that PMHC remains amongst the best performing Councils in the state of NSW where deposits are concerned over longer-term periods. We have been pro-active in our advice about protecting interest income by strategically maintaining a slightly longer duration position. Council has reaped the benefits during the pandemic period (and historically). The portfolio should outperform by undertaking a similar strategy in the long-run.



Recommendations for Council

Term Deposits

As at February 2024, Council's **deposit** portfolio was yielding 3.23% p.a. (up 5bp from the end of the previous month), with a weighted average duration of ~1.13 years. Where possible, we recommend Council maintains this weighted average duration.

Please refer to the section below for further details on the Term Deposit market.

Securities

Primary (new) Senior **FRNs** (with maturities between 3-5 years) continue to be appealing (particularly for those investors with portfolios skewed towards fixed assets) and should be considered on a case by case scenario. Please refer to the section below for further details on the FRN market.

Council's Senior Fixed Bonds

During September 2021, Council placed parcels in NTTC (AA-) fixed bonds as follows:

Investment Date	Maturity Date	Principal	Rate % p.a. [^]	Remaining Term (Yrs)	Interest Paid
7/09/2021	15/12/2024	\$5,000,000	0.90%	0.79	Annually
14/09/2021	15/12/2025	\$5,000,000	1.10%	1.79	Annually
2/09/2021	15/12/2026	\$5,000,000	1.40%	2.79	Annually
7/09/2021	15/12/2026	\$5,000,000	1.40%	2.79	Annually
Totals / Wgt. Avg.		\$20,000,000	1.20%	2.04	

[^]Council received the full rebated commission of 0.25% (plus GST) on the face value of investment on all these parcels (currently totalling \$55,000).

We believe these investments were prudent at the time of investment, especially after the rate cut delivered in early November 2020 and the RBA's forward guidance on official interest rates (no rate rises 'until at least 2024').

The NTTC bonds are a 'retail' offering and not 'wholesale' issuances. Given the lack of liquidity and high penalty costs if they were to be sold/redeemed prior to the maturity date, they are considered to be a hold-to-maturity investment and will be marked at par value (\$100.00) throughout the term of investment.



Term Deposit Market Review

Current Term Deposits Rates

As at the end of February, we see value in the following:

Index	LT Credit Rating	Term	Rate % p.a.
ING	A	5 years	5.04%
BoQ	BBB+	5 years	5.00%
ING	A	2 years	4.95%
BoQ	BBB+	4 years	4.95%
ING	A	4 years	4.92%
Australian Unity	BBB+	2 years	4.90%
ING	A	3 years	4.87%
Suncorp	A+	2 years	4.85%
BoQ	BBB+	2 years	4.85%
Westpac	AA-	5 years	4.82%
Westpac	AA-	2 years	4.82%
NAB	AA-	2 years	4.75%

The above deposits are suitable for investors looking to maintain diversification and lock-in a slight premium compared to purely investing short-term.

For terms under 12 months, we believe the strongest value is currently being offered by the following ADIs (*we stress that rates are indicative, dependent on daily funding requirements and different for industry segments*):



Index	LT Credit Rating	Term	Rate % p.a.
NAB	AA-	5-8 months	5.10%
ING	A	12 months	5.08%
Suncorp	A+	6 months	5.08%
NAB	AA-	12 months	5.05%
Westpac	AA-	12 months	5.05%
Suncorp	A+	9 months	5.05%
BoQ	BBB+	9 months	5.05%
Hume Bank	BBB+	12 months	5.04%
Bendigo	BBB+	9 months	5.03%
BoQ	BBB+	6 months	5.00%

If Council does not require high levels of liquidity and can stagger a proportion of its investments across the longer term horizons (1-5 years), it will be rewarded over a longer-term cycle. Investing a spread of 12 months to 3 year horizons is likely to yield, on average, up to $\frac{1}{4}$ - $\frac{1}{2}$ % p.a. higher compared to those investors that entirely invest in short-dated deposits (under 6-9 months).

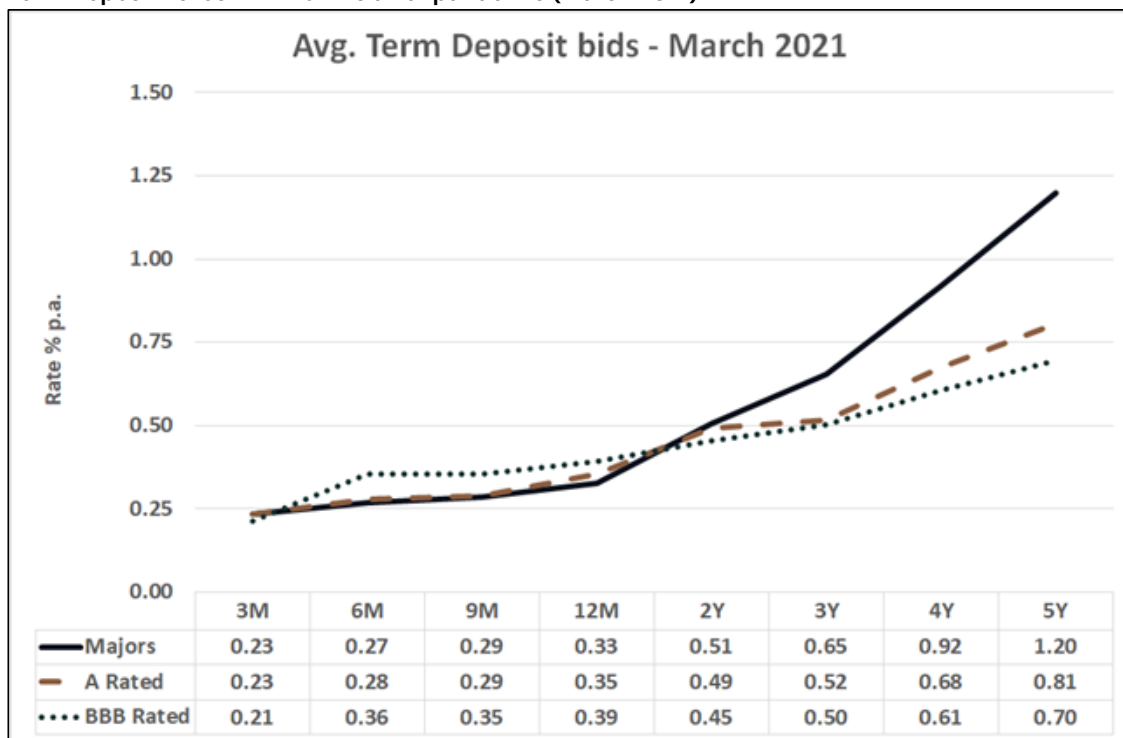
With a global economic slowdown and rate cuts being priced in coming years, investors should strongly consider and allocate some longer term surplus funds to undertake an insurance policy by investing across 2-5 year fixed deposits and locking in rates close to or above 4 $\frac{3}{4}$ -5% p.a. This will provide some income protection with central banks now likely to cut rates at some stage later this year.



Term Deposits Analysis

Pre-pandemic (March 2020), a 'normal' marketplace meant the lower rated ADIs (i.e. BBB category) were offering higher rates on term deposits compared to the higher rated ADIs (i.e. A or AA rated). But due to the cheap funding available provided by the RBA via their Term Funding Facility (TFF) during mid-2020, allowing the ADIs to borrow as low as 0.10% p.a. fixed for 3 years, those lower rated ADIs (BBB rated) did not require deposit funding from the wholesale deposit. Given the higher rated banks had more capacity to lend (as they have a greater pool of mortgage borrowers), they subsequently were offering higher deposit rates. In fact, some of the lower rated banks were not even offering deposit rates at all. As a result, most investors placed a higher proportion of their deposit investments with the higher rated (A or AA) ADIs over the past three years.

Term Deposit Rates – 12 months after pandemic (March 2021)



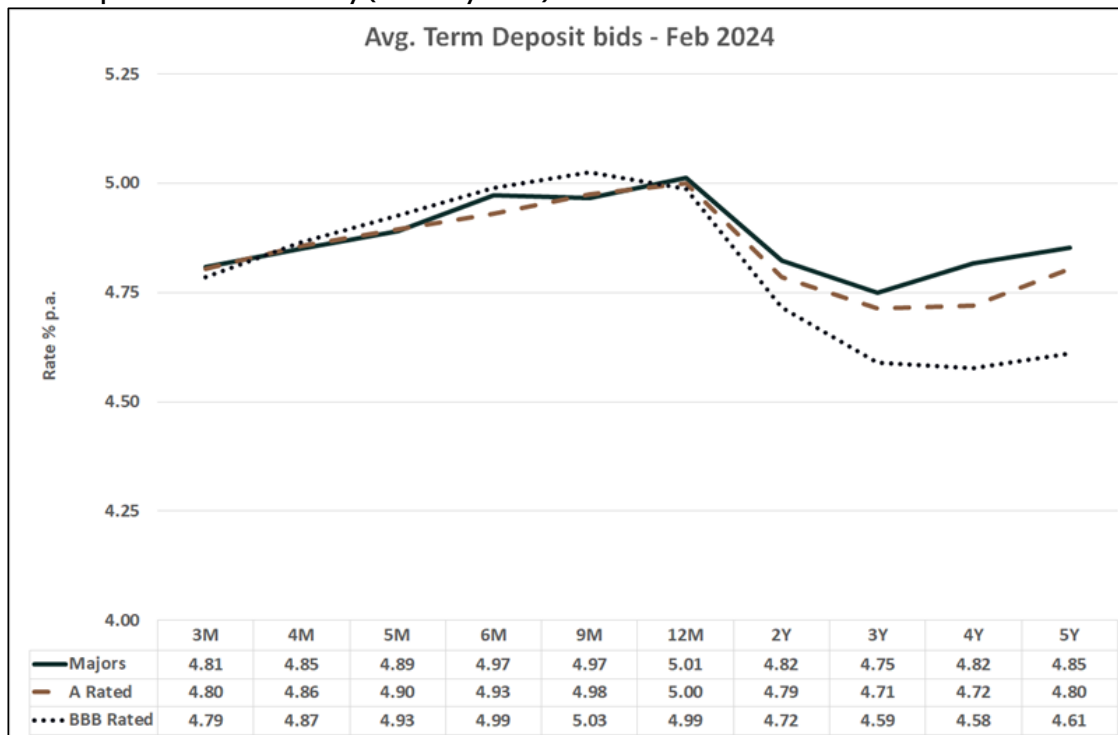
Source: Imperium Markets

The abnormal marketplace experienced during the pandemic is starting to reverse as the competition for deposits slowly increases. In recent months, we have started to periodically see some of the lower rated ADIs ("A" and "BBB" rated) offering slightly higher rates compared to the domestic major banks ("AA" rated) on different parts of the curve (i.e. pre-pandemic environment). Some of this has been attributed to lags in adjusting their deposit rates as some banks (mainly the lower rated ADIs) simply set their rates for the week.



Going forward, Council should have a larger opportunity to invest a higher proportion of its funds with the lower rated institutions (up to Policy limits), from which the majority are not lending to the Fossil Fuel industry. We are slowly seeing this trend emerge, although the past few months have been an exception, with the major banks repricing more rapidly to the movement in the bond market than their lower rated counterparts. This reversed somewhat over the past few months with the lower rated institutions (mainly "A" rated) lagging the major banks in dropping their rates:

Term Deposit Rates – Currently (February 2024)



Source: Imperium Markets

Regional & Unrated ADI Sector

Ratings agency S&P has commented that "*mergers remain compelling for mutual lenders*" in providing smaller lenders greater economies of scale and assisting them in being able to price competitively and will see "*the banking landscape will settle with a small number of larger mutual players*". S&P expects that consolidation to continue over the next two years.

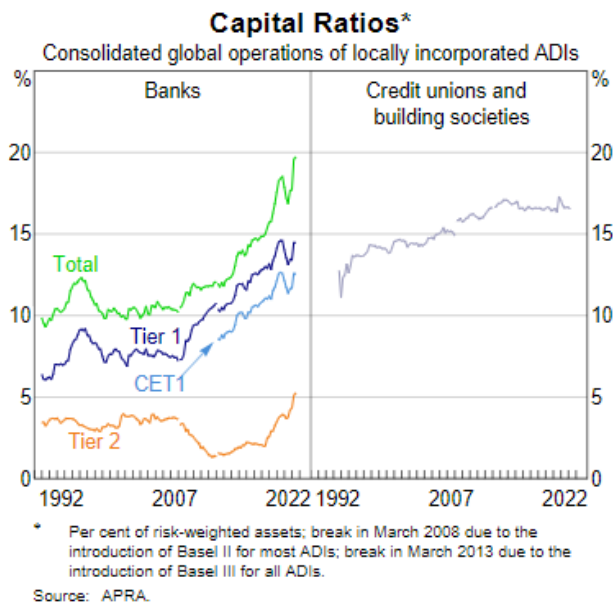
We remain supportive of the regional and unrated ADI sector (and have been even throughout the post-GFC period). They continue to remain solid, incorporate strong balance sheets, while exhibiting high levels of capital – typically, much higher compared to the higher rated ADIs. Some unrated ADIs have up to 25-40% more capital than the domestic major banks, and well above the Basel III requirements.



Overall, the lower rated ADIs (BBB and unrated) are generally now in a better financial position than they have been historically (see the Capital Ratio figure below). The financial regulator, APRA has noted that the Common Equity Tier 1 capital of Australian banks now exceeds a quarter of a trillion dollars. It has increased by \$110 billion, or more than 70%, over the past ten years. Over the same time, banks' assets have grown by 44%. Some of the extra capital is supporting growth in the banking system itself but clearly, there has been a strengthening in overall resilience and leverage in the system is lower.

We believe that deposit investments with the lower rated ADIs should be considered going forward, particularly when they offer 'above market' specials. Not only would it diversify the investment portfolio and reduce credit risk, it would also improve the portfolio's overall returns. The lower rated entities are generally deemed to be the more 'ethical' ADIs compared to the higher rated ADIs.

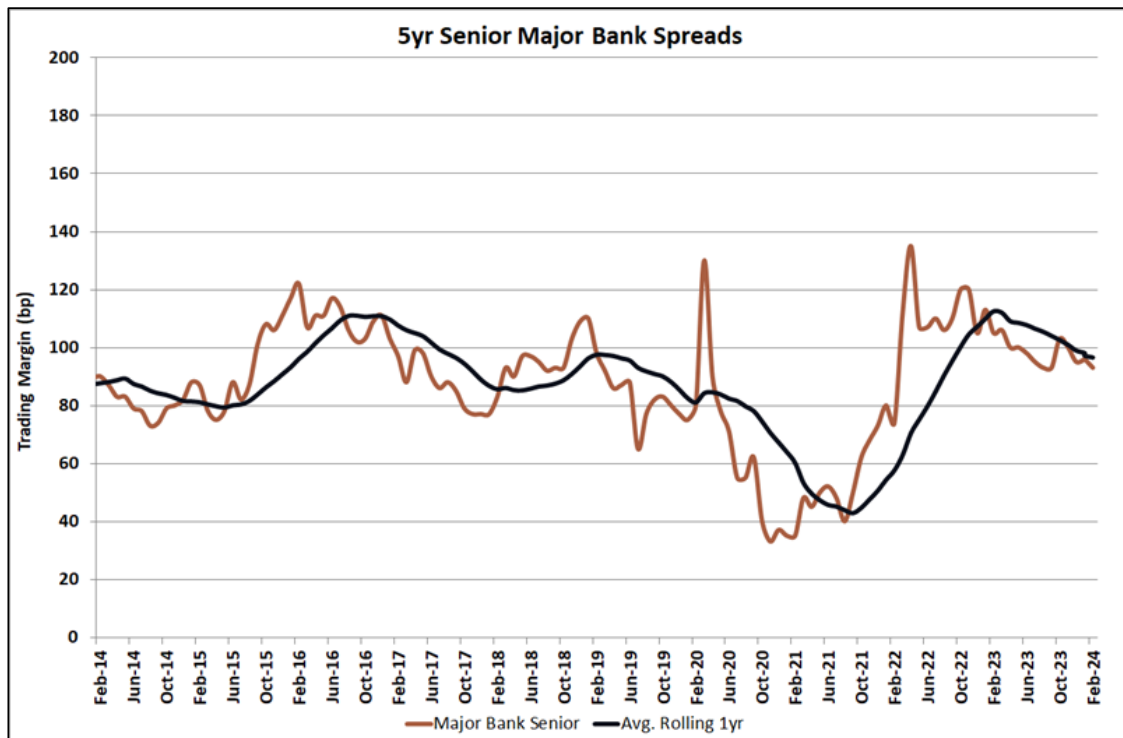
In the current environment of high regulation and scrutiny, all domestic (and international) ADIs continue to carry high levels of capital. There is minimal (if any) probability of any ADI defaulting on their deposits going forward – this was stress tested during the GFC and the pandemic period. APRA's mandate is to "protect depositors" and provide "financial stability".





Senior FRNs Market Review

Over February, amongst the senior major bank FRNs, physical credit securities tightened by around 3–7bp at the long-end of the curve. Major bank senior securities remain at fair value on a historical basis (5yr margins around +93bp level).



Source: IBS Capital

During the month, there were several new (primary) issuances including:

- Heritage (BBB) 3 year senior FRN at +160bp
- Newcastle Greater (BBB) 5 year senior FRN at +185bp
- Bank Australia (BBB) 4 year senior FRN at +170bp
- DBS Bank (AA-) 3 year senior security at +77bp
- Rabobank Australia Branch (A+) 3 & 5 year senior security at +87bp and +103bp respectively
- MUFG Bank Sydney Branch (A) 3 & 5 year senior FRN at +85bp and +99bp respectively
- Members Banking Group (RACQ Bank) (BBB+) 3 year senior FRN at +160bp
- OCBC Sydney Branch (AA-) 3 year senior FRN at +72bp



Amongst the “A” rated sector, the securities tightened by around 12-20bp at the longer-end of the curve, whilst the “BBB” rated sector widened by around 12bp at the 3 year part of the curve. Overall, credit securities are looking much more attractive given the widening of spreads over the past 2 years and as more primary issuances become available. FRNs will continue to play a role in investors’ portfolios mainly on the basis of their liquidity and the ability to roll down the curve and gross up returns over ensuing years (in a relatively stable credit environment).

Senior FRNs (ADIs)	29/02/2024	31/01/2024
“AA” rated – 5yrs	+93bp	+96bp
“AA” rated – 3yrs	+73bp	+80bp
“A” rated – 5yrs	+105bp	+125bp
“A” rated – 3yrs	+87bp	+99bp
“BBB” rated – 3yrs	+160bp	+148bp

Source: IBS Capital

We now generally recommend switches (‘benchmark’ issues only) into new primary issues, out of the following senior FRNs that are maturing:

- On or before early 2026 for the “AA” rated ADIs (domestic major banks);
- On or before early 2025 for the “A” rated ADIs; and
- Within 6-9 months for the “BBB” rated ADIs (consider case by case).

Investors holding onto the above senior FRNs (‘benchmark’ issues only) in their last few years are now generally holding sub optimal investments and are not maximising returns by foregoing realised capital gains. In the current challenging economic environment, any boost in overall returns should be locked in when it is advantageous to do so, particularly as switch opportunities become available.



Senior Fixed Bonds – ADIs (Secondary Market)

With global inflation still high by historical standards, this has seen a significant lift in longer-term bond yields over the past 2 years (valuations have fallen) as markets have reacted sharply.

This has resulted in some opportunities in the secondary market. We currently see value in the following fixed bond lines, with the majority now being marked at a significant discount to par (please note supply in the secondary market may be limited on any day):

ISIN	Issuer	Rating	Capital Structure	Maturity Date	~Remain. Term (yrs)	Fixed Coupon	Indicative Yield
AU3CB0278174	UBS	A+	Senior	26/02/2026	1.99	1.10%	5.01%
AU3CB0280030	BoQ	BBB+	Senior	06/05/2026	2.18	1.40%	5.16%
AU3CB0299337	Bendigo	BBB+	Senior	15/05/2026	2.21	4.70%	5.08%
AU3CB0296168	BoQ	BBB+	Senior	27/01/2027	2.91	4.70%	5.13%



Economic Commentary

International Market

Financial markets continued their rally in February largely reflective of the overall continued easing in inflation globally. Focus remains on when central banks will begin their interest rate cuts this year.

Across equity markets, the S&P 500 Index gained +5.17% over the month, whilst the NASDAQ surged +6.12%. Europe's main indices also experienced material gains, led by Italy's FTSE MIB (+7.34%), Germany's DAX (+4.58%), and France's CAC (+3.54%). UK's FTSE (-0.01%) was the exception, which was largely flat against the rally in global equity markets.

In the US, January CPI was +0.3% m/m vs +0.2% expected, with the core reading at +0.4% m/m (+2.8% y/y) vs +0.3% expected.

In Europe, the CPI was +2.8% y/y in January, down from +2.9% y/y recorded in December. Additionally, wage growth declined to +4.5% y/y in January (from +4.7% the previous month).

UK CPI data for January also came in lower than expected, where the headline rate held at +4.0% (expected +4.1%), as did core at +5.1% (versus +5.2% expected). UK Q4 GDP fell -0.3% in Q4 following the -0.1% contraction in Q3, resulting in a technical recession. The UK labour market data was stronger than expected, with the unemployment rate 0.2% lower than expected at 3.8% and wages inflation not falling as fast as expected.

Canadian CPI was +2.9% in January from a year ago, which was much lower than the expected +3.3%. Additionally, unemployment in Canada fell to 5.7% vs. 5.9% expected and employment was +37.5k vs. +15.0k expected.

Whilst in Japan, core CPI eased to +2.0%y/y in January compared with +2.3%y/y in December.

In China, the People's Bank of China lowered the five-year loan prime rate by 25bp to 3.95%. This surprise cut is aimed to revive China's property sector as it could improve affordability for buyers by lowering mortgage rates.

The MSCI World ex-Aus Index rose +4.22% for the month of February:

Index	1m	3m	1yr	3yr	5yr	10yr
S&P 500 Index	+5.17%	+11.57%	+28.36%	+10.17%	+12.85%	+10.61%
MSCI World ex-AUS	+4.22%	+10.43%	+23.37%	+7.12%	+10.01%	+7.31%
S&P ASX 200 Accum. Index	+0.79%	+9.39%	+10.64%	+9.32%	+8.61%	+7.95%

Source: S&P, MSCI



Domestic Market

According to the RBA February Board meeting minutes, the Board had considered to hike the cash rate by 25bp or to hold steady; however, it ultimately decided to hold the cash rate steady given recent signs inflation had moderated further. However, the minutes stated, *"it was not yet possible to rule in or out further increases in interest rates"* and it would take *"some time"* to have sufficient confidence inflation was on track.

The monthly consumer price index (CPI) fell -0.3% in January, leaving the annual rate unchanged at +3.4% y/y (which was lower than market expectations of +3.6% y/y). When excluding volatile items, the annual rise was +4.1%, down from +4.2% recorded in December.

The Wage Price Index (WPI) was +0.9% over the December 2023 quarter and +4.2% over calendar 2023 (the highest annual growth since the March 2009 quarter). The annual growth in the WPI exceeded forecasts and was driven by newly-implemented enterprise agreements in the public sector. Wages growth in the public sector rose by +4.3% y/y, outpacing the +4.2% y/y wages growth in the private sector.

The unemployment rate rose to 4.1% from 3.9% (consensus 4.0%), though unrounded it rose only by 0.1% to 4.0577%. Employment growth was flat at +0.5k vs. the +25.0k consensus, and hours worked fell sharply by -2.5% m/m. The participation rate also fell by 0.1% to 66.8% from 66.9% and underemployment rose by 0.1% to 6.6%.

Retail sales increased +1.1% m/m in January, which was lower than expectations of +1.6% m/m, but rebounded from the -2.7% recorded in December.

Dwelling approvals fell sharply in December by -9.5% m/m, driven by a sharp fall in the volatile non-house component (i.e. apartments; -25.3% m/m).

The December goods trade surplus fell slightly to \$10.96bn from \$11.8bn (consensus \$10.5bn). The largely on consensus print was driven by a partial rebound in imports (+4.8% m/m after last month's -8.4%; or \$1.7bn).

The Australian dollar slightly fell -0.84%, finishing the month at US65.19 cents (from US65.74 cents the previous month).

Credit Market

The global credit indices tightened over February as risk markets continued their rally. They are now back to their levels in early 2022 (prior to the rate hike cycle from most central banks):

Index	February 2024	January 2024
CDX North American 5yr CDS	52bp	55bp
iTraxx Europe 5yr CDS	55bp	60bp
iTraxx Australia 5yr CDS	64bp	68bp

Source: Markit



Fixed Interest Review

Benchmark Index Returns

Index	February 2024	January 2024
Bloomberg AusBond Bank Bill Index (0+YR)	+0.34%	+0.37%
Bloomberg AusBond Composite Bond Index (0+YR)	-0.30%	+0.21%
Bloomberg AusBond Credit FRN Index (0+YR)	+0.53%	+0.44%
Bloomberg AusBond Credit Index (0+YR)	+0.05%	+0.41%
Bloomberg AusBond Treasury Index (0+YR)	-0.36%	+0.16%
Bloomberg AusBond Inflation Gov't Index (0+YR)	-0.48%	-0.69%

Source: Bloomberg

Other Key Rates

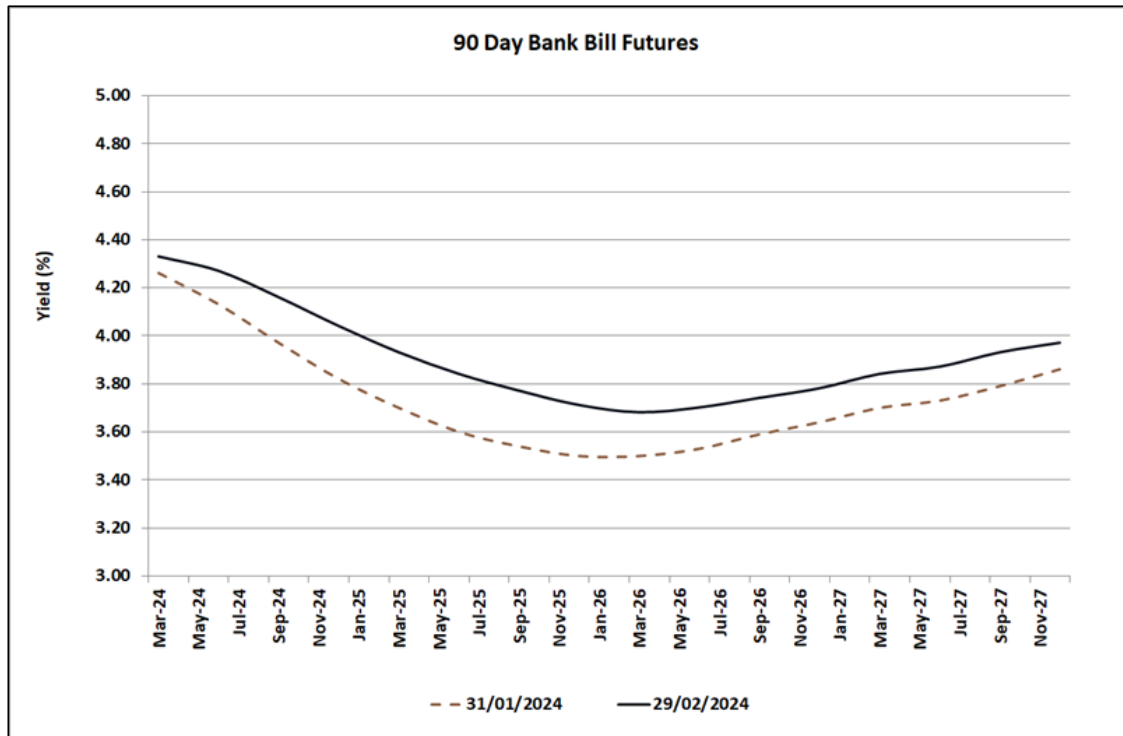
Index	February 2024	January 2024
RBA Official Cash Rate	4.35%	4.35%
90 Day (3 month) BBSW Rate	4.34%	4.35%
3yr Australian Government Bonds	3.71%	3.56%
10yr Australian Government Bonds	4.14%	4.02%
US Fed Funds Rate	5.25%-5.50%	5.25%-5.50%
2yr US Treasury Bonds	4.64%	4.27%
10yr US Treasury Bonds	4.25%	3.99%

Source: RBA, ASX, US Department of Treasury



90 Day Bill Futures

Bill futures increased across the board this month, following the movement in the global bond market. The focus from the market remains on when the first rate cut will be delivered:



Source: ASX

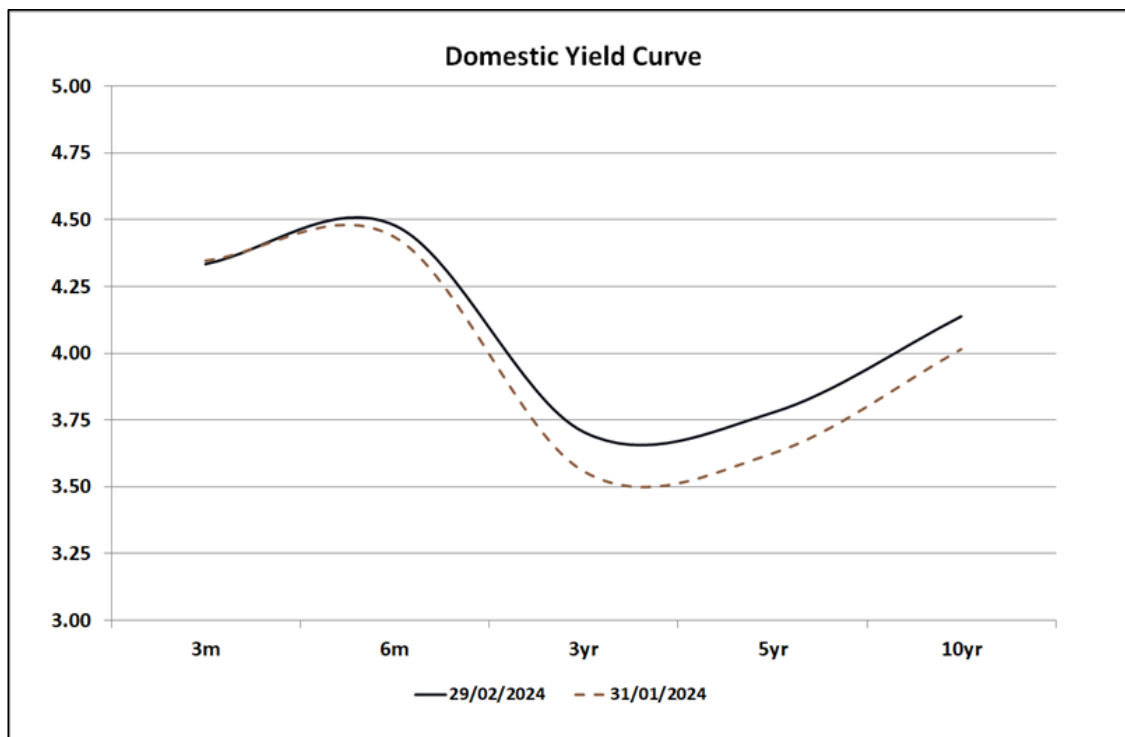


Fixed Interest Outlook

There is uncertainty when central banks will start to cut official rates in 2024. The latest minutes of the US Federal Reserve's latest meeting stated significant progress has been made to date on inflation; however, policymakers noted "*restrictive*" policy has more work to do. This suggests the Fed is therefore in no rush to cut rates as it wants to see more evidence inflation is firmly on a downward path to the 2% target before lowering interest rates. Financial markets are currently pricing in around 80bp of US Fed rate cuts in 2024, with the first cut expected at the Fed's July meeting.

Domestically, the RBA currently remains on a mild tightening bias and appears to be comfortable with the current level of the cash rate being restrictive enough. The RBA February Board meeting minutes stated, "*it was not yet possible to rule in or out further increases in interest rates*" and it would take "*some time*" to have sufficient confidence inflation was on track. The Board therefore wants to keep the optionality in the event of future shocks. Nevertheless, financial markets anticipate the RBA to cut rates by year end.

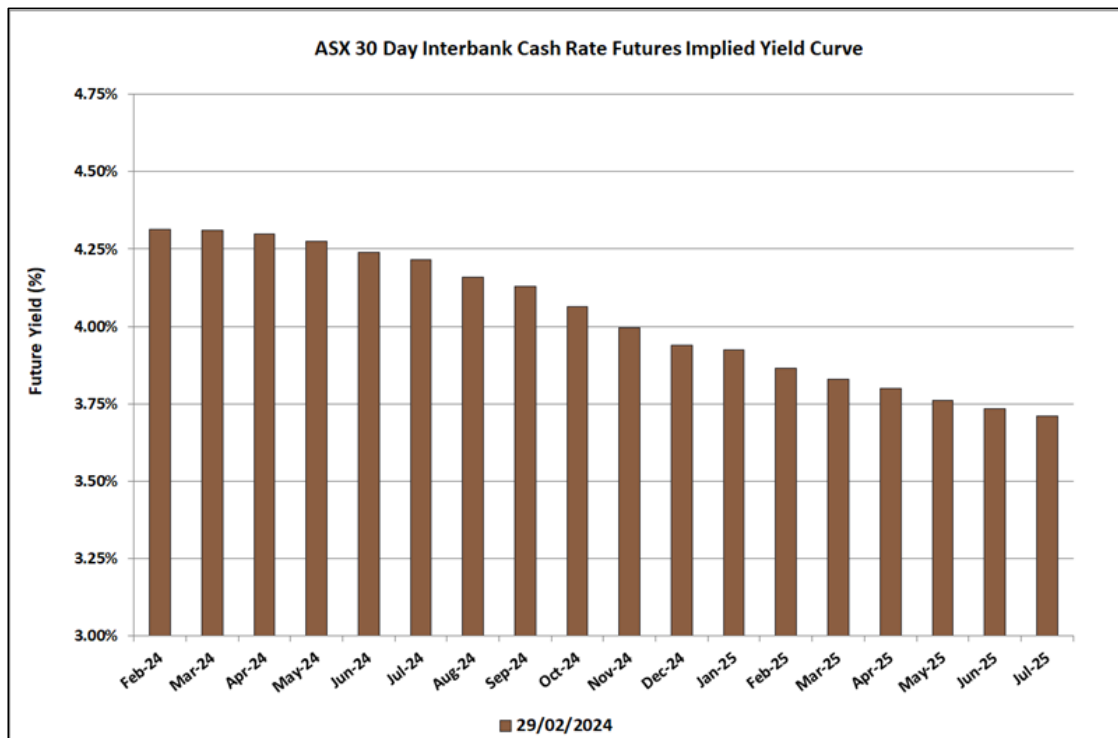
Over the month, longer-term yields rose up to 15bp at the very long end of the curve:



Source: ASX, RBA



The consensus from the broader market is that we have reached the peak of the interest rate cycle, with financial markets pricing in the first rate cut by October 2024:



Source: ASX

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Investment Report

01/02/2024 to 29/02/2024



Portfolio Valuation as at 29/02/2024

Issuer	Rating	Type	Alloc	Interest	Purchase	Maturity	Rate	Capital Value	Face Value	Accrued	Accrued MTD
P&N Bank	BBB	TD	GENERAL	Annual	02/03/2022	04/03/2024	1.7000	4,000,000.00	4,000,000.00	68,000.00	5,402.74
Auswide Bank	BBB	TD	GENERAL	At Maturity	02/03/2020	04/03/2024	1.7500	3,000,000.00	3,000,000.00	210,000.00	4,171.23
ING Direct	A	TD	GENERAL	At Maturity	10/03/2023	11/03/2024	4.9800	5,000,000.00	5,000,000.00	243,542.47	19,783.56
ING Direct	A	TD	GENERAL	Annual	23/03/2023	25/03/2024	4.6000	4,000,000.00	4,000,000.00	173,413.70	14,619.18
Australian Unity Bank	BBB+	TD	GENERAL	Annual	23/03/2023	25/03/2024	4.6600	4,000,000.00	4,000,000.00	175,675.62	14,809.86
Auswide Bank	BBB	TD	GENERAL	Annual	04/04/2023	04/04/2024	4.9000	3,000,000.00	3,000,000.00	133,709.59	11,679.45
NAB	AA-	TD	GENERAL	Annual	04/04/2022	04/04/2024	2.6000	4,000,000.00	4,000,000.00	94,597.26	8,263.01
BOQ	BBB+	TD	GENERAL	At Maturity	16/06/2023	16/04/2024	5.6000	5,000,000.00	5,000,000.00	198,684.93	22,246.58
Hume Bank	BBB+	TD	GENERAL	Annual	28/04/2023	29/04/2024	4.8000	4,000,000.00	4,000,000.00	162,016.44	15,254.79
Bendigo and Adelaide	BBB+	TD	GENERAL	At Maturity	13/06/2023	13/05/2024	5.4500	5,000,000.00	5,000,000.00	195,602.74	21,650.68
BOQ	BBB+	TD	GENERAL	At Maturity	16/06/2023	16/05/2024	5.6000	5,000,000.00	5,000,000.00	198,684.93	22,246.58
Bendigo and Adelaide	BBB+	TD	GENERAL	At Maturity	19/06/2023	20/05/2024	5.6000	5,000,000.00	5,000,000.00	196,383.56	22,246.58
Australian Military Bank	BBB+	TD	GENERAL	Annual	25/05/2023	27/05/2024	5.0600	4,000,000.00	4,000,000.00	155,820.27	16,081.10
Australian Unity Bank	BBB+	TD	GENERAL	Annual	25/05/2023	27/05/2024	5.0600	4,000,000.00	4,000,000.00	155,820.27	16,081.10
Bendigo and Adelaide	BBB+	TD	GENERAL	At Maturity	13/06/2023	13/06/2024	5.4600	5,000,000.00	5,000,000.00	195,961.64	21,690.41
Australian Unity Bank	BBB+	TD	GENERAL	At Maturity	16/06/2023	17/06/2024	5.6100	2,000,000.00	2,000,000.00	79,615.89	8,914.52
BOQ	BBB+	TD	GENERAL	Annual	18/06/2020	18/06/2024	1.4500	3,000,000.00	3,000,000.00	30,509.59	3,456.16
Bendigo and Adelaide	BBB+	TD	GENERAL	At Maturity	19/06/2023	19/06/2024	5.6000	5,000,000.00	5,000,000.00	196,383.56	22,246.58



Issuer	Rating	Type	Alloc	Interest	Purchase	Maturity	Rate	Capital Value	Face Value	Accrued	Accrued MTD
NAB	AA-	TD	GENERAL	At Maturity	23/06/2023	24/06/2024	5.6000	5,000,000.00	5,000,000.00	193,315.07	22,246.58
ING Direct	A	TD	GENERAL	Annual	23/06/2020	24/06/2024	1.2500	3,000,000.00	3,000,000.00	25,890.41	2,979.45
BOQ	BBB+	TD	GENERAL	Annual	11/08/2021	12/08/2024	0.7900	2,000,000.00	2,000,000.00	8,787.40	1,255.34
Westpac	AA-	TD	GENERAL	Quarterly	11/08/2021	12/08/2024	0.7700	3,000,000.00	3,000,000.00	1,139.18	1,139.18
ICBC Sydney Branch	A	TD	GENERAL	Annual	16/08/2023	16/08/2024	5.4000	5,000,000.00	5,000,000.00	146,465.75	21,452.05
Australian Military Bank	BBB+	TD	GENERAL	Annual	19/08/2021	19/08/2024	0.7200	3,000,000.00	3,000,000.00	11,421.37	1,716.16
Westpac	AA-	TD	GENERAL	Quarterly	17/08/2021	19/08/2024	0.7200	2,000,000.00	2,000,000.00	433.97	433.97
Westpac	AA-	TD	LOCAL BRANCH	At Maturity	21/08/2023	21/08/2024	4.2500	20,000.00	20,000.00	449.45	67.53
P&N Bank	BBB	TD	GENERAL	Annual	13/09/2022	13/09/2024	4.4500	6,000,000.00	6,000,000.00	124,356.16	21,213.70
ICBC Sydney Branch	A	TD	GENERAL	Annual	14/09/2022	16/09/2024	4.5500	5,000,000.00	5,000,000.00	105,335.62	18,075.34
NAB	AA-	TD	GENERAL	Annual	19/09/2023	19/09/2024	5.2800	5,000,000.00	5,000,000.00	118,619.18	20,975.34
BOQ	BBB+	TD	GENERAL	Annual	27/09/2019	27/09/2024	2.0000	2,000,000.00	2,000,000.00	17,095.89	3,178.08
Westpac	AA-	TD	GENERAL	Quarterly	10/10/2022	10/10/2024	4.5800	4,000,000.00	4,000,000.00	25,597.81	14,555.62
AMP Bank	BBB	TD	GENERAL	Annual	12/10/2021	11/10/2024	1.0000	3,000,000.00	3,000,000.00	11,589.04	2,383.56
NAB	AA-	TD	GENERAL	Annual	16/10/2020	16/10/2024	0.8000	5,000,000.00	5,000,000.00	15,013.70	3,178.08
ICBC Sydney Branch	A	TD	GENERAL	Annual	03/11/2021	04/11/2024	1.6500	3,000,000.00	3,000,000.00	16,138.36	3,932.88
Westpac	AA-	TD	LOCAL BRANCH	At Maturity	07/11/2023	07/11/2024	4.7500	56,760.00	56,760.00	849.46	214.21
ICBC Sydney Branch	A	TD	GENERAL	Annual	07/11/2022	07/11/2024	4.8500	5,000,000.00	5,000,000.00	76,404.11	19,267.12
Westpac	AA-	TD	GENERAL	Quarterly	09/11/2021	11/11/2024	1.4500	1,000,000.00	1,000,000.00	834.25	834.25
Westpac	AA-	TD	GENERAL	Quarterly	16/11/2021	18/11/2024	1.6000	4,000,000.00	4,000,000.00	2,454.79	2,454.79



Issuer	Rating	Type	Alloc	Interest	Purchase	Maturity	Rate	Capital Value	Face Value	Accrued	Accrued MTD
NAB	AA-	TD	GENERAL	Annual	18/11/2020	18/11/2024	0.7000	5,000,000.00	5,000,000.00	9,780.82	2,780.82
Westpac	AA-	TD	GENERAL	Quarterly	29/11/2021	29/11/2024	1.6000	5,000,000.00	5,000,000.00	219.18	219.18
Westpac	AA-	TD	GENERAL	Quarterly	02/12/2021	02/12/2024	1.6200	2,000,000.00	2,000,000.00	7,811.51	2,574.25
BankVic	BBB+	TD	GENERAL	Annual	05/12/2023	05/12/2024	5.4500	5,000,000.00	5,000,000.00	64,952.05	21,650.68
ICBC Sydney Branch	A	TD	GENERAL	Annual	09/12/2021	09/12/2024	1.9200	5,000,000.00	5,000,000.00	21,304.11	7,627.40
Northern Territory Treasury	AA-	BOND	GENERAL	Semi-Annual	07/09/2021	16/12/2024	0.9000	5,000,000.00	5,000,000.00	9,493.15	3,575.34
NAB	AA-	TD	GENERAL	Annual	29/01/2021	29/01/2025	0.7200	4,000,000.00	4,000,000.00	2,524.93	2,288.22
Westpac	AA-	TD	GENERAL	Quarterly	02/02/2022	03/02/2025	1.8200	2,500,000.00	2,500,000.00	3,490.41	3,490.41
Westpac	AA-	TD	GENERAL	Quarterly	10/02/2023	10/02/2025	4.8500	5,000,000.00	5,000,000.00	11,958.90	11,958.90
ING Direct	A	TD	GENERAL	Annual	17/02/2023	17/02/2025	4.9400	5,000,000.00	5,000,000.00	7,443.84	7,443.84
P&N Bank	BBB	TD	GENERAL	Annual	15/02/2022	17/02/2025	2.3700	5,000,000.00	5,000,000.00	4,869.86	4,869.86
ING Direct	A	TD	GENERAL	Annual	24/02/2023	24/02/2025	5.0900	3,000,000.00	3,000,000.00	1,673.42	1,673.42
P&N Bank	BBB	TD	GENERAL	Annual	22/02/2022	24/02/2025	2.0500	2,000,000.00	2,000,000.00	898.63	898.63
MyState Bank	BBB	TD	GENERAL	Annual	28/02/2022	28/02/2025	2.2500	5,000,000.00	5,000,000.00	616.44	616.44
ICBC Sydney Branch	A	TD	GENERAL	Annual	02/03/2022	03/03/2025	2.3000	4,000,000.00	4,000,000.00	92,000.00	7,309.59
NAB	AA-	TD	GENERAL	Annual	02/03/2021	03/03/2025	0.9500	4,000,000.00	4,000,000.00	38,000.00	3,019.18
ING Direct	A	TD	GENERAL	Annual	10/03/2023	10/03/2025	5.1000	3,000,000.00	3,000,000.00	149,646.58	12,156.16
ING Direct	A	TD	GENERAL	Annual	10/03/2023	10/03/2025	5.1000	4,000,000.00	4,000,000.00	199,528.77	16,208.22
P&N Bank	BBB	TD	GENERAL	Annual	15/03/2022	17/03/2025	2.4600	3,000,000.00	3,000,000.00	71,171.51	5,863.56
ING Direct	A	TD	GENERAL	Annual	23/03/2023	24/03/2025	4.5500	4,000,000.00	4,000,000.00	171,528.77	14,460.27



Issuer	Rating	Type	Alloc	Interest	Purchase	Maturity	Rate	Capital Value	Face Value	Accrued	Accrued MTD
P&N Bank	BBB	TD	GENERAL	Annual	28/03/2022	28/03/2025	2.9000	5,000,000.00	5,000,000.00	134,671.23	11,520.55
Auswide Bank	BBB	TD	GENERAL	Annual	04/04/2023	04/04/2025	4.9000	4,000,000.00	4,000,000.00	178,279.45	15,572.60
Hume Bank	BBB+	TD	GENERAL	Annual	28/04/2023	28/04/2025	4.7000	3,000,000.00	3,000,000.00	118,980.82	11,202.74
ICBC Sydney Branch	A	TD	GENERAL	Annual	18/06/2020	18/06/2025	1.7500	2,000,000.00	2,000,000.00	24,547.95	2,780.82
NAB	AA-	TD	GENERAL	Annual	26/07/2021	28/07/2025	1.0000	5,000,000.00	5,000,000.00	30,000.00	3,972.60
ING Direct	A	TD	GENERAL	Annual	16/08/2023	18/08/2025	5.2100	5,000,000.00	5,000,000.00	141,312.33	20,697.26
ICBC Sydney Branch	A	TD	GENERAL	Annual	16/08/2022	18/08/2025	4.4200	4,000,000.00	4,000,000.00	95,907.95	14,047.12
ICBC Sydney Branch	A	TD	GENERAL	Annual	02/09/2021	02/09/2025	1.2000	5,000,000.00	5,000,000.00	29,424.66	4,767.12
ING Direct	A	TD	GENERAL	Annual	05/09/2023	05/09/2025	5.0500	5,000,000.00	5,000,000.00	123,136.99	20,061.64
ING Direct	A	TD	GENERAL	Annual	12/09/2023	12/09/2025	5.0000	5,000,000.00	5,000,000.00	117,123.29	19,863.01
P&N Bank	BBB	TD	GENERAL	Annual	13/09/2022	15/09/2025	4.6500	4,000,000.00	4,000,000.00	86,630.14	14,778.08
NAB	AA-	TD	GENERAL	Annual	19/09/2023	19/09/2025	5.0800	5,000,000.00	5,000,000.00	114,126.03	20,180.82
P&N Bank	BBB	TD	GENERAL	Annual	19/09/2022	19/09/2025	4.6500	5,000,000.00	5,000,000.00	104,465.75	18,472.60
ICBC Sydney Branch	A	TD	GENERAL	Annual	10/10/2022	10/10/2025	4.8400	3,000,000.00	3,000,000.00	56,886.58	11,536.44
ICBC Sydney Branch	A	TD	GENERAL	Annual	16/10/2020	16/10/2025	1.2000	5,000,000.00	5,000,000.00	22,520.55	4,767.12
ICBC Sydney Branch	A	TD	GENERAL	Annual	17/11/2020	17/11/2025	1.3000	6,500,000.00	6,500,000.00	24,308.22	6,713.70
NAB	AA-	TD	GENERAL	Annual	17/11/2020	17/11/2025	0.8500	3,500,000.00	3,500,000.00	8,558.22	2,363.70
ICBC Sydney Branch	A	TD	GENERAL	Annual	03/12/2020	03/12/2025	1.2000	5,000,000.00	5,000,000.00	14,465.75	4,767.12
BankVic	BBB+	TD	GENERAL	Annual	05/12/2023	05/12/2025	5.3500	5,000,000.00	5,000,000.00	63,760.27	21,253.42
P&N Bank	BBB	TD	GENERAL	Annual	05/12/2022	05/12/2025	4.6500	5,000,000.00	5,000,000.00	55,417.81	18,472.60



Issuer	Rating	Type	Alloc	Interest	Purchase	Maturity	Rate	Capital Value	Face Value	Accrued	Accrued MTD
ICBC Sydney Branch	A	TD	GENERAL	Annual	07/12/2020	08/12/2025	1.2000	5,000,000.00	5,000,000.00	13,972.60	4,767.12
NAB	AA-	TD	GENERAL	Annual	07/12/2020	08/12/2025	0.9000	5,000,000.00	5,000,000.00	10,479.45	3,575.34
Northern Territory Treasury	AA-	BOND	GENERAL	Semi-Annual	14/09/2021	15/12/2025	1.1000	5,000,000.00	5,000,000.00	11,602.74	4,369.86
NAB	AA-	TD	GENERAL	Annual	29/01/2021	29/01/2026	0.9100	4,000,000.00	4,000,000.00	3,191.23	2,892.05
NAB	AA-	TD	GENERAL	Annual	02/03/2021	02/03/2026	1.2100	4,000,000.00	4,000,000.00	48,400.00	3,845.48
Westpac	AA-	TD	GENERAL	Quarterly	09/03/2021	09/03/2026	1.2500	5,000,000.00	5,000,000.00	13,869.86	4,965.75
NAB	AA-	TD	GENERAL	Annual	16/03/2021	16/03/2026	1.2500	5,000,000.00	5,000,000.00	60,102.74	4,965.75
Auswide Bank	BBB	TD	GENERAL	Annual	04/04/2023	07/04/2026	4.9000	3,000,000.00	3,000,000.00	133,709.59	11,679.45
NAB	AA-	TD	GENERAL	Annual	26/05/2021	26/05/2026	1.2500	5,000,000.00	5,000,000.00	47,945.21	4,965.75
ICBC Sydney Branch	A	TD	GENERAL	Annual	02/06/2021	02/06/2026	1.4000	2,500,000.00	2,500,000.00	26,178.08	2,780.82
NAB	AA-	TD	GENERAL	Annual	02/06/2021	02/06/2026	1.3000	2,500,000.00	2,500,000.00	24,308.22	2,582.19
Westpac	AA-	TD	GENERAL	Quarterly	23/06/2021	23/06/2026	1.3200	5,000,000.00	5,000,000.00	11,753.42	5,243.84
Westpac	AA-	TD	GENERAL	Quarterly	23/06/2021	23/06/2026	1.3200	5,000,000.00	5,000,000.00	11,753.42	5,243.84
NAB	AA-	TD	GENERAL	Annual	26/07/2021	27/07/2026	1.2000	5,000,000.00	5,000,000.00	36,000.00	4,767.12
ICBC Sydney Branch	A	TD	GENERAL	Annual	28/07/2021	28/07/2026	1.3200	2,000,000.00	2,000,000.00	15,695.34	2,097.53
ING Direct	A	TD	GENERAL	Annual	05/09/2023	07/09/2026	5.0000	5,000,000.00	5,000,000.00	121,917.81	19,863.01
NAB	AA-	TD	GENERAL	Annual	23/09/2021	23/09/2026	1.2000	5,000,000.00	5,000,000.00	25,972.60	4,767.12
Northern Territory Treasury	AA-	BOND	GENERAL	Semi-Annual	07/09/2021	15/12/2026	1.4000	5,000,000.00	5,000,000.00	14,767.12	5,561.64
Northern Territory Treasury	AA-	BOND	GENERAL	Semi-Annual	02/09/2021	15/12/2026	1.4000	5,000,000.00	5,000,000.00	14,767.12	5,561.64
ING Direct	A	TD	GENERAL	Annual	28/02/2024	28/02/2029	5.1300	5,000,000.00	5,000,000.00	1,405.48	1,405.48



Issuer	Rating	Type	Alloc	Interest	Purchase	Maturity	Rate	Capital Value	Face Value	Accrued	Accrued MTD
Westpac	AA-	CASH	GENERAL	Monthly	29/02/2024	29/02/2024	4.6000	25,484,005.27	25,484,005.27	52,631.01	52,631.01
TOTALS								424,060,765.27	424,060,765.27	6,880,473.34	969,404.67

Loan Repayments for Financial Year 2023/2024

Loan #	Purpose	Year Drawdown	Term of Loan	Interest Rate	Original Balance	Outstanding Balance as at 01/07/2023	Repayments due for 6mths ending 31/12/2023		Repayments due for 6mths ending 30/06/2024	
							Principal	Interest	Principal	Interest
2005.5	Glasshouse	2005	20yrs	6.030%	\$3,500,000	\$564,068	\$134,799	\$17,053	\$138,733	\$13,120
2007.2	Glasshouse	2007	20yrs	6.270%	\$5,435,954	\$1,490,793	\$193,628	\$46,704	\$199,699	\$40,633
2007.3	Glasshouse	2007	20yrs	6.270%	\$10,873,801	\$2,980,636	\$387,941	\$93,092	\$399,384	\$81,648
2015.1	Hastings River Drive (LIRS)	2015	10yrs	3.780%	\$5,600,000	\$1,293,712	\$314,402	\$24,451	\$320,344	\$18,509
2015.2	General - Roadworks	2015	10yrs	3.780%	\$800,000	\$184,816	\$44,915	\$3,493	\$45,763	\$2,644
2015.3	General - Stormwater Remediation	2015	10yrs	3.780%	\$200,000	\$46,204	\$11,229	\$873	\$11,441	\$661
2015.5	Stingray Creek Bridge (LIRS)	2015	10yrs	3.780%	\$8,600,000	\$1,986,771	\$482,831	\$37,550	\$491,957	\$28,424
2016.1	Waste Management - Kew Transfer Stn	2016	10yrs	3.440%	\$1,500,000	\$504,991	\$80,676	\$8,614	\$81,973	\$7,318
2016.6 LR	Glasshouse	2016	8yrs	3.270%	\$11,035,000	\$2,175,400	\$713,610	\$35,275	\$724,920	\$23,966
2016.8 LR	Stormwater	2016	10yrs	3.270%	\$1,730,000	\$582,424	\$93,047	\$9,935	\$94,542	\$8,440
2017.1	Town Centre Master Plan	2017	10yrs	3.510%	\$3,425,000	\$1,514,353	\$177,635	\$26,941	\$181,181	\$23,395
2018.1	Bridge Replacement	2018	10yrs	3.930%	\$3,350,000	\$1,837,493	\$167,437	\$36,799	\$171,510	\$32,727
2018.2	Stormwater Renewal	2018	10yrs	3.930%	\$1,000,000	\$548,505	\$49,981	\$10,985	\$51,197	\$9,769
2018.3	Footpath Construction	2018	10yrs	3.930%	\$500,000	\$274,253	\$24,991	\$5,492	\$25,598	\$4,885
2020.2	Roadworks	2020	10yrs	2.120%	\$2,252,500	\$1,625,929	\$108,497	\$17,093	\$109,197	\$16,393
2020.3	Natural Resource - Various	2020	10yrs	2.120%	\$147,500	\$106,470	\$7,105	\$1,119	\$7,151	\$1,073
2021.1	Regional Sporting Complex Construction	2021	10yrs	2.150%	\$1,500,000	\$1,225,099	\$70,582	\$13,170	\$71,341	\$12,411
2021.2	Timber Brides Renewals and Repairs	2021	10yrs	2.150%	\$1,200,000	\$980,044	\$56,161	\$10,860	\$57,151	\$9,871
2023.1	Purchase Tuffins Lane	2023	10yrs	6.187%	\$1,375,000	\$1,375,000	\$68,750	\$39,960	\$68,750	\$40,296
2023.2	Airport Parallel Taxiway	2023	10yrs	6.187%	\$3,620,000	\$3,620,000	\$181,000	\$105,204	\$181,000	\$106,089
Totals					\$67,644,755	\$24,916,961	\$3,369,216	\$544,665	\$3,432,830	\$482,273

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
Grants & Other Funding												
To recognise new grant funding for Koala Habitat Mapping.												
Description:		Grant funding from Department of Planning and Environment.										
Natural Resources	42351	Koala Habitat Mapping	Operating	Community Planning & Environment	0	45,000	0	300,000	-255,000	Grant	Materials and Contracts	0
Natural Resources	19231	Operating Grants	Operating		-400,000	-1,373,733	-362,535	-1,628,733	255,000	Grant	Grants and Contributions	0
To bring to account grant funding awarded to Council for the Regional Youth Holiday Break Program, "Skate Your Place".												
Description:		Grant funding from Department of Regional NSW.										
Community Activation	42443	Youth Holiday Break Program - Autumn	Operating	Community Planning & Environment	0	0	0	7,000	-7,000	Grant	Materials and Contracts	0
Community Activation	19151	Operating Grants	Operating		0	-53,734	-71,305	-60,734	7,000	Grant	Grants and Contributions	0
New grant funding brought to account for the 2024 NSW Seniors Festival, "Make a Move in Seniors Week".												
Description:		Grant funding from Department of Communities and Justice.										
Community Activation	42445	Make a Move in Seniors Week	Operating	Community Planning & Environment	0	0	3,654	7,000	-7,000	Grant	Materials and Contracts	0
Community Activation	19151	Operating Grants	Operating		0	-60,734	-71,305	-67,734	7,000	Grant	Grants and Contributions	0
To recognise insurance recoveries relating to insurance matter.												
Description:		Income received from third party insurer.										
Livable Communities	42447	First Nations Installations/Workshops	Operating	Community Planning & Environment	0	0	0	6,000	-6,000	Revenue	Materials and Contracts	0
Livable Communities	10230	Insurance Settlement Recoveries	Operating		0	0	0	-6,000	6,000	Revenue	Grants and Contributions	0
To bring to account grant funding awarded to Council under Phase 4 of the Local Roads Community Infrastructure Program.												
Description:		Grant funding from Department of Infrastructure, Transport, Regional Development, Communications and the Arts.										
Transport & Traffic	41465	Road Resealing Works	Capital	Community Infrastructure	5,475,300	5,114,137	3,094,006	6,167,771	-1,053,634	Loan/Revenue/ Grant	Purchase of Assets	0
Transport & Traffic	19342	Capital Grants	Capital		-43,187,959	-49,136,535	-12,722,828	-50,190,169	1,053,634	Grant	Grants and Contributions	0

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
To bring to account grant funding for 8 Bridges under the Fixing Country Bridges program.												
Description:		Grant funding from Transport for NSW.										
Transport & Traffic	42209	Crowe Roods Bridge Upgrade - Bellangary Road, Mortons Creek	Capital	Community Infrastructure	173,400	297,375	650,312	650,312	-352,937	Grant	Purchase of Assets	0
Transport & Traffic	42146	Donkins Flat Bridge Replacement, Comboyne	Capital		150,000	402,911	652,076	652,076	-249,165	Grant	Purchase of Assets	0
Transport & Traffic	42147	Old School Road Bridge Replacement, Herrons Creek	Capital		378,000	74,721	276,703	276,703	-201,982	Grant	Purchase of Assets	0
Transport & Traffic	42214	Culvert - Thone River Road, Byabarra	Capital		86,700	230,243	429,463	429,463	-199,220	Grant	Purchase of Assets	0
Transport & Traffic	42216	Tower Road Bridge Upgrade - Tower Road, Pembroke	Capital		239,700	418,885	334,790	334,790	84,095	Grant	Purchase of Assets	0
Transport & Traffic	42215	Culvert - Farrawells Road, Telegraph Point	Capital		220,150	175,659	501,660	501,660	-326,001	Grant	Purchase of Assets	0
Transport & Traffic	42218	Cutty Creek Bridge Upgrade - Bobs Creek Road, Bobs Creek	Capital		196,350	427,949	506,263	506,263	-78,314	Grant	Purchase of Assets	0
Transport & Traffic	42219	Joes Bridge Upgrade - Bobs Creek Road, Bobs Creek	Capital		196,350	426,484	528,280	528,280	-101,796	Grant	Purchase of Assets	0
Transport & Traffic	19342	Capital Grants	Capital		-43,187,959	-50,190,169	-12,722,828	-51,615,489	1,425,320	Grant	Grants and Contributions	0
To recognise reimbursement income received for Gallery exhibition.												
Description:		Revenue received from Art Gallery of NSW.										
Glasshouse Cultural	917	Art Gallery	Operating	Business & Performance	394,683	394,683	288,583	419,478	-24,795	Revenue	Materials and Contracts	-24,795
Glasshouse Cultural	12080	Gallery Income	Operating		-21,000	-21,000	-53,436	-45,795	24,795	Revenue	Grants and Contributions	24,795
New grant funding awarded to Council for a Youth Week project, including Council's contribution towards this project.												
Description:		Grant funding from the Department of Communities and Justice.										
Community Activation	42339	Youth Week 2024	Operating	Community Planning & Environment	0	0	3,598	9,116	-9,116	Grant/Revenue	Materials and Contracts	-4,146
Community Activation	326	Community Events	Operating		8,300	8,300	1,000	4,154	4,146	Revenue	Materials and Contracts	4,146
Community Activation	10240	Operating Grants	Operating		-327,200	-327,200	0	-332,170	4,970	Grant	Grants and Contributions	0
Total Grants & Other Funding									2,783,719		0	

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
Reserve Movements												
Transfer of Reserve Funds required for Airport operations.												
Description:		Reforecasting of Airport operational budgets.										
Airport	10000	Airport Income	Operating	Business & Performance	-5,651,960	-5,651,960	-3,362,278	-6,028,743	376,783	Reserve	User Charges and Fees	0
Airport	100	Airport Expenditure	Operating		2,491,078	2,491,078	1,567,777	2,393,091	97,987	Reserve	Materials and Contracts	0
Airport	110	Loan Repayments	Operating		0	0	57,393	571,676	-571,676	Reserve	Interest Paid/Other Operating Payments	0
Airport	19019	Reserve Funding	Operating		-970,000	-1,001,000	0	-1,097,906	96,906	Reserve	Transfer from Restricted Assets	0
Transfer of Reserve Funds required for developer contributions works.												
Description:		Gravity sewer upgrade works funded from developer contributions.										
Sewerage Services	30207	Developer Sewer Upgrade Works	Capital	Community Utilities	0	0	348,485	348,485	-348,485	Contributions	Purchase of Assets	0
Sewerage Services	19217	Section 64 Funding	Capital		-4,300,000	-1,000,000	0	-1,348,485	348,485	Contributions	Transfer from Restricted Assets	0
Transfer of Reserve Funds required for a Waste Strategy project.												
Description:		Contract variation required for project completion.										
Waste Disposal	50122	Waste Strategy	Operating	Community Utilities	0	50,000	36,705	65,000	-15,000	Reserve	Materials and Contracts	0
Waste Disposal	19309	Reserve Funding	Operating		-1,700,000	-1,875,090	0	-1,890,090	15,000	Reserve	Transfer from Restricted Assets	0
Total Reserve Movements									460,391		0	
Movement between Projects												
Transfer of funds between linked projects. Accounting entry only.												
Transport and Traffic	42413	Bril Bril Road Upgrade - Investigate & Concept Design	Capital	Community Infrastructure	0	0	0	414,500	-414,500	Revenue	Purchase of Assets	-414,500
Transport and Traffic	42145	Bril Bril Bridge Renewal, Rollands Plains	Capital		414,500	414,500	0	0	414,500	Revenue	Purchase of Assets	414,500
Transfer of funds between linked projects. Accounting entry only.												
Vegetation Operations	514	Tree Management	Operating	Community Planning & Environment	777,071	777,071	819,414	1,689,731	-912,660	Revenue/ Reserve	Materials and Contracts	0
Vegetation Operations	40686	Tree Maintenance	Operating		920,000	920,000	7,340	7,340	912,660	Revenue/ Reserve	Materials and Contracts	0

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
Transfer of funds between linked projects. Accounting entry only.												
Sewerage Services	30208	Coffin to PM Wastewater Treatment Plant Relining & Rehabilitation	Capital	Community Utilities	0	0	0	1,250,000	-1,250,000	Reserve	Purchase of Assets	0
Sewerage Services	30129	Sewer Relining Works	Capital		850,000	850,000	245,750	250,000	600,000	Reserve	Purchase of Assets	0
Sewerage Services	39368	Sewer Rehabilitation	Capital		850,000	850,000	166,666	200,000	650,000	Reserve	Purchase of Assets	0
Transfer of funds between linked projects. Accounting entry only.												
Sewerage Services	30206	Kew/Kendall Sewer Diversion to Camden Haven	Capital	Community Utilities	0	0	15,655	200,000	-200,000	Reserve	Purchase of Assets	0
Sewerage Services	30147	Kew STP Upgrade	Capital		2,000,000	500,000	22,160	300,000	200,000	Reserve	Purchase of Assets	0
Transfer of funds between linked projects. Accounting entry only.												
Parks & Recreation	486	Area A Parks & Gardens	Operating	Community Planning & Environment	1,959,288	1,899,288	1,697,613	1,940,160	-40,872	Revenue/ Reserve	Materials and Contracts	0
Parks & Recreation	41950	Rainbow Beach Sports Fields	Capital		0	65,053	24,181	24,181	40,872	Reserve	Purchase of Assets	0
Community Infrastructure's contribution to aerial laser survey coordinated by the GIS and Natural Resources Team.												
Natural Resources	42340	CMP Stage 2 - Camden	Operating	Community Infrastructure / Community Planning & Environment	300,000	396,667	127,195	406,167	-9,500	Reserve	Materials and Contracts	0
Drainage	41319	Panorama Drive - Stormwater Remediation	Capital		170,000	159,115	73,724	149,615	9,500	Reserve	Purchase of Assets	0
Transfer of funds between linked projects. Accounting entry only.												
Parks & Recreation	486	Area A Parks & Gardens	Operating	Community Planning & Environment	1,959,288	1,940,160	1,697,613	2,440,160	-500,000	Revenue	Materials and Contracts	-500,000
Parks & Recreation	487	Area B Parks & Gardens	Operating		1,241,495	1,241,495	1,206,382	1,741,495	-500,000	Revenue	Materials and Contracts	-500,000
Parks & Recreation	40449	Additional Parks Maintenance	Operating		1,000,000	1,000,000	0	0	1,000,000	Revenue	Materials and Contracts	1,000,000
Transfer of funds between linked projects. Accounting entry only.												
Natural Resources	41735	Koala Road Strike Project	Operating	Community Planning & Environment	60,000	141,482	143,110	143,110	-1,628	Revenue/Env Levy/Grant	Materials and Contracts	0
Natural Resources	42352	Koala Vehicle Strike Mitigation Actions	Operating		0	120,465	34,976	118,837	1,628	Grant	Materials and Contracts	0

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
Transfer of funds between linked projects. Accounting entry only.												
Natural Resources	42263	Black Summers Bushfire Grant	Operating	Community Planning & Environment	0	332,325	336,134	336,134	-3,809	Env Levy	Materials and Contracts	0
Natural Resources	42301	Hazard Management - Bushfire Mitigation	Operating		88,500	78,500	13,455	74,691	3,809	Env Levy	Materials and Contracts	0
Transfer of funds between linked projects. Accounting entry only.												
Communications	42457	Media Monitoring	Operating	Business & Performance	0	0	0	25,000	-25,000	Revenue	Materials and Contracts	-25,000
Transformation	563	Bespoke Projects	Operating		500,000	500,000	67,627	475,000	25,000	Revenue	Materials and Contracts	25,000
Total Movements between Projects									3,857,969		0	
Budget Variation Requests - Approved by Executive												
A Budget Variance Request has been approved by Executive for LRCI Grant Funding and Road Resealing Works.												
Description:		Grant funding has been received from LRCI Phase 4 which is being allocated to Road Resealing Works. This BVR is a funding swap to replace loan funding with grant.										
Transport & Traffic	41465	Road Resealing Works	Capital	Community Infrastructure	5,475,300	6,167,771	3,094,006	5,475,300	692,471	Loan/Revenue/ Grant	Purchase of Assets	0
Transport & Traffic	19348	Loans Funding	Capital		-29,950,000	-29,950,000	0	-29,257,529	-692,471	Loan	Transfer from Restricted Assets	0
A Budget Variance Request has been approved by Executive for Bain Park Masterplan Implementation.												
Description:		The current contingency is expected to be exhausted, additional funds fom developers contributions will provide appropriate funds to complete the project.										
Parks & Recreation	42181	Revitalisation of Bain Park, Wauchope CBD	Capital	Community Planning & Environment	549,618	1,848,776	843,068	1,948,412	-99,636	S7.11	Purchase of Assets	0
Parks & Recreation	19286	Section 7.11 Funding	Capital		-10,505,306	-10,767,837	0	-10,867,473	99,636	S7.11	Transfer from Restricted Assets	0
A Budget Variance Request has been approved by Executive for Gordon Street and Horton Street Intersection.												
Description:		Funding reallocation required to ensure the Roads to Recovery grant is shifted to within Council's Road Resealing works program. This is a funding swap for this BVR only.										
Transport & Traffic	41890	Gordon/Horton Street Intersection Upgrade	Capital	Community Infrastructure	1,600,000	1,805,153	19,639	205,153	1,600,000	Grant	Purchase of Assets	0
Transport & Traffic	41465	Road Resealing Works	Capital		5,475,300	5,475,300	3,094,006	7,075,300	-1,600,000	Grant	Purchase of Assets	0
Transport & Traffic	41465	Road Resealing Works	Capital		5,475,300	7,075,300	3,094,006	5,475,300	1,600,000	Revenue	Purchase of Assets	1,600,000
Transport & Traffic	41890	Gordon/Horton Street Intersection Upgrade	Capital		1,600,000	205,153	19,639	1,805,153	-1,600,000	Revenue	Purchase of Assets	-1,600,000

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
A Budget Variance Request has been approved by Executive for Kendall Skate Park.												
Description:		Kendall Skate Park is funded by the Stronger Communities Grant however this is only a portion of the project. In order to deliver the whole project, funding is sourced from nominated budgets.										
Parks & Recreation	41854	Kendall Skate Park	Capital	Community Planning & Environment	550,000	447,935	222,009	637,935	-190,000	Grant/Revenue	Purchase of Assets	-190,000
Community Activation	42266	Grant Funded & Community Projects Management	Capital		238,500	138,500	24,764	38,500	100,000	Revenue	Purchase of Assets	100,000
Facilities Management	421	Port Macquarie Building Maintenance	Operating		1,294,227	1,294,227	712,211	1,204,227	90,000	Revenue	Materials and Contracts	90,000
A Budget Variance Request has been approved by Executive for Pilot Beach Play Space Upgrade.												
Description:		Pilot Beach Play Space is in urgent need of upgrade due to deteriorating condition of current play assets. Assets are 12 years old and at the end of their useful life. Funds required to carry out priority works.										
Parks & Recreation	42448	Pilot Beach Play Space Upgrade	Capital	Community Planning & Environment	0	0	0	72,900	-72,900	Revenue/S7.11	Purchase of Assets	
Parks & Recreation	42404	Endeavour Park - Playground Upgrade	Capital		95,500	95,500	0	37,963	57,537	Revenue/S7.11	Purchase of Assets	
Parks & Recreation	19286	Section 7.11 Funding	Capital		-10,505,306	-10,867,473	0	-10,882,836	15,363	S7.11	Transfer from Restricted Assets	
A Budget Variance Request has been approved by Executive for Kendall Recreation Reserve Play Space.												
Description:		Projects have been identified as no longer priority projects. Transfer of these funds provides funding to support the Kendall Recreation Reserve project.										
Parks & Recreation	42449	Kendall Recreation Reserve Play Space	Capital	Community Planning & Environment	0	0	0	136,760	-136,760	Revenue/ Reserve/S7.11	Purchase of Assets	
Parks & Recreation	41352	Norrie Reserve Kendall - Playground Replacement	Capital		59,000	59,000	0	0	59,000	Reserve/S7.11	Purchase of Assets	
Parks & Recreation	42405	Apex Park Playground Upgrade	Capital		100,000	100,000	0	22,240	77,760	Revenue/S7.11	Purchase of Assets	
Total Budget Variations - Approved by Executive									2,791,767			
ORGANISATIONAL TOTAL - THIS REVIEW									9,893,846			
FORECAST FOR FINANCIAL YEAR ENDED 30 JUNE 2024												
Original Budget as at 1 July 2023					Balanced	0						
Plus: Adjustments												
July Review					Balanced	0						
August Review					Balanced	0						
September Review					Balanced	0						
October Review					Balanced	0						
November Review					Surplus	17,495						
January Review					Balanced	0						
February Review					Balanced	0						
FORECAST FOR 30 JUNE 2024					Surplus	17,495						

BUDGET VARIATIONS - FEBRUARY 2024												
Section	Project	Project Description	Capital/ Operating	Division	Full Year Original Budget	Full Year Current Budget	Actuals to February 2024	New Yearly Proposed Budget - February 2024	Movement	Funding Source	Funding Source Category	EFFECT ON FUNDING POSITION
Notes:	1	The result shown above is the general fund result. All surpluses/deficits in the water, sewerage and waste funds are transferred to/from reserves.										
	2	Reserve are internal restrictions that hold funds for a specific purpose, e.g. The airport has its own reserve and all income and expenditure relating to the airport is credited/debited to that reserve.										
	3	Council projects are funded from a variety of funding sources. Below is a definition of the various types of funding that are used to fund projects.										
		<i>Revenue - All funds that are generated through rates, annual charges, fees and charges, interest etc. These funds are untied and can be expended on any project that Council considers appropriate.</i>										
		<i>Grants - Government grants can either be monetary or otherwise and may be tied or untied. Tied grants are required to be used for a specific purpose such as the construction of a road. Untied grants may be applied for any purpose council considers appropriate.</i>										
		<i>Contributions - Contributions are non-reciprocal transfers to Council in the sense that Council is not required to give value in exchange for the contributions directly to the contributor. Examples are contributions given by ratepayers towards capital works in their vicinity.</i>										
		<i>Reserves - Reserves are internal restrictions held for a specific purpose, e.g. The airport has its own reserve and all income and expenditure relating to the airport is credited/debited to that reserve.</i>										
		<i>S7.11 and S64 Contributions - Section 7.11 of the NSW Environmental and Planning Act (1979) and section 64 of the Local Government Act (1993) provides NSW local government with a formal legal framework for levying developers for the provision of infrastructure, services and amenities - known as developer contributions.</i>										
	4	<i>Some projects are funded by multiple funding sources, e.g. a capital project may be funded by s7.11 funds, grants and revenue. The effect on capital column will only show the revenue funding adjustment as the other types of funding will have an income line budget adjustment shown in the report.</i>										

Port Macquarie Hastings Council Internal Audit

CHARTER

Port Macquarie Hastings Council has established an internal audit function as a key component of the Council's governance and assurance framework, in compliance with the *Local Government (General) Regulation 2021* and the Office of Local Government's *Guidelines for risk management and internal audit for local government in NSW*. This charter provides the framework for the conduct of the internal audit function in the Port Macquarie Hastings Council (Council) and has been approved by the governing body taking into account the advice of Council's Audit, Risk, and Improvement Committee (ARIC).

Purpose of internal audit

Internal auditing strengthens Council's ability to create, protect and sustain value by providing the ARIC and management independent, risk based, and objective assurance, advice, insight and foresight.

It enhances Council's

- successful achievement of its objectives,
- governance, risk management and control processes,
- decision making and oversight
- reputation and credibility with its stakeholders
- ability to service the public interest

Internal Audit is most effective when:

- it is performed by competent professionals in conformance with the Global Internal Audit Standards, which are set in the public interest
- the internal audit function is independently positioned with direct accountability to the ARIC
- Internal auditors are free from undue influence and committed to making objective assessments¹.

Internal audit provides an independent and objective review and advisory service to provide advice to the governing body, Chief Executive Officer and ARIC about Council's governance processes, risk management and control frameworks and its external accountability obligations. It also assists Council to improve its business performance.

Internal Audit services may include:

- Assurance Services – objective examination of evidence for the purpose of providing an independent assessment of risk management, control and governance processes.
- Advisory Services – advisory and related client activities, the nature and scope of which are agreed upon with the client and which are intended to add value and improve business operations.

¹ As defined by the Global Internal Audit Standards (2024)

Role

The internal audit function is to support the Council's ARIC to review and provide independent advice to Council in accordance with section 428A of the *Local Government Act 1993*. This includes conducting internal audits of Council and monitoring the implementation of recommendations.

The internal audit function is to also play an active role in:

- developing and maintaining a culture of accountability and integrity,
- facilitating the integration of risk management into day-to-day business activities and processes, and
- promoting a culture of high ethical standards.

The internal audit function has no direct authority or responsibility for the activities it reviews. The internal audit function has no responsibility for developing or implementing procedures or systems and does not prepare records or engage in Council's functions or activities (except in carrying out its own functions).

Independence

Council's internal audit function is independent of Council so it can provide an unbiased assessment of Council's operations and risk and control activities and is overseen by the independent ARIC.

The Internal Auditor reports functionally to Council's ARIC on the results of completed audits, strategic direction and accountability purposes and reports administratively to the Executive Lead Finance and Commercial Operations to facilitate day-to-day operations. Internal audit activities are not subject to direction by Council and Council's management has no role in the exercise of Council's internal audit activities.

The ARIC is responsible for communicating any internal audit issues or information to the governing body. Should the governing body require additional information, a request for the information may be made to the Chair by resolution. The Chair is only required to provide the information requested by the governing body where the Chair is satisfied that it is reasonably necessary for the governing body to receive the information for the purposes of performing its functions under the Local Government Act. Individual councillors are only entitled to request information through the non-voting Councillor representative to the ARIC or receive information at the discretion of the ARIC.

The Chief Executive Officer must consult with the Chair of the ARIC before appointing or making decisions affecting the employment of the Internal Auditor

Where the Chair of the ARIC has any concerns about the treatment of the Internal Auditor or any action taken that may compromise the ability to undertake the function independently, they can report their concerns to the governing body.

The Internal Auditor is to confirm at least annually to the ARIC the independence of internal audit activities from Council.

Authority and Confidentiality

Council authorises the internal audit function to have full, free and unrestricted access to all functions, premises, assets, personnel, records and other documentation and information that is necessary for the internal audit function to undertake its responsibilities.

All records, documentation and information accessed while undertaking internal audit activities are to be used solely for the conduct of those activities. The Internal Auditor and individual internal audit staff are responsible and accountable for maintaining the confidentiality of the information they receive when undertaking their work.

All internal audit documentation is to remain the property of Council including where internal audit services are performed by an external third-party provider.

Information and documents pertaining to the internal audit function are not to be made publicly available. The Internal Auditor may only release information to external parties that are assisting the internal audit function to undertake its responsibilities with the approval of the Chief Executive Officer, except where it is being provided to an external investigative or oversight agency for the purpose of informing that agency of a matter that may warrant its attention.

Internal Audit Arrangements

Internal Auditor

The Internal Auditor leads the internal audit function and has sufficient skills, knowledge and experience to ensure the function fulfils its role and responsibilities to Council and the ARIC. The Internal Auditor must be independent, impartial, unbiased and objective when performing their work and free from any conflicts of interest.

Responsibilities of the Internal Auditor include:

- managing the day-to-day activities of the internal audit function,
- managing the Council's internal audit budget,
- supporting the operation of the ARIC,
- approving internal audit project plans, conducting or supervising audits and assessments and providing independent advice to the ARIC,
- monitoring the Council's implementation of corrective actions that arise from the findings of audits,
- implementing the ARIC's annual work plan and four-year strategic work plan,
- ensuring Council's internal audit activities comply with the Office of Local Government's *Guidelines for risk management and internal audit for local government in NSW*, and
- contract management and oversight of supplementary external providers (where appropriate).

The internal audit function

Council is to contract an external third-party provider when additional resources or skills are required to undertake its internal audit activities. To ensure the independence of the external provider, the Internal Auditor is to ensure the external provider:

- does not conduct any audits on specific Council's operations or areas that they have worked on within the last two years,
- is not the same provider conducting the Council's external audit,
- is not the auditor of any contractors of Council that may be subject to the internal audit, and
- can satisfy the requirements of the Office of Local Government's *Guidelines for risk management and internal audit for local government in NSW*.

The Internal Auditor must consult with the ARIC and Executive Lead Finance and Commercial Operations regarding the appropriateness of the skills, knowledge and experience of any external provider before they are engaged by Council.

Performing internal audit activities

The work of the internal audit function is to be thoroughly planned and executed.

The ARIC must develop a strategic work plan every four years to ensure that the matters listed in Schedule One are reviewed by the ARIC and considered by the internal audit function when developing their risk-based program of internal audits. The strategic work plan must be reviewed at least annually to ensure it remains appropriate.

The committee must also develop an annual work plan to guide the work of the internal audit function over the forward year.

All internal audit activities are to be performed in a manner that is consistent with relevant professional standards including the Global Internal Audit Standards issued by the Institute of Internal Auditors and risk management standard ISO 31000:2018.

The Internal Auditor will:

- Provide the findings and recommendations of internal audits to the ARIC at the next quarterly meeting after the report is finalised. Each report is to include a response from the relevant Senior Manager or Director.
- Establish an ongoing monitoring system to follow up Council's progress in implementing corrective actions.
- Develop and maintain policies and procedures to guide the operation of Council's internal audit function.
- Ensure that the ARIC is advised at each meeting of the internal audit activities completed during that quarter, progress in implementing the annual work plan and progress made implementing corrective actions.

Conduct and Standards

Internal audit personnel (including any service providers) must comply with Council's code of conduct. Complaints about breaches of Council's code of conduct by internal audit personnel are to be dealt with in accordance with the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*. The Chief Executive Officer must consult with the ARIC before any disciplinary action is taken against personnel in the Internal Audit function in response to a breach of Council's code of conduct.

Management is not to exert pressure and or attempt to unduly influence internal audit personnel to change or omit findings of internal audit reports. Such behaviour will be dealt with under the Code of Conduct and reported to the Chief Executive Officer and ARIC.

Internal Audit will govern itself by adherence to mandatory guidance contained in the 'new International Professional Practices Framework'(IPPF) issued by the Institute of Internal Auditors (IIA):

- Global Internal Audit Standards
- Topical Requirements

This mandatory guidance constitutes the fundamental requirements for the professional practice of internal auditing and the principles against which to evaluate the effectiveness of the internal audit performance.

Internal Audit will also refer to the nonmandatory Global guidance which supports the Standards, which are composed of the Global Practice Guides and the Global Technology Audit Guides.

Internal audit, including service providers, will perform work in accordance with the IPPF. While the IPPF applies to all internal audit work, technology audits may also apply the ISACA standards contained in the 'Information Technology Assurance Framework' (ITAF). Where relevant the current Australian risk management standard will be applied.

Administrative arrangements

Audit, Risk, and Improvement Committee meetings

The Internal Auditor will attend ARIC meetings as an independent non-voting observer. The Internal Auditor can be excluded from meetings by the committee at any time.

The Internal Auditor must meet separately with the ARIC at least once per year.

The Internal Auditor can meet with the Chair of the ARIC at any time, as necessary, between committee meetings.

External audit

Internal and external audit activities will be coordinated to help ensure the adequacy of overall audit coverage and to minimise duplication of effort.

Periodic meetings and contact between internal and external audit shall be held to discuss matters of mutual interest and to facilitate coordination.

External audit will have full and free access to all internal audit plans, working papers and reports.

Administrative reporting

The Internal Auditor reports administratively to the Executive Lead Finance and Commercial Operations in relation to:

- Internal audit budget
- Human resource administration
- Internal communications and information flows
- Administration of Councils internal policies and procedures

Dispute resolution

The internal audit function should maintain an effective working relationship with Council and the ARIC and seek to resolve any differences they may have in an amicable and professional way by discussion and negotiation.

In the event of a disagreement between the internal audit function and Council, the dispute is to be resolved by the Chief Executive Officer and/or the ARIC. Disputes between the internal audit function and the ARIC are to be resolved by the governing body.

Unresolved disputes regarding compliance with statutory or other requirements are to be referred to the Departmental Chief Executive of the Office of Local Government in writing.

Review arrangements

The ARIC must review the performance of the internal audit function each year and report its findings to the governing body. A strategic review of the performance of the internal audit function must be conducted each council term that considers the views of an external party with a strong knowledge of internal audit and reported to the governing body.

This charter is to be reviewed annually by the ARIC and once each council term by the governing body. Any substantive changes are to be approved by the governing body.

Further information

For further information on council's internal audit activities contact Catherine Watson on catherine.watson@pmhc.nsw.gov.au or by phone 02 6581 8324.

Reviewed by Internal Auditor

[sign and date]

Reviewed by Chair of the Port Macquarie Hastings Council's Audit, Risk, and Improvement Committee

[sign and date]

Reviewed by Chief Executive Officer

[sign and date]

Reviewed by Port Macquarie Hastings Council in accordance with a resolution of the governing body

[sign and date] [resolution reference]

Schedule 1: Internal audit function responsibilities**Audit****Internal audit**

- Implement the annual and four-year strategic internal audit work plans.
- Conduct internal audits in line internal audit work plans.
- Monitor the implementation of internal audit findings and recommendations.
- Assist Council to develop and maintain a culture of accountability and integrity.
- Facilitate the integration of risk management into day-to-day business activities and processes.
- Promote a culture of high ethical standards.

External audit

- Provide input and feedback on the financial statement and performance audit coverage proposed by external audit and provide feedback on the audit services provided.
- Review all external plans and reports in respect of planned or completed audits and monitor Council's implementation of audit recommendations.
- Provide advice on action taken on significant issues raised in relevant external audit reports and better practice guides.

Risk**Risk management**

Review and advise:

- if Council has in place a current and appropriate risk management framework that is consistent with the Australian risk management standard,
- whether the risk management framework is adequate and effective for identifying and managing the risks Council faces, including those associated with individual projects, programs and other activities,
- if risk management is integrated across all levels of Council and across all processes, operations, services, decision-making, functions and reporting,
- of the adequacy of risk reports and documentation, for example, Council's risk register and risk profile,
- whether a sound approach has been followed in developing risk management plans for major projects or undertakings,
- whether appropriate policies and procedures are in place for the management and exercise of delegations,
- if Council has taken steps to embed a culture which is committed to ethical and lawful behaviour,
- if there is a positive risk culture within Council and strong leadership that supports effective risk management,
- of the adequacy of staff training and induction in risk management,
- how Council's risk management approach impacts on the Council's insurance arrangements,
- of the effectiveness of management of its assets, and

- of the effectiveness of business continuity arrangements, including business continuity plans, disaster recovery plans and the periodic testing of these plans.

Internal controls

Review and advise:

- whether Council's approach to maintaining an effective internal audit framework, including over external parties such as contractors and advisors, is sound and effective,
- whether Council has in place relevant policies and procedures and that these are periodically reviewed and updated,
- whether appropriate policies and procedures are in place for the management and exercise of delegations,
- whether staff are informed of their responsibilities and processes and procedures to implement controls are complied with,
- if Council's monitoring and review of controls is sufficient, and
- if internal and external audit recommendations to correct internal control weaknesses are implemented appropriately.

Compliance

Review and advise of the adequacy and effectiveness of Council's compliance framework, including:

- if Council has appropriately considered legal and compliance risks as part of Council's risk management framework,
- how the Council manages its compliance with applicable laws, regulations, policies, procedures, codes and contractual arrangements, and
- whether appropriate processes are in place to assess compliance.

Fraud and corruption

Review and advise of the adequacy and effectiveness of Council's fraud and corruption prevention framework and activities, including whether appropriate processes and systems are in place to capture and effectively investigate fraud-related information.

Financial management

Review and advise:

- if Council complying with accounting standards and external accountability requirements,
- of the appropriateness of Council's accounting policies and disclosures,
- of the implications for Council of the findings of external audits and performance audits and Council's responses and implementation of recommendations,
- whether Council's financial statement preparation procedures and timelines are sound,
- the accuracy of Council's annual financial statements prior to external audit, including:
 - management compliance/representations,
 - significant accounting and reporting issues,
 - the methods used by Council to account for significant or unusual transactions and areas of significant estimates or judgements, and
 - appropriate management signoff on the statements.
- if effective processes are in place to ensure financial information included in Council's report is consistent with signed financial statements,
- if Council's financial management processes are adequate,

- the adequacy of cash management policies and procedures,
- if there are adequate controls over financial processes, for example:
 - appropriate authorisation and approval of payments and transactions,
 - adequate segregation of duties,
 - timely reconciliation of accounts and balances, and
 - review of unusual and high value purchases.
- if policies and procedures for management review and consideration of the financial position and performance of Council are adequate, and
- if Council's grants and tied funding policies and procedures are sound.

Governance

Review and advise of the adequacy of Council governance framework:

- decision-making processes,
- implementation of governance policies and procedures,
- reporting lines and accountability,
- assignment of key roles and responsibilities,
- committee structure,
- management oversight responsibilities,
- human resources and performance management activities,
- reporting and communication activities,
- information and communications technology (ICT) governance, and
- management and governance of the use of data, information and knowledge.

Improvement

Strategic planning

Review and advise:

- of the adequacy and effectiveness of Council's integrated, planning and reporting (IP&R) processes,
- if appropriate reporting and monitoring mechanisms are in place to measure progress against objectives, and
- whether Council is successfully implementing and achieving its IP&R objectives and strategies.

Service reviews and business improvement

Review and advise:

- if Council has robust systems to set objectives and goals to determine and deliver appropriate levels of service to the community and business performance,
- if appropriate reporting and monitoring mechanisms are in place to measure service delivery to the community and overall performance, and
- How Council can improve its service delivery and Council's performance of its business and functions generally.

Performance data and measurement

Review and advise:

- if Council has a robust system to determine appropriate performance indicators to measure the achievement of its strategic objectives,
- if the performance indicators Council uses are effective, and
- of the adequacy of performance data collection and reporting.



Authorised by: Council
Authorised date: 15/09/2022
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Council Policy INVESTMENT POLICY

1. INTRODUCTION

The Investment Policy establishes the framework within which Council's cash and investment portfolio will be managed, monitored and reported on. This policy has been established in compliance with section 625 of the Local Government Act 1993 and provides guidance for the investment of Council's funds, with consideration given to the following primary objectives:

- Preservation of capital. Preservation of capital is the principal objective of the investment portfolio. Investments are to be placed in a manner that seeks to safeguard Council's cash and investments portfolio. This includes managing credit and interest rate risk within identified thresholds and parameters;
- Maximise investment returns within Council's risk appetite as outlined within this policy. Investments are expected to achieve a market average rate of return in line with Council's risk tolerance;
- Manage Council's cash resources to ensure sufficient liquidity to meet Council's business objectives over the short, medium and long term.

The policy reinforces Council's ongoing commitment to maintain a conservative risk and return portfolio, an important component of its ongoing prudent financial management practices.

2. POLICY STATEMENT AND SCOPE

2.1 Funds for Investment

Investment are maintained to meet specified business needs, including:

- strategic purposes consistent with Council's long term strategic plan;
- holding short-term investments for working capital requirements;
- holding investments that are necessary to carry out Council operations consistent with annual long-term plans.

2.2 Legislative Authority for Investments

All investments are to be made in accordance with:

- Australian Accounting Standards;
- NSW Office of Local Government Investment Circulars;
- NSW Office of Local Government Investment Policy Guidelines;
- Local Government (General) Regulation 2021 - Clause 212;
- Local Government Act 1993 (particularly section 625);
- NSW Local Government Code of Accounting Practice & Financial Reporting;
- Minister's Investment Order (gazetted);
- The Trustee Amended (Discretionary Investments) Act 1997 – Sections 14A(2), 14C(1) & (2).

2.3 Investment Governance

The following internal control practices are in place to ensure adequate governance and allow transparent

and clear performance measurement for the management of Council's cash and investment portfolio:

- financial planning and cash flow management;
- delegated authorities and investment approval;
- measurement of investment performance;
- performance benchmarks;
- reporting and review;
- audit oversight.

2.4 Delegation of Authority

Authority for the implementation of the Investment Policy is delegated by Council to the Chief Executive Officer (CEO) in accordance with the *Local Government Act 1993*.

The CEO has delegated the day-to-day management of Council's investment portfolio, including authority to invest surplus funds as follows:

- Director Business & Performance (DBP) ;
- Group Manager Financial Services (GMFS);
- Other senior financial officers who have the requisite skills to undertake investment functions (as per the Delegations Register).

Officers with delegated authority are required to acknowledge they have received a copy of this policy and understand their obligations in this role.

2.5 Prudent Person Standard

The investment portfolio will be managed with the care, diligence and skill that a prudent person would exercise. As trustees of public monies, officers are to manage Council's investment portfolio to safeguard the portfolio in accordance with the spirit of this Investment Policy, and not for speculative purposes.

2.6 Ethics and Conflicts of Interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investment portfolio. Any potential conflicts of interest should be appropriately disclosed in accordance with Council's Code of Conduct.

Independent advisors are also to declare that they have no actual or perceived conflicts of interest and receive no inducements in relation to Council's investments.

2.7 Approved Investments

Current investment regulations require Councils to invest with either the NSW Treasury Corporation (NSW TCorp) or Approved Deposit-taking Institutions (ADI) such as Australian banks or branches of foreign owned banks, credit unions and/or building societies as it acknowledges the additional assurance that arises from their regulation by the Australian Prudential Regulation Authority (APRA).

Investments are limited to those allowed by any current Ministerial Investment Order that has been issued by the NSW Minister for Local Government.

2.8 Prohibited Investments

In accordance with any current Ministerial Investment Order, this investment policy prohibits but is not limited to any investment carried out for speculative purposes, including:

- Derivative based instruments;
- Principal only investments or securities that provide potentially nil or negative cash flow; and
- Standalone securities issued that have underlying futures, options, forward contracts and swaps of any kind.

This policy also prohibits the use of leveraging (borrowing to invest) of an investment.

2.9 Investment Advisor

In managing its investments Council may engage the services of an independent investment advisor, licensed by the Australian Securities and Investment Commission for the purpose of achieving the aims of this policy. Independence includes receiving no commissions or other benefits in relation to the investments being recommended or reviewed, except as fully rebated to Council, promptly.

The independent advisor will review and assess the market value of the investment portfolio on a monthly basis.

Council's investment advisor is required to provide written confirmation that they do not have any actual or potential conflicts of interest in relation to the investments they are recommending or reviewing, including that they are not receiving any commissions or other benefits from the product providers in relation to the investments being recommended or reviewed.

2.10 Mandatory Investment Criteria

2.10.1 Scope

Investments must comply with the legislative authorities as described in the **Legislative Authority for Investments** paragraph of this policy.

2.10.2 Currency

Investments must be denominated in Australian Dollars.

2.10.3 Ownership

Investments must be held in Port Macquarie Hastings Council name.

2.10.4 Term / Maturity

The term to maturity of investments may not exceed the periods shown below:

Investment	Maximum term
Fixed Rate Term Deposits	5 years
Floating Rate Notes (FRNs)	5.5 years
Other Investments	10 years

2.10.5 Risk Management Framework

Council's risk profile in relation to investing surplus funds is to be relatively prudent, conservative and risk averse. The profile will be achieved by effectively managing within the investment portfolio:

- the diversity of the investments;
- the creditworthiness of the investments.

Diversity is achieved by placing limits on the maximum exposure Council may have to individual funds or financial institutions and individual credit rating bands.

Creditworthiness of investments is primarily determined using industry standard credit ratings.

Investments are to comply with three key risk management criteria:

- **Overall Portfolio Credit Framework:** limit overall credit exposure of the portfolio;
- **Institutional Credit Framework:** limit exposure to individual institutions based on their rating;
- **Term to Maturity Framework:** limits based on maturity of securities.

Overall Portfolio Credit Framework

To control the credit quality of the entire portfolio, the following credit framework limits the percentage of the total portfolio exposed to particular credit rating categories.

Credit rating agencies apply short-term ratings to investments with 12 months or less to maturity and long-term ratings to those with greater than 12 months to maturity.

Short-term credit rating	Long-term credit rating	Overall portfolio exposure (as a % of Total Portfolio)
A-1+	AAA	100%
A-1	AA	100%
A-2	A	60%
A-3	BBB	35%
Unrated	Unrated	5%
NSW Treasury Corp Deposits and TCorpIM Funds (allowable under the Ministerial Order)		20%

- Credit ratings apply to both products and institutions. This policy requires the rating applicable to the institution responsible for the product (e.g. guarantor) to be taken as the relevant rating given this represents the underlying risk to Council.
- Credit risk investment parameters are based on credit rating bands as published by the credit rating agencies (e.g. S&P, Moody's, Fitch). If an investment is rated by more than one ratings agency, the credit rating to be used will be based on the order of S&P, Moody's and then Fitch. In the event of disagreement between agencies as to the rating band ("split ratings") Council shall use the higher in assessing compliance with portfolio policy limits, but for conservatism shall apply the lower in assessing new purchases.
- Where the principal amount and accrued interest of any investment with a financial institution are directly guaranteed by the Australian Federal Government for full repayment, the exposure of the total portfolio to credit ratings lower than AAA may be exceeded, provided that the excess amount comprises only guaranteed investments. As a result, investments directly guaranteed by the Australian Federal Government may comprise the total investment portfolio. Management should ensure that any excess of investments over the parameters specified in the table above that is comprised of Australian Federal Government guaranteed investments can be managed back to within the specified parameter levels prior to the expiration of any such guarantee.

Institutional Credit Framework

Council's exposure to an individual institution will be restricted by their credit rating so that single entity exposure is limited.

Where Council has short-term and long-term holdings with the same institution, the limit associated to the institution's short-term rating will be used.

Short-term credit rating	Long-term credit rating	Individual institution exposure (as a % of Total Portfolio)
A-1+	AAA	40%
A-1	AA	30%
A-2	A	20%
A-3	BBB	10%
Unrated	Unrated	5%
NSW Treasury Corp Deposits and TCorpIM Funds (allowable under the Ministerial Order)		20%

- Credit ratings apply to both products and institutions. This policy requires the rating applicable to the institution responsible for the product (e.g. guarantor) to be taken as the relevant rating given this represents the underlying risk to Council.
- Credit risk investment parameters are based on credit rating bands as published by the credit rating agencies (e.g. S&P, Moody's, Fitch). If an investment is rated by more than one ratings agency, the credit rating to be used will be based on the order of S&P, Moody's and then Fitch. In the event of disagreement between agencies as to the rating band ("split ratings") Council shall use the higher in assessing compliance with portfolio policy limits, but for conservatism shall apply the lower in assessing new purchases.

- Where the principal amount and accrued interest of any investment with a financial institution are directly guaranteed by the Australian Federal Government for full repayment, the exposure to individual institutions may exceed the stated limits provided that the excess amount comprises only guaranteed investments.

Term to Maturity Framework

The term to maturity framework specifies the maximum amounts or percentages of Council's total investment portfolio that can be held within the various investment maturity bands.

Maximum thresholds are set to control the proportion of the total portfolio that can be invested into longer term investments to ensure that Council has adequate access to short and medium term liquidity to satisfy its business objectives. The maximum thresholds reduce as the maturity horizon extends further into the future.

	< 1 Year	1 to 3 Years	3 to 5.5 Years	> 5.5 Years
Maximum % of Total Portfolio	100%	70%	40%	10%

Minimum thresholds are set to ensure that there will always be an adequate amount of liquidity available for ongoing working capital purposes. Remaining funds are invested across the various investment horizons, seeking the best relative value at the time of investment.

	< 1 Year
Minimum % of Total Portfolio	40%

2.10.6 Breaches of Criteria

This policy imposes limits and thresholds in relation to the acquisition and holding of investments. However, situations may occur where inadvertent breaches of these limitations or thresholds arise, other than from the acquisition of investments. For example:

- amendments to regulatory directives or legislation;
- changes in the total value or amount of Council's investment portfolio which consequently changes any of the threshold limits so that they no longer meet the portfolio liquidity parameters.

If the credit ratings of any of Council's investments are downgraded to an extent that they no longer fall within the investment policy limits, they will be divested as soon as practicable having regard to potential losses resulting from early redemption and subject to minimising any loss of capital that may arise from compliance with this provision.

Then limitations or thresholds are breached due to amendments to regulatory directives or legislation, the investment portfolio must be managed in accordance with the respective amendments. Where the amendments enable retention and grandfathering of existing investments, Council may continue to actively manage those investments within the portfolio in accordance with all other regulations and policies applicable to such investments. This includes a strategy of holding or divesting such investments in accordance with regular investment considerations.

Where limitations or thresholds are breached due to a change in the overall size of the total investment portfolio, the following process will apply:

- an immediate freeze is imposed on the acquisition of new investments in the relevant category until the portfolio can be effectively managed back to accord with the requirements of this policy;

- the relevant category of investments must be managed back in accord with the policy limits within a period that takes into account any adversity created by market liquidity, current valuations of these investments and the risks of default.

The immediate forced sale of the investments in breach of the limits or thresholds will not be required.

2.11 Investments in Financial Institutions which Support the Fossil Fuel Industry

Subject to consideration of the Risk Management Guidelines in this policy, preference is to be given to financial institutions that publicly state that they do not invest in or finance the fossil fuel industry if:

- the investment is compliant with Council's Investment Policy; and
- the investment rate of interest is equivalent to or more favourable to Council relative to other similar investments that may be on offer to Council at the time of the investment.

2.12 Measurement of Investment Performance

Investment performance includes both interest returns and any change in the underlying capital value of the investments.

Interim fluctuations of capital value are excluded from the monthly measurement of investment performance on the basis that:

- investments are mainly acquired with the intention of holding them through to maturity, although some liquid assets may be sold prior to maturity should it be to the benefit of Council;
- cash liquidity requirements are structured and managed to ensure that Council is not in a financial position that will require a forced sale of these assets.

Notwithstanding the above, changes in capital value are important and the monthly investment report will therefore provide Council with indicative market valuations of each investment. In the event that the capital value of any investment becomes impaired, or a capital gain or loss is actually realised (through disposal), the gain or loss of value will be recognised within that month's financial accounts.

Investment performance will be measured monthly against the chosen benchmarks in relation to both current month and 12-month rolling returns.

The GMFS will approve the use of independently determined benchmarks. Where Council changes independently determined benchmarks, monthly reports for the month of change and the next five months thereafter shall contain reporting of investment returns against benchmark for both the following:

- the benchmark that is being replaced; and
- the new benchmark, backdated on a twelve-month basis.

Council currently uses two performance benchmarks:

- Bloomberg AusBond Bank Bill Index (formerly known as UBSA Bank Bill Index) – the Bank Bill Index represents the performance of a notional rolling parcel of bills averaging 45 days and is the widely used benchmark for local councils and other institutional cash investments;
- 30-day Bank Bill Rate – provides a fair indicator of the risk free rate of return so that Council can understand the return that has been earned from diversifying its investment portfolio and accepting conservative levels of risk.

2.13 Reporting and Review

Council will maintain a separate record of money it has invested under section 625 of the *Local Government Act 1993*, in accordance with the criteria defined by the *Local Government Code of Accounting Practice and Financial Reporting*.

All investments are to be appropriately recorded in Council's financial records and reconciled at least on a monthly basis.

Pursuant to the *Local Government (General) Regulation 2021* (clause 212), the GMFS will provide a monthly report to Council on investments. The monthly report to Council will detail the investment portfolio in terms of performance and rate of return on the overall portfolio for the period and will detail the purchase price, face value, current (market) value, credit rating and coupon / yield for each individual investment.

For audit purposes, the GMFS will obtain certificates from the banks or fund managers confirming the amounts of investment held on Council's behalf at 30 June each year.

The Investment Policy will be reviewed at least once a year or as required in the event of legislative changes.

3. REFERENCES

Laws and standards	<ul style="list-style-type: none"> • Australian Accounting Standards • NSW Office of Local Government – Local Government Code of Accounting Practice & Financial Reporting • NSW Office of Local Government Investment Circulars • Office of Local Government Investment Policy Guidelines • Local Government (General) Regulation 2021 • Local Government Act 1993 • Minister's Investment Order (gazetted) • The Trustee Amended (Discretionary Investments) Act 1997 – Sections 14A(2), 14C(1) & (2)
Policies and procedures	<ul style="list-style-type: none"> • Code of Conduct • Disciplinary Policy & Procedures • Fraud & Corruption Internal Reporting Policy • Investment Strategy

4. DEFINITIONS

Term	Meaning
Total investments	<p>Total investments comprise:</p> <ul style="list-style-type: none"> • call accounts • term deposits • floating rate notes • bonds with an active secondary market with government (including NSW T-Corp) and Authorised Deposit-taking Institutions (ADIs). <p>Investments also include grandfathered structured investments with other institutions as defined.</p>
Active investments	<p>Active investments are a part of total investments and comprise:</p> <ul style="list-style-type: none"> • call accounts • term deposits • floating rate notes • bonds with an active secondary market

Term	Meaning
Grandfathered investments	Grandfathered investments are a part of total investments and comprise: <ul style="list-style-type: none"> investments where new investment activity is prohibited by regulation other investments over which new investment activity is temporarily prohibited due to unintentional breaches of investment thresholds and limitations that arise due to changes in the level of unrelated investments within the portfolio, (the prohibition only remains as long as the breaches remain in place).
Impairment	The impairment of an investment represents the amount of the original cost of the investment that is not expected to be recovered at the investment's maturity date due to current adverse economic or investment conditions that impact on the investment's financial performance.
Approved Deposit-taking Institution (ADI)	An institution that is authorised under the <i>Banking Act 1959</i> to accept term deposits and conduct banking activities in accordance with that Act and under the prudential supervision of the Australian Prudential Regulation Authority (APRA).
Active secondary market	A market where investors purchase securities or assets from other investors, rather than from issuing companies themselves on an arms length (independent) basis.
Benchmark rates	Benchmark rates comprise: <ul style="list-style-type: none"> Bloomberg AusBond Bank Bill Index - The Australian Bloomberg (formally UBSA) Bank Bill index is constructed as a benchmark to represent the performance of a passively managed short-term money market portfolio. It comprises thirteen Bank Bills of equal face value, each with a maturity seven days apart. The average term to maturity is approximately 45 days. A Bank Bill is a non-interest bearing security issued by a bank whereby the bank takes on an obligation to pay an investor a fixed amount (face value) at a fixed future date. It is sold to an investor at a discount to the face value. Bank Bills are short-term money market investments with maturities usually between 30 days and 180 days. 30 Day Bank Bill Index - The Bank Bill Index is designed to measure the performance of the Australian short-term money market and consists of 13 weekly maturities out to varying dates. Interest rates applied to these maturities are interpolated from cash and Bank Bill Swap (BBSW) rates. BBSW rates are administered by the Australian Stock Exchange (ASX).
Call funds	Call funds are closely linked with investments but do not constitute investments. Call funds are used to meet immediate operational cash needs and may be retained in Council cheque accounts and call accounts at an ADI. Call funds must be accessible immediately or up to a maximum of 24 hours notice within normal ADI operating hours.

5. PROCESS OWNER

Group Manager Financial Services

6. AMENDMENTS

Changes that have been made since the last version (ORD 13/10/2021) include:

- Changes to titles
- Update of legislative references



Authorised by: Council
Authorised date:
Effective date:
Next review date:
File Number:

Council Policy INVESTMENT POLICY

1. INTRODUCTION

The Investment Policy establishes the framework within which Council's cash and investment portfolio will be managed, monitored and reported on. This policy has been established in compliance with section 625 of the Local Government Act 1993 and provides guidance for the investment of Council's funds, with consideration given to the following primary objectives:

- Preservation of capital. Preservation of capital is the principal objective of the investment portfolio. Investments are to be placed in a manner that seeks to safeguard Council's cash and investments portfolio. This includes managing credit and interest rate risk within identified thresholds and parameters;
- Maximise investment returns within Council's risk appetite as outlined within this policy. Investments are expected to achieve a market average rate of return in line with Council's risk tolerance;
- Manage Council's cash resources to ensure sufficient liquidity to meet Council's business objectives over the short, medium and long term.

The policy reinforces Council's ongoing commitment to maintain a conservative risk and return portfolio, an important component of its ongoing prudent financial management practices.

2. POLICY STATEMENT AND SCOPE

2.1 Funds for Investment

Investment are maintained to meet specified business needs, including:

- strategic purposes consistent with Council's long term strategic plan;
- holding short-term investments for working capital requirements;
- holding investments that are necessary to carry out Council operations consistent with annual long-term plans.

2.2 Legislative Authority for Investments

All investments are to be made in accordance with:

- Australian Accounting Standards;
- NSW Office of Local Government Investment Circulars;
- NSW Office of Local Government Investment Policy Guidelines;
- Local Government (General) Regulation 2021 - Clause 212;
- Local Government Act 1993 (particularly section 625);
- NSW Local Government Code of Accounting Practice & Financial Reporting;
- Minister's Investment Order (gazetted);
- The Trustee Amended (Discretionary Investments) Act 1997 – Sections 14A(2), 14C(1) & (2).

2.3 Investment Governance

The following internal control practices are in place to ensure adequate governance and allow transparent

and clear performance measurement for the management of Council's cash and investment portfolio:

- financial planning and cash flow management;
- delegated authorities and investment approval;
- measurement of investment performance;
- performance benchmarks;
- reporting and review;
- audit oversight.

2.4 Delegation of Authority

Authority for the implementation of the Investment Policy is delegated by Council to the Chief Executive Officer (CEO) in accordance with the *Local Government Act 1993*.

The CEO has delegated the day-to-day management of Council's investment portfolio, including authority to invest surplus funds as follows:

- Director Business & Performance (DBP) ;
- Group Manager Financial Services (GMFS);
- Other senior financial officers who have the requisite skills to undertake investment functions (as per the Delegations Register).

Officers with delegated authority are required to acknowledge they have received a copy of this policy and understand their obligations in this role.

2.5 Prudent Person Standard

The investment portfolio will be managed with the care, diligence and skill that a prudent person would exercise. As trustees of public monies, officers are to manage Council's investment portfolio to safeguard the portfolio in accordance with the spirit of this Investment Policy, and not for speculative purposes.

2.6 Ethics and Conflicts of Interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investment portfolio. Any potential conflicts of interest should be appropriately disclosed in accordance with Council's Code of Conduct.

Independent advisors are also to declare that they have no actual or perceived conflicts of interest and receive no inducements in relation to Council's investments.

2.7 Approved Investments

Current investment regulations require Councils to invest with either the NSW Treasury Corporation (NSW TCorp) or Approved Deposit-taking Institutions (ADI) such as Australian banks or branches of foreign owned banks, credit unions and/or building societies as it acknowledges the additional assurance that arises from their regulation by the Australian Prudential Regulation Authority (APRA).

Investments are limited to those allowed by any current Ministerial Investment Order that has been issued by the NSW Minister for Local Government.

2.8 Prohibited Investments

In accordance with any current Ministerial Investment Order, this investment policy prohibits but is not limited to any investment carried out for speculative purposes, including:

- Derivative based instruments;
- Principal only investments or securities that provide potentially nil or negative cash flow; and
- Standalone securities issued that have underlying futures, options, forward contracts and swaps of any kind.

This policy also prohibits the use of leveraging (borrowing to invest) of an investment.

2.9 Investment Advisor

In managing its investments Council may engage the services of an independent investment advisor, licensed by the Australian Securities and Investment Commission for the purpose of achieving the aims of this policy. Independence includes receiving no commissions or other benefits in relation to the investments being recommended or reviewed, except as fully rebated to Council, promptly.

The independent advisor will review and assess the market value of the investment portfolio on a monthly basis.

Council's investment advisor is required to provide written confirmation that they do not have any actual or potential conflicts of interest in relation to the investments they are recommending or reviewing, including that they are not receiving any commissions or other benefits from the product providers in relation to the investments being recommended or reviewed.

2.10 Mandatory Investment Criteria

2.10.1 Scope

Investments must comply with the legislative authorities as described in the **Legislative Authority for Investments** paragraph of this policy.

2.10.2 Currency

Investments must be denominated in Australian Dollars.

2.10.3 Ownership

Investments must be held in Port Macquarie Hastings Council name.

2.10.4 Term / Maturity

The term to maturity of investments may not exceed the periods shown below:

Investment	Maximum term
Fixed Rate Term Deposits	5 years
Floating Rate Notes (FRNs)	5.5 years
Other Investments	10 years

2.10.5 Risk Management Framework

Council's risk profile in relation to investing surplus funds is to be relatively prudent, conservative and risk averse. The profile will be achieved by effectively managing within the investment portfolio:

- the diversity of the investments;
- the creditworthiness of the investments.

Diversity is achieved by placing limits on the maximum exposure Council may have to individual funds or financial institutions and individual credit rating bands.

Creditworthiness of investments is primarily determined using industry standard credit ratings.

Investments are to comply with three key risk management criteria:

- **Overall Portfolio Credit Framework:** limit overall credit exposure of the portfolio;
- **Institutional Credit Framework:** limit exposure to individual institutions based on their rating;
- **Term to Maturity Framework:** limits based on maturity of securities.

Overall Portfolio Credit Framework

To control the credit quality of the entire portfolio, the following credit framework limits the percentage of the total portfolio exposed to particular credit rating categories.

Credit rating agencies apply short-term ratings to investments with 12 months or less to maturity and long-term ratings to those with greater than 12 months to maturity.

Short-term credit rating	Long-term credit rating	Overall portfolio exposure (as a % of Total Portfolio)
A-1+	AAA	100%
A-1	AA	100%
A-2	A	60%
A-3	BBB	40%
Unrated	Unrated	5%
NSW Treasury Corp Deposits and TCorpIM Funds (allowable under the Ministerial Order)		20%

- Credit ratings apply to both products and institutions. This policy requires the rating applicable to the institution responsible for the product (e.g. guarantor) to be taken as the relevant rating given this represents the underlying risk to Council.
- Credit risk investment parameters are based on credit rating bands as published by the credit rating agencies (e.g. S&P, Moody's, Fitch). If an investment is rated by more than one ratings agency, the credit rating to be used will be based on the order of S&P, Moody's and then Fitch. In the event of disagreement between agencies as to the rating band ("split ratings") Council shall use the higher in assessing compliance with portfolio policy limits, but for conservatism shall apply the lower in assessing new purchases.
- Where the principal amount and accrued interest of any investment with a financial institution are directly guaranteed by the Australian Federal Government for full repayment, the exposure of the total portfolio to credit ratings lower than AAA may be exceeded, provided that the excess amount comprises only guaranteed investments. As a result, investments directly guaranteed by the Australian Federal Government may comprise the total investment portfolio. Management should ensure that any excess of investments over the parameters specified in the table above that is comprised of Australian Federal Government guaranteed investments can be managed back to within the specified parameter levels prior to the expiration of any such guarantee.

Institutional Credit Framework

Council's exposure to an individual institution will be restricted by their credit rating so that single entity exposure is limited.

Where Council has short-term and long-term holdings with the same institution, the limit associated to the institution's short-term rating will be used.

Short-term credit rating	Long-term credit rating	Individual institution exposure (as a % of Total Portfolio)
A-1+	AAA	40%
A-1	AA	30%
A-2	A	20%
A-3	BBB	15%
Unrated	Unrated	5%
NSW Treasury Corp Deposits and TCorpIM Funds (allowable under the Ministerial Order)		20%

- Credit ratings apply to both products and institutions. This policy requires the rating applicable to the institution responsible for the product (e.g. guarantor) to be taken as the relevant rating given this represents the underlying risk to Council.
- Credit risk investment parameters are based on credit rating bands as published by the credit rating agencies (e.g. S&P, Moody's, Fitch). If an investment is rated by more than one ratings agency, the credit rating to be used will be based on the order of S&P, Moody's and then Fitch. In the event of disagreement between agencies as to the rating band ("split ratings") Council shall use the higher in assessing compliance with portfolio policy limits, but for conservatism shall apply the lower in assessing new purchases.

- Where the principal amount and accrued interest of any investment with a financial institution are directly guaranteed by the Australian Federal Government for full repayment, the exposure to individual institutions may exceed the stated limits provided that the excess amount comprises only guaranteed investments.

Term to Maturity Framework

The term to maturity framework specifies the maximum amounts or percentages of Council's total investment portfolio that can be held within the various investment maturity bands.

Maximum thresholds are set to control the proportion of the total portfolio that can be invested into longer term investments to ensure that Council has adequate access to short and medium term liquidity to satisfy its business objectives. The maximum thresholds reduce as the maturity horizon extends further into the future.

	< 1 Year	1 to 3 Years	3 to 5.5 Years	> 5.5 Years
Maximum % of Total Portfolio	100%	70%	40%	10%

Minimum thresholds are set to ensure that there will always be an adequate amount of liquidity available for ongoing working capital purposes. Remaining funds are invested across the various investment horizons, seeking the best relative value at the time of investment.

	< 1 Year
Minimum % of Total Portfolio	40%

2.10.6 Breaches of Criteria

This policy imposes limits and thresholds in relation to the acquisition and holding of investments. However, situations may occur where inadvertent breaches of these limitations or thresholds arise, other than from the acquisition of investments. For example:

- amendments to regulatory directives or legislation;
- changes in the total value or amount of Council's investment portfolio which consequently changes any of the threshold limits so that they no longer meet the portfolio liquidity parameters.

If the credit ratings of any of Council's investments are downgraded to an extent that they no longer fall within the investment policy limits, they will be divested as soon as practicable having regard to potential losses resulting from early redemption and subject to minimising any loss of capital that may arise from compliance with this provision.

Then limitations or thresholds are breached due to amendments to regulatory directives or legislation, the investment portfolio must be managed in accordance with the respective amendments. Where the amendments enable retention and grandfathering of existing investments, Council may continue to actively manage those investments within the portfolio in accordance with all other regulations and policies applicable to such investments. This includes a strategy of holding or divesting such investments in accordance with regular investment considerations.

Where limitations or thresholds are breached due to a change in the overall size of the total investment portfolio, the following process will apply:

- an immediate freeze is imposed on the acquisition of new investments in the relevant category until the portfolio can be effectively managed back to accord with the requirements of this policy;

- the relevant category of investments must be managed back in accord with the policy limits within a period that takes into account any adversity created by market liquidity, current valuations of these investments and the risks of default.

The immediate forced sale of the investments in breach of the limits or thresholds will not be required.

2.11 Investments in Financial Institutions which Support the Fossil Fuel Industry

Subject to consideration of the Risk Management Guidelines in this policy, preference is to be given to financial institutions that publicly state that they do not invest in or finance the fossil fuel industry if:

- the investment is compliant with Council's Investment Policy; and
- the investment rate of interest is equivalent to or more favourable to Council relative to other similar investments that may be on offer to Council at the time of the investment.

2.12 Measurement of Investment Performance

Investment performance includes both interest returns and any change in the underlying capital value of the investments.

Interim fluctuations of capital value are excluded from the monthly measurement of investment performance on the basis that:

- investments are mainly acquired with the intention of holding them through to maturity, although some liquid assets may be sold prior to maturity should it be to the benefit of Council;
- cash liquidity requirements are structured and managed to ensure that Council is not in a financial position that will require a forced sale of these assets.

Notwithstanding the above, changes in capital value are important and the monthly investment report will therefore provide Council with indicative market valuations of each investment. In the event that the capital value of any investment becomes impaired, or a capital gain or loss is actually realised (through disposal), the gain or loss of value will be recognised within that month's financial accounts.

Investment performance will be measured monthly against the chosen benchmarks in relation to both current month and 12-month rolling returns.

The GMFS will approve the use of independently determined benchmarks. Where Council changes independently determined benchmarks, monthly reports for the month of change and the next five months thereafter shall contain reporting of investment returns against benchmark for both the following:

- the benchmark that is being replaced; and
- the new benchmark, backdated on a twelve-month basis.

Council currently uses two performance benchmarks:

- Bloomberg AusBond Bank Bill Index (formerly known as UBSA Bank Bill Index) – the Bank Bill Index represents the performance of a notional rolling parcel of bills averaging 45 days and is the widely used benchmark for local councils and other institutional cash investments;
- 30-day Bank Bill Rate – provides a fair indicator of the risk free rate of return so that Council can understand the return that has been earned from diversifying its investment portfolio and accepting conservative levels of risk.

2.13 Reporting and Review

Council will maintain a separate record of money it has invested under section 625 of the *Local Government Act 1993*, in accordance with the criteria defined by the *Local Government Code of Accounting Practice and Financial Reporting*.

All investments are to be appropriately recorded in Council's financial records and reconciled at least on a monthly basis.

Pursuant to the *Local Government (General) Regulation 2021* (clause 212), the GMFS will provide a monthly report to Council on investments. The monthly report to Council will detail the investment portfolio in terms of performance and rate of return on the overall portfolio for the period and will detail the purchase price, face value, current (market) value, credit rating and coupon / yield for each individual investment.

For audit purposes, the GMFS will obtain certificates from the banks or fund managers confirming the amounts of investment held on Council's behalf at 30 June each year.

The Investment Policy will be reviewed at least once a year or as required in the event of legislative changes.

3. REFERENCES

Laws and standards	<ul style="list-style-type: none"> • Australian Accounting Standards • NSW Office of Local Government – Local Government Code of Accounting Practice & Financial Reporting • NSW Office of Local Government Investment Circulars • Office of Local Government Investment Policy Guidelines • Local Government (General) Regulation 2021 • Local Government Act 1993 • Minister's Investment Order (gazetted) • The Trustee Amended (Discretionary Investments) Act 1997 – Sections 14A(2), 14C(1) & (2)
Policies and procedures	<ul style="list-style-type: none"> • Code of Conduct • Disciplinary Policy & Procedures • Fraud & Corruption Internal Reporting Policy • Investment Strategy

4. DEFINITIONS

Term	Meaning
Total investments	<p>Total investments comprise:</p> <ul style="list-style-type: none"> • call accounts • term deposits • floating rate notes • bonds with an active secondary market with government (including NSW T-Corp) and Authorised Deposit-taking Institutions (ADIs). <p>Investments also include grandfathered structured investments with other institutions as defined.</p>
Active investments	<p>Active investments are a part of total investments and comprise:</p> <ul style="list-style-type: none"> • call accounts • term deposits • floating rate notes • bonds with an active secondary market

Term	Meaning
Grandfathered investments	Grandfathered investments are a part of total investments and comprise: <ul style="list-style-type: none"> investments where new investment activity is prohibited by regulation other investments over which new investment activity is temporarily prohibited due to unintentional breaches of investment thresholds and limitations that arise due to changes in the level of unrelated investments within the portfolio, (the prohibition only remains as long as the breaches remain in place).
Impairment	The impairment of an investment represents the amount of the original cost of the investment that is not expected to be recovered at the investment's maturity date due to current adverse economic or investment conditions that impact on the investment's financial performance.
Approved Deposit-taking Institution (ADI)	An institution that is authorised under the <i>Banking Act 1959</i> to accept term deposits and conduct banking activities in accordance with that Act and under the prudential supervision of the Australian Prudential Regulation Authority (APRA).
Active secondary market	A market where investors purchase securities or assets from other investors, rather than from issuing companies themselves on an arms length (independent) basis.
Benchmark rates	Benchmark rates comprise: <ul style="list-style-type: none"> Bloomberg AusBond Bank Bill Index - The Australian Bloomberg (formally UBSA) Bank Bill index is constructed as a benchmark to represent the performance of a passively managed short-term money market portfolio. It comprises thirteen Bank Bills of equal face value, each with a maturity seven days apart. The average term to maturity is approximately 45 days. A Bank Bill is a non-interest bearing security issued by a bank whereby the bank takes on an obligation to pay an investor a fixed amount (face value) at a fixed future date. It is sold to an investor at a discount to the face value. Bank Bills are short-term money market investments with maturities usually between 30 days and 180 days. 30 Day Bank Bill Index - The Bank Bill Index is designed to measure the performance of the Australian short-term money market and consists of 13 weekly maturities out to varying dates. Interest rates applied to these maturities are interpolated from cash and Bank Bill Swap (BBSW) rates. BBSW rates are administered by the Australian Stock Exchange (ASX).
Call funds	Call funds are closely linked with investments but do not constitute investments. Call funds are used to meet immediate operational cash needs and may be retained in Council cheque accounts and call accounts at an ADI. Call funds must be accessible immediately or up to a maximum of 24 hours notice within normal ADI operating hours.

5. PROCESS OWNER

Group Manager Financial Services

6. AMENDMENTS

Changes made since the last version (ORD 15/09/2022):

- Amended "BBB" rated overall limits from 35% to 40%
- Amended individual "BBB" rated limits from 10% to 15%

ENGAGEMENT SUMMARY

Project name	Draft Strategic Property Investment Policy
Project manager	Allanah Summerville - Strategic Property Investment Coordinator
Consultant	
Engagement Officer	

Background



Developing a Strategic Property Investment Framework and supporting policy were actions included in Council's Operational Plan 2023-2024 to guide decision making and ensure probity, transparency, and equity in Council's commercial property dealings.

The existing Property Investment Policy from 2017 was reviewed in 2023 as part of the development of this Strategic Property Investment Framework. The revised policy is now called the Strategic Property Investment Policy.

The amendments reflect Council organisational changes, including minor rewording, and a new section outlining Council's role in property development. This new section underscores Council's strategic objective to take a more commercial approach to property investment. The Framework and the Policy have also been specifically aligned with the Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022.

At the December 2023 Ordinary Meeting, Council resolved to publicly exhibit the draft Strategic Property Investment Policy for no less than 42 days.

Engagement approach



The draft Strategic Property Investment Policy was on public exhibition from 2 January until 15 February 2024 through the Have Your Say website.

The engagement approach was Involve, with any submissions received to be considered.

Engagement activities

PMHC Corporate Website



A public notice was published on Council's website about the amendments, with the draft policy attached and explained how residents could provide feedback. The public notice can be viewed here: [Policy Review - Strategic Property Investment Policy](#)

ENGAGEMENT SUMMARY

Have Your Say newsletter

Draft Strategic Property Investment Policy

At the December 2023 Ordinary Council Meeting, Council resolved to place the Draft Strategic Property Investment Policy on Public Exhibition for 42 days. The existing Property Investment Policy from 2017 was reviewed in 2023 as part of the development of the Strategic Property Investment Framework.

The amendments reflect Council organisational changes, including minor rewording, and a new section outlining Council's role in property development. Head to Have Your Say to review the Draft Strategic Property Investment Policy and provide your feedback through our online survey.

Submissions Close Thursday 15 February 2024.

HAVE YOUR SAY

4,440 subscribers to the Have Your Say mailing list were sent the February edition of the Have Your Say newsletter, which included the Draft Strategic Property Investment Policy

This newsletter was opened by 48.87% of recipients and there were 27 clicks through to the Have Your Say page for this policy.

Have Your Say

The Draft Strategic Investment Policy Have Your Say page was visited 90 times, with 6 submissions made. There was a total of 27 downloads of the draft policy.

Find a project Contact us PMHC website

Home Projects Search annabelle.sneddon

Home / Draft Strategic Property Investment Policy

Draft Strategic Property Investment Policy

Consultation has concluded

At its December 2023 Ordinary Meeting, Council resolved to Publicly exhibit the draft Strategic Property Investment Policy for a period of not less than 42 days.

Council's Operational Plan 2023-2024 includes an action to develop a Strategic Property Investment Framework and supporting policy to guide decision making and ensure probity, transparency and equity in Council's commercial property dealings by December 2023.

The existing Property Investment Policy from 2017 was reviewed in 2023 as part of the development of this Strategic Property Investment Framework. The revised policy will now be called the Strategic Property Investment Policy.

The amendments reflect Council organisational changes, include minor rewording, and a new section outlining Council's role in property development. This new section underscores Council's strategic objective to take a more commercial approach to property investment. The Framework and the Policy have also been specifically aligned with the Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022.

You can provide your feedback on the proposed Draft Policy by:

- Completing the survey below;
- Emailing council@pmhc.nsw.gov.au; or
- Posting to:
 - Chief Executive Officer
 - Port Macquarie-Hastings Council
 - PO Box 84
 - Port Macquarie NSW 2444

All submissions must be received by close of business on **Thursday 15 February 2024**.

Survey

Who's Listening

Allanah Summerville
Strategic Property Investment Coordinator
Port Macquarie Hastings Council

Phone 6381 8111
Email Allanah.Summerville@pmhc.nsw.gov.au

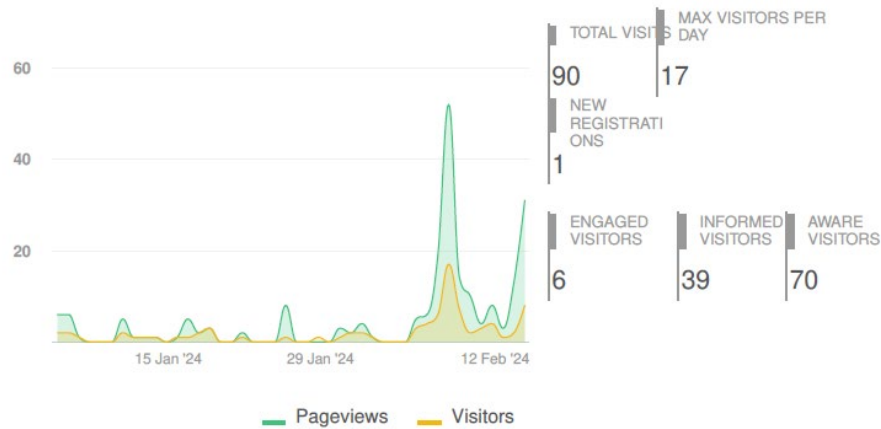
Documents

DRAFT Strategic Property Investment Policy.pdf (205 KB) (pdf)

ENGAGEMENT SUMMARY

The following graph summarises the user activity for the exhibition period.

Visitors Summary



TOP 3 DOCUMENTS BASED ON DOWNLOADS

27

Downloads

DRAFT Strategic Property
Investment Policy.pdf

ENGAGEMENT SUMMARY



Results/Conclusion

The following categorises key themes and summarises free text responses received via the survey.

Probity, Transparency, and Equity: Emphasising the importance of documented processes to ensure fairness, honesty, and openness in council's commercial property dealings. This includes disclosure of staff relations, transparency in activities, and disclosure of individual benefits.

Infrastructure Prioritisation: Concerns raised about the council's ability to focus on property investment amidst existing infrastructure gaps, such as water, sewerage, and roads. Delays in infrastructure projects affect development approvals and housing supply.

Conflict of Interest and Viability: Concerns about Council's role as a property developer conflicting with its support for commercial development initiatives. Lack of clarity on the payback period and viability of investments is highlighted as a concern.

Decision-Making Process: Suggestions for clearer decision-making processes involving the entire council rather than individual councillors. Emphasis on community priorities and adherence to established policies.

Strategic Land Use: Calls for strategic planning regarding the use of public land, including considerations for future needs such as public transport, conservation, renewable energy projects, and public facilities. Prioritisation of non-car pathways, wildlife corridors, and green spaces is emphasised.

Community Engagement: Support for ongoing reviews and inclusive planning processes involving community input and feedback to address future needs effectively.

Next Steps

Community engagement makes up one part of the decision-making process for this project. Council needs to temper feedback against a range of other factors before making a decision on whether to adopt this policy.

A further report will be tabled at the March 2024 meeting of Council, detailing the submissions received from the public during the exhibition period.

ENGAGEMENT SUMMARY

Appendix 1 - Submissions

Submission Date	Submission Feedback
Jan 24 24 09:14:08 pm	<p>A documented process to guide decision-making and ensure probity, transparency, and equity in Council's commercial property dealings must include</p> <p>Documented probity disclosure of all council and non-council staff related to the commercial and contractual activity</p> <p>Transparency of all commercial and contractual activity must be disclosed to the public i.e. no closed-door meetings</p> <p>Disclosure of any individual benefits</p>
Feb 14 24 12:38:26 pm	<p>In my role as [REDACTED] I have concerns with the Strategic Property Investment Policy as published on the Council's website.</p> <p>My main concern is the ability of the Council with its current resourcing levels to focus on such a big endeavour, when there are large gaps in the infrastructure that the Council is currently responsible for delivery, such as water, sewage and roads. This critical infrastructure is years behind in demand despite funding being available. Also, the time is taken for the approval of development applications that are currently being delayed due to these delays. I am hearing reports from the business community of delays of up to 6 months for approvals to be processed. Proposed rezonings to deliver critical housing supply cannot be processed due to a lack of needed infrastructure.</p> <ul style="list-style-type: none"> • It is a clear conflict of interest for the Council to become a property developer, particularly at a time when the Council's support of current commercial development initiatives is lagging so far behind demand. Council becoming a developer in its own right would be totally inappropriate when commercial developers cannot get projects approved. • The policy appears in its current form to have no payback period for the investment (page 3). This is a major concern with no timeframe on the viability of the investment. • There is no clear understanding of the time frame for establishing of a documented process to guide decision-making and ensure probity, transparency, and equity in the Council's commercial property dealings (page 2). • The paper refers to the role of a Councillor to be responsible for the following, this would be better approved by the whole Council. "A Councillor is responsible and accountable to: Rather than A Councillor, any decisions required should be by the majority of council as per existing decision making processes. • Approve the Property Investment Policy; • Ensure that Property Investment activities meet the Principles outlined in the Policy and community priorities for present and future generations; • Ensure strategic decisions made regarding property assets are in accordance with the Council's Property Investment Policy; and • Ensure appropriate resources for Property Investment activities are made available." (page 4)

ENGAGEMENT SUMMARY

	I would recommend that the Council focus its resources on the infrastructure shortfalls that holding up the business community, before taking on other responsibilities.
Feb 15 24 09:32:25 am	<p>Great that this review happening.</p> <p>Council needs to be strategic and take a view to future needs for public land, both foreseen and capacity for the unforeseen. 3 areas of need for public land spring to mind:</p> <ol style="list-style-type: none"> 1. Public transport, walking and cycling passages remembering that roads access to urban centres will inevitably require limitation and regulation as population grows. 2. Conservation of green breathing spaces for public recreation and bio-diversity sustainability. This will include the need for wildlife corridors in spreading suburbs. 3. Land for local public facilities including traditional sewage, water etc but increasingly the need for localised renewable energy and energy storage facilities.
Feb 15 24 11:50:12 am	We need to ensure that we can invest in property for conservation (biodiversity) and for renewable energy projects.
Feb 15 24 05:36:06 pm	<p>Great idea hoping to lead to positive results. Please include</p> <ol style="list-style-type: none"> 1-reservation of future transport corridors from Port CBD to Thrumster and Wauchope CBD to Bonny hills and Layton. 2. Non car pathways joining urban development estates for non-road vehicles, walkers and cyclists. 3. Reserving substantial blocks of habitat land for wildlife. 4. Proceeding with the development of an ocean pool to provide exercise and recreation for non-ocean users. There's lots of us! 5. Continued reservation of substantial blocks for passive use and tree cover.
Feb 15 24 05:55:18 pm	<p>Great that this review happening. Council needs to be strategic and take a view to future needs for public land, both foreseen and capacity for the unforeseen. 3 areas of need for public land spring to mind: 1. Public transport, walking and cycling passages remembering that roads access to urban centres will inevitably require limitation and regulation as population grows. 2. Conservation of green breathing spaces for public recreation and bio-diversity sustainability. This will include the need for wildlife corridors in spreading suburbs. 3. Land for local public facilities including traditional sewage, water etc but increasingly the need for localised renewable energy and energy storage facilities.</p>



Authorised by:	Council
Authorised date:	DD/MM/2023
Effective date:	DD/MM/2023
Next review date:	DD/MM/2025
File Number:	D2023/#####

STRATEGIC PROPERTY INVESTMENT POLICY

1. INTRODUCTION

This Policy defines the scope and principles to guide Strategic Property Investment for Port Macquarie-Hastings Council.

Council holds or manages property assets to support the delivery of a broad range of services to the community. Council is required to provide effective and efficient management of property related activities to fulfil legislative, operational and community obligations.

Property Investment is the ownership, acquisition, investment, management, development and disposal of land and property assets to support the strategic outcomes of Council. Property Investment activities can provide an immediate financial return to Council (such as the sale of surplus land or purchase and lease of a commercial office building), provide a pathway for future income generation (such as the future development of an existing land parcel), a pathway for future Council infrastructure development (such as the purchase of property for future road projects) and or to secure environmental/biodiversity offsets. Strategic Property Investment activities generally span medium to longer terms (i.e., 5 to 20 years).

A structured and prudent approach to Property Investment can contribute to the long-term financial sustainability of Council and hence improve outcomes for the community.

Council has an opportunity to use Property Investment to establish a recurring income stream that supplements its traditional income base of rates, charges, and government grants. This can be achieved by maximising the use and commercial return of existing Council property assets and through strategic investment in additional property assets.

This Policy is supported by a Strategic Property Investment Procedure to guide decision making and ensure probity, transparency, and equity in Council's commercial property dealings, noting Council's dual role as landowner and separately, as Planning/Consent Authority.

2. POLICY STATEMENT AND SCOPE

Property assets are critical in supporting the delivery of current and future services to the community.

Port Macquarie-Hastings Council is committed to undertaking appropriate Property Investment to meet the strategic direction of Council and the community. This investment will take the form of:

- The development of one-off or recurring income streams to Council, through maximising the use and commercial return of existing Council property assets ("operational" land) that have been identified as being surplus to Council's operational requirements; and the strategic acquisition, investment, development, and sale of appropriate property assets; and
- Meeting future community, operational and growth needs through strategic acquisition and disposal of property assets in line with adopted long-term Council strategies and plans.

To implement this Policy, Council will establish and manage a Property Investment Portfolio, comprising strategic property assets that meet the above criteria. Through the relevant Director, the Group Manager, Commercial & Business Services will regularly review and report to Council annually on the performance of the Property Investment Portfolio and make recommendations regarding the portfolio.

This Policy applies to Council's strategic activities in relation to Property Investment involving "operational" land assets. This includes, but is not limited to, property due diligence activities; market research and investigations; financial feasibilities; property development activities, including planning proposals; concept planning and design; development applications; subdivision works; renovation and construction works; property investment activities; property acquisition activities; and property marketing and sales.

This Policy does not cover Council's operational and statutory activities in relation to property management, including day-to-day administration of Council's property assets, leasing, licensing, and management of easements. Likewise, the Policy does not apply to land owned by Council and classified as "community" land, noting the restrictions on "community" land as set out in the *Local Government Act 1993*.

Policy Background

In the June 2015 "Fit for the Future" submission to the Office of Local Government, Council identified *"the establishment of a property business unit to drive a stronger business focus on land assets"*, as a key strategy to improve operational performance and long-term financial sustainability. Property assets and Property Investment activities were identified on the basis that *"these initiatives will increase revenue, harvest ongoing savings and/or reduce expenditure."*

Council currently owns approximately 1,240 individual properties, which are split approximately 50/50 between "operational" classified land and "community" classified land. 81% of these properties are held by Council's General Fund, with the balance held by Council's Water Fund, Sewer Fund and Waste Fund.

To contribute to the long-term financial sustainability of Council and improve outcomes to the community, a Policy is required to clearly define Council's objectives, approach, and responsibilities as they relate to Property Investment and the strategic management of its property assets.

Policy Principles

The principles of this Policy and the associated Strategic Property Investment Procedure, provide a framework to ensure a consistent and informed approach to the management of a Property Investment Portfolio, ensuring:

- The establishment of a documented process to guide the decision-making process and ensure probity, transparency, and equity in Council's commercial property dealings.
- An enduring reference guide that supports the long-term nature of strategic property investment and survives successive Council terms; and
- The overall mix and nature of property assets meets the long-term strategic direction of Council and service level requirements.

For operational land that has been identified as being surplus to Council's operational requirements: and for property assets that have been selected to provide a one-off or recurring income stream to Council:

- To actively invest in property to establish and maintain a Property Investment Portfolio as a strategy for providing capital growth (in the form of a return of capital plus a profit margin) and recurrent sources of revenue to support Council's rates income and other statutory income.
- To maintain a portfolio balance of medium-term and longer-term property investments providing acceptable growth and recurrent returns in line with prevailing industry and market forces and the strategic goals of Council.
- To ensure optimum financial return through appropriate asset selection and analysis of highest and best use value to the community.
- To ensure optimum financial return through effective asset management and planning practices, ensuring that property assets are fit-for-purpose, well maintained and financially sustainable; and
- To ensure disposal of property assets is managed with transparency and maximises outcomes for the community.

For property assets that have been selected to meet future community, operational and growth needs:

- To invest in property assets and maintain a Property Investment Portfolio to efficiently manage and prepare for future major Council infrastructure works (included, but not limited to, major transport corridors and connections; major water and sewer trunk main infrastructure; renewable energy sites; quarry material sites; biodiversity banking and offset sites; and operational sites).
- To insure against the risk of Council being exposed to high property purchase costs when undertaking strategic infrastructure works.
- To maintain a portfolio of property assets that satisfies the current and future property needs of Council by meeting the requirements and corporate objectives outlined in key Council strategies and plans (including but not limited to, the Long-Term Financial Plan, Urban Growth Management Strategy, Regional Integrated Transport Strategy, Infrastructure Strategy, Long Term Energy Strategy and Economic Development Strategy).

For all Property Investment Portfolio assets:

- In undertaking property investment and development activities, Council will maintain a commercial risk-based approach to the use of public funds.
- Property investment decisions will consider quadruple bottom line elements, addressing social, economic, environmental, and civic leadership elements, ensuring decisions are balanced and take into account both financial and community benefit;
- Investment decisions will consider prevailing economic conditions and factors relative to Property Investment, including but not limited to market demand, location, vacancy rates, lifecycle costs of improvements, and future development potential;
- Council will implement a process to ensure that value is captured at appropriate stages in the property development process;
- Unless Council resolves otherwise, revenue generated from property investment will be placed in a Property Reserve to fund future development and investment opportunities (and associated planning) and/or the delivery of improved services for the community;
- Upon establishing a stabilised revenue stream within the Property Investment Portfolio, Council will look to implement a mechanism whereby a portion of revenue from Property Investment activities will be paid as a dividend back to Council to supplement rates and support the long term financial sustainability of Council.

Council as a “developer”:

- In adopting a commercial risk-based approach to the use of public funds, Council will avoid high risk, speculative property investment activities.
- In considering quadruple bottom line/civic leadership obligations, Council will not take land to market that is subject to environmental constraints (e.g., flood prone, contaminated, etc) unless those constraints can be appropriately managed/remediated.
- Council may manage and mitigate risk and supplement its internal capabilities by partnering with the private sector through appropriate commercial and contractual mechanisms to maximise outcomes for the community.
- Council will ensure probity, transparency, and equity in its commercial property dealings. Council will not consider unsolicited market approaches and will publicly advertise all property investment opportunities which will be assessed via formal procurement/assessment processes.
- Council will not lease or sell land “subject to development or other planning consent” to avoid conflict of interest risks between Council’s dual role as landowner and separately, as Planning/Consent Authority.
- Council related development applications will be considered in line with the NSW *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022*;
- Commercial property activities will be undertaken consistent with competitive neutrality principles.
- As Council’s property investment capability matures, Council may seek to acquire and develop property outside of the Port Macquarie-Hastings Council Local Government Area (LGA) to maximise outcomes for the community.

3. RESPONSIBILITIES AND AUTHORITIES

A Councillor is responsible and accountable to:

- Approve the Property Investment Policy.
- Ensure that Property Investment activities meet the principles outlined in the Policy and community priorities for present and future generations.
- Ensure strategic decisions made regarding property assets are in accordance with Council’s Property Investment Policy; and
- Ensure appropriate resources for Property Investment activities are made available.

The Chief Executive Officer and Directors are responsible and accountable to:

- Review the Property Investment Policy in accordance with Council’s strategic direction.
- Implement the Property Investment Policy with agreed resources; and
- Ensure the practices of the organisation are consistent with the adopted Property Investment Policy.

The Group Manager, Commercial & Business Services is responsible and accountable to:

- Implement the Property Investment Policy.
- Engage appropriate resources to deliver the outcomes of the Property Investment Policy; and
- Report to Council annually on the status of the Property Investment Portfolio.

4. REFERENCES

Asset Disposal Policy
Asset Management Policy
Asset Management Strategy
Community Strategic Plan
Disposal of Real Property Procedure
Development Control Plan
Economic Development Strategy
Local Environment Plan
Long Term Energy Strategy
Long Term Financial Plan
Operational Plan
Regional Integrated Transport Strategy
Resourcing Strategy
Urban Growth Management Strategy
Conveyancing Act 1919
Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022
Investment Policy Guidelines May 2010 as published by NSW Department of Premier & Cabinet
Local Government Act 1993
Real Property Act 1900

5. DEFINITIONS

Community Land: Land owned by Council, and made available for use by the general public, for example, parks, reserves or sports grounds, the use of which is restricted by terms and conditions set out in the *Local Government Act 1993*. Community land must not be sold, exchanged, or otherwise disposed of by a council.

Operational Land: Land owned by Council, which facilitates the functions of Council and may not be open to the general public, for example, a works depot. There are no special restrictions on Council powers to manage, develop, dispose, or change the nature and use of operational land.

Public Land: is defined in the *Local Government Act 1993* as any land (including a public reserve) vested in, or under Council control.

Leasing: The granting of the exclusive use of land or building to a third party.

Licensing: The granting of the use of land or building that does not provide for exclusive use.

Competitive Neutrality: The principle that government (Council) should compete with private business on an equal footing and should not have a competitive advantage (or disadvantage) as a result of its government ownership. Competitive neutrality policies aim to promote fair and efficient competition between public and private businesses.

Level of Service: The defined quality and quantity of services to meet community expectations delivered by Council.

Chief Executive Officer: first tier management position and titled as such.

Councillor: Elected member of local government.

Council Officer: A member of Council staff.

Director: second tier management position and titled as such.

Executive: first and second tier management.

Group Manager: third tier management position and titled as such.

6. PROCESS OWNER

Director, Business and Performance

7. AMENDMENTS

Name of Document	File Location	Amendments:
Policy - Property Investment - adopted 15 December 2017	D2017/089602	<ul style="list-style-type: none">• Initial Policy
DRAFT Policy - Strategic Property Investment 14/12/2023	D2023/XXXXXX	<ul style="list-style-type: none">• Staff position titles updated• Minor administrative updates• Additional principles added to define Council's role as a "developer"



Authorised by: <authority>
Authorised date: DD/MM/YYYY
Effective date: DD/MM/YYYY
Next review date: DD/MM/YYYY
File Number: #####

Determining Applications Lodged by Councillors and Staff Policy

1. INTRODUCTION

Council has adopted a Code of Conduct that applies to all Councillors and staff. Of particular significance is the Code's requirements in respect to conflict of interest, personal dealings with Council, gifts and bribery, improper or undue influence, inappropriate interactions between Councillors and staff as well as to staff in performing their respective responsibilities in evaluating and determining applications.

2. POLICY STATEMENT AND SCOPE

This Policy applies to applications lodged by or on behalf of Councillors, Council employees or family members thereof.

This Policy aims to:

1. To provide a transparent protocol for the determination of development applications lodged by Councillors, Council employees or family members thereof where they are the owner of the property.
2. To provide a transparent protocol for the determination of other applications lodged by Councillors, Council employees or family members thereof.
3. To facilitate compliance with Council's adopted Code of Conduct which requires in Clause 3.14 that council employees "... avoid any occasion for suspicion of improper conduct in the development assessment process."

Development Applications

To facilitate compliance with the Code of Conduct, this Policy details the protocols for determination of a development application lodged by or on behalf of a Councillor, Council employees, Development and associated staff or family members thereof, based on the type of development and where they are the property owner.

It is the responsibility of individual Councillors and staff who are affected by this Policy or the Code of Conduct to complete a 'Declaration of Conflict of Interest' where they are the owner in respect of the application and where relevant, whether the application relates to non-commercial development associated with the Principal Place of Residence or other development types.

Owner	Development Type	Required Level of Determination
Section 1 Council employees (excluding Development and associated staff, GMDS, DCPE, CEO).	Section 1.1 All development types.	Determined under delegated authority (unless separate Council policy or legislation directs otherwise).
Section 2 Development and associated staff*	Section 2.1 Non-commercial development associated with the <i>Principal place of residence</i> . Section 2.2 All other development types.	Assessment undertaken by independent staff member and recommendation provided to the CEO for determination (unless separate Council policy or legislation directs otherwise). Assessment referred to independent assessor for peer review with a recommendation provided to the CEO for determination (unless separate Council policy or legislation directs otherwise).
Section 3 Councillors*	Section 3.1 All development types.	Assessment undertaken by staff with a recommendation provided to the Development Assessment Panel for determination.
Section 4 Director Community, Planning and Environment* and Group Manager Development Services*	All development types.	Assessment undertaken by staff with a recommendation provided to the Development Assessment Panel for determination.

Applicant/Owner	Development Type	Required Level of Determination
Section 5 Chief Executive Officer*	All development types.	Assessment undertaken by staff with a recommendation provided to the Development Assessment Panel for determination.

* Includes *relatives* thereof.

Other Applications

Similar to development related applications it is the responsibility of individual Councillors and staff (including relatives) who lodge an application for approval for other activities as defined to complete a 'Declaration of Conflict of Interest' where they are the applicant and/or owner in respect of the application and where relevant.

For staff, and relatives of staff, these other applications will be assessed by an independent staff member and a recommendation provided to the CEO for determination, unless a registered certifier is required to approve. In the instances where a registered certifier is required to approve, the application is to be assessed by an alternate certifier and be reviewed by the relevant Group Manager and Director prior to final approval.

For the Chief Executive Officer, and relatives of the Chief Executive Officer, these other applications will be assessed by an independent staff member and a recommendation provided to the Council for determination, unless a registered certifier is required to approve. In the instances where a registered certifier is required to approve, the application is to be assessed by an independent certifier.

For Councillors, and relatives of Councillors, these applications will be assessed by staff and a recommendation provided to Council for determination unless a registered certifier is required to approve. In the instances where a registered certifier is required to approve, the application is to be assessed by an alternate certifier and be reviewed by the relevant Group Manager, Director and Chief Executive Officer prior to final approval.

Where the application relates to use of, construction on (other than when a Development Application is required) or any other application that primarily relates to activities related to a specific property, where the applicant is a Councillor, or Councillors family, and is not the owner of the subject property, the application will be assessed by an independent staff member and a recommendation provided to the CEO for determination.

3. RESPONSIBILITIES AND AUTHORITIES

The Group Manager Governance is responsible and accountable to:

- Implementing and communicating this policy
- Monitoring compliance of this policy
- Ensuring this policy is reviewed and updated to meet external compliance

The Group Manager Development Services is responsible and accountable to follow this policy.

4. REFERENCES

- Environmental Planning and Assessment Act, 1979;
- Port Macquarie-Hastings Council Code of Conduct

5. DEFINITIONS

Council determination - refers to an application being determined (refused or approved) by a full meeting of Council.

Councillors - means a person elected or appointed to civic office, and includes the Mayor.

Development and associated staff means any:

1. Employee of the Community, Planning and Environment Division (excluding both the Director Community (DCPE), Planning and Environment and the Group Manager Development Services;
2. Employee of the Council who has qualitative/decision making dealings within the process of assessing and determining Applications, leases and licences;
3. Member of the Executive Leadership Team (excluding both the DCPE and the Chief Executive Officer (CEO)); and includes *relatives* thereof.

Development related applications - refers to development activities/approvals as defined in the Environmental Planning and Assessment Act

Director - refers to the Director Community, Planning and Environment

Independent assessor means – a person with suitable tertiary planning/building qualifications and experience and not being an employee of Council.

Independent staff member - a staff member who is not a direct report or supervisor of the applicant/proponent

Other applications - applications not relating to development such as approvals to use public spaces and/or land, mobile food vending, events, leases and licences for Council buildings and facilities.

Principal place of residence means - a property owned by Councillors, Development and associated staff or a family member thereof, that is utilised as their main residence and relates to all domestic ancillary building structures.

Relative - includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c)

6. PROCESS OWNER

Group Manager Governance is responsible for the process this policy refers to, also the policy owner. This is the role to be contacted for any information in relation to this policy.



Policy Framework

Document Control

Content Manager Record No.:

Action	Version	Completed by	Completion Date	Approved by	Approval Date	Review Date
Created (replaced Making a Council Policy	V01	Governance and Legal Officer	04/09/23	[position title]	DD/MM/YY	DD/MM/YY

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1. Purpose

The purpose of the Policy Framework is to provide direction for the creation, review, amendment, and rescission of Port Macquarie-Hastings Council policies, procedures, and guidelines.

2. Statement

Port Macquarie-Hastings Council (Council) is committed to following the Policy Framework (Framework) to:

- a. implement and execute strategy;
- b. establish standards of employee and Councillor behaviour (our Values);
- c. promote governance best practice and manage risk;
- d. comply with legislative requirements; and
- e. effectively run the business of Council.

3. Scope

The Framework applies to all employees and Councillors, and to all policies, procedures, and guidelines, developed for and on behalf of Council.

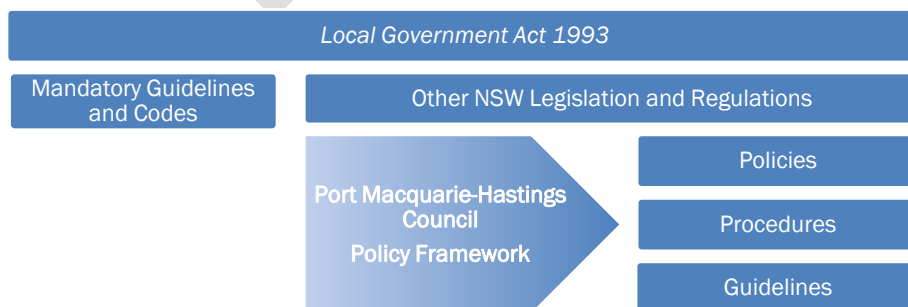
4. Principles

All policies, procedures, and guidelines must be:

- a. clear, simple to read, and easily understood;
- b. created, reviewed, amended, and rescinded as per the Policy Framework Procedure;
- c. approved by the appropriate delegate(s) as per the Policy Framework Procedure;
- d. on the appropriate template;
- e. communicated to, and easily accessible by, all employees and Councillors (where appropriate); and
- f. must not be contrary to current legislation, regulation, or policy.

5. Policy Framework Hierarchy

The Policy Framework fits within Council's broader governance structure under the *Local Government Act 1993*.





5.1. Policies

A policy is a formal document containing a mandatory statement of principles that set direction for our strategy, governance and risk management, legal requirements, values, and operations.

Policies outline what we as employees must do to deliver our community vision to be the most liveable, sustainable, and innovative place in Australia. They provide an approved way of operating and consistency in decision making in relation to a particular matter. This in turn reduces Council's risk exposure.

Port Macquarie-Hastings Council produces two types of policies:

- a. External policies - support strategy, governance and risk management, or legislative requirements; and
- b. Internal policies - establish our values, support Council operations, or legislative requirements.

5.2. Procedures

A procedure is a formal document containing a mandatory process, practice, or action required to implement and comply with a policy. While policies outline what we must do as employees, procedures tell us how we must do it, in order to meet the principles contained in the policy.

5.3. Guidelines

A guideline is a non-mandatory document that suggests steps or methods to help implement a policy or procedure. A guideline provides additional support, or guidance, to help accurately interpret a policy, and/or action a procedure.

5.4. Frameworks

A Framework is an overarching collection of resources such as policies, procedures, and guidelines which provide direction on a specific topic or business function. A framework may also include video and interactive online modules. A Framework may or may not be formalised by a document such as this one.

6. Reporting

A status report will be provided annually to:

- a. The Executive Group - outlining the status of internal policies; and
- b. Council - outlining the status of external policies.

The format and information provided will be determined by the Governance team in consultation with each stakeholder group.

7. Records Management

All policies, procedures and guidelines must be:

- a. Registered on the Council Policy Register;
- b. Added to Content Manager; and



- c. Displayed on the Council website (external policies) or intranet (all policies, procedures, and guidelines).

8. References and Related Documents

- [Local Government Act 1993](#)
- [Local Government \(State\) Award 2020](#)
- Policy Template
- Policy Framework Procedure
- Procedure Template
- [Work Health and Safety Act 2011](#)
- Other legislation as appropriate

9. Definitions

Framework - an overarching collection of resources such as policies, procedures, and guidelines which provide direction on a specific topic or business function.

Guideline - a non-mandatory document that suggests steps or methods to help implement policies or procedures.

Policy - a formal document containing a mandatory statement of principles that set direction for our strategy, governance and risk management, legal requirements, values, or operations.

Procedure - a formal document containing a mandatory process, practice, or action required to implement and comply with a policy.

10. Responsible Officer

For more information on the Policy Framework or its associated documents please contact the Governance and Legal Officer.



MAKING OF COUNCIL POLICY

Responsible Officer	Group Manager Governance and Executive Services
Contact Officer	Group Manager Governance and Executive Services
Authorisation	Port Macquarie-Hastings Council
Effective Date	16 September 2015
Modifications	
Superseded Document(s)	Proposing New Policy, Amending Existing Policy and Rescinding Obsolete Policy Policy
Review	Group Manager Governance and Executive Services
File Number	D2015/118330
Associated Documents	Nil

1. INTRODUCTION

The establishment of policy reduces risk, provides for consistency in decision making and guides the promotion of operational efficiencies. Procedures, guidelines and similar documents sit under policy, provide the “how to” and assist in the implementation of policy.

A council will typically divide its policy suite into what is termed public ‘Council’ Policy and internal ‘management’ policy. There is no Local Government industry standard terminology used to separate Council Policy from management policy, however the differentiation is commonly formed on the basis of who completes the final authorisation, either the Council or the General Manager.

Commonly used terminology:

Policy approved by Council	Policy approved by the General Manager
Council Policy	Management policy
Big ‘P’ Policy	Little ‘p’ policy
Externally focused Policy	Internally focused policy
	Organisational policy

2. POLICY OBJECTIVE

This Policy on the making of Council Policy provides an open and transparent statement as to how the Council will establish, amend and rescind its Policy.

3. POLICY SCOPE

In general, Council Policy covers strategic matters and external relationships, whilst management policy covers operational matters and legislative requirements on staffing.

It should be noted that a particular policy (either Council or management) may have a deliberately defined scope of coverage. For example, an adopted Council Policy may only apply to a specific location of the Local Government area or a management policy may apply to a specific staff group or groups.

This Policy sets the Policy making and review process for ‘Council’ Policy.

4. DEFINITIONS

Policy	<p>Is a concise statement of governing principles, intentions and values that mandate or constrain the performance of activities undertaken to achieve Council's objectives.</p> <p>Policy provides an approved way of operating in relation to a particular matter.</p> <p>A policy is general in nature, has broad application and helps to ensure compliance with:</p> <ul style="list-style-type: none"> • Council objectives. • Applicable legislation and regulations. • Contract requirements; and • Delegation of authority by the Council and General Manager.
Procedure	<p>Is a mandated way of undertaking a particular activity.</p> <p>A procedure is the "how to" document, it is a written, approved specification for the execution of an activity - often composed of steps, using established methods or forms - designed to achieve a consistent approach to compliance with applicable policies.</p>
Guideline	<p>Is a document that contains information about acceptable methods for implementing requirements found in policies and procedures that have been adopted.</p> <p>Guidelines do not mandate the actions that are to be taken, rather they offer suggested steps to follow in implementing a particular policy or procedure.</p>
Council official	<p>A Councillor, Council staff, Administrator, Council Committee, Sub-Committee or Advisory Group member, Conduct Reviewer or any person or body to whom a function of Council has been delegated.</p>

5. LEGAL & POLICY FRAMEWORK

This Policy, once adopted, will provide Council and Council staff with a process for the development of all new Council Policy, the amendment of existing Council Policy and the rescission of redundant Council Policy.

6. POLICY STATEMENT

Please refer to Policy Statement following.

7. IMPLEMENTATION**7.1 Roles and Responsibilities**

The following Council officers are responsible for the implementation and adherence of this Policy:

- General Manager.
- Directors.
- Group Manager Governance and Executive Services.

7.2 Support and Advice

The following Council officers are available to provide support and advice on this Policy:

- Group Manager Governance and Executive Services.

7.3 Communication

Policy will be communicated utilising the Making of Council Policy Procedure.

7.4 Procedures and Forms

7.4.1 Making of Council Policy Procedure.

7.5 Guidelines

Nil.

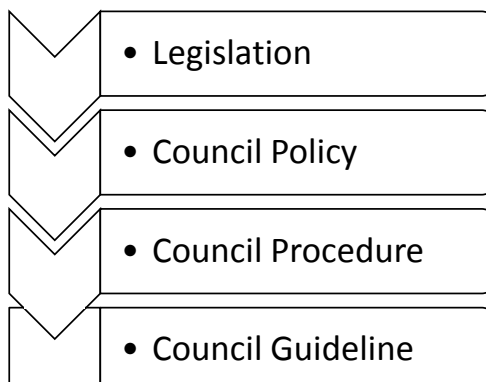
8. REVIEW

Review of this Policy will incorporate relevant legislation, documentation released from relevant state agencies and best practice guidelines.

The Group Manager Governance and Executive Services is responsible for the review of this Policy.

This Policy will be reviewed within 12 months after any scheduled Ordinary Local Government Election and as a minimum, once every four (4) years.

A review of this Policy can be initiated at the discretion of the General Manager.

POLICY STATEMENT**PART 1: COUNCIL POLICY FRAMEWORK**

Council's Policy Framework is hierarchical and consists of this Policy and the Making of Council Policy Procedure.

Council cannot adopt Policy that is contrary to any applicable Act or Regulation.

Similarly, Policy takes precedence over a Procedure and Procedure takes precedence over a Guideline.

In the event of any inconsistency within Council's Policy Framework, the document of precedence will prevail to the extent of the inconsistency.

1.1 Legislation

Legislation is passed by the Commonwealth (Federal) and/or State Government.

The NSW State Government is specifically responsible and has oversight of Local Government.

1.2 Council Policy

Council Policy is formally adopted by resolution of Council.

Council Policy is a concise statement of governing principles, intentions and values that mandate or constrain the performance of activities undertaken to achieve Council's objectives.

Policy provides an approved way of operating in relation to a particular matter.

A Policy is general in nature, has broad application and helps to ensure compliance with:

- Council objectives.
- Applicable legislation.
- Contract requirements; and
- Delegation of authority by the Council and General Manager.

1.3 Procedure

Procedures can be adopted at various levels, by Council and within the organisation. The level of adoption will dictate precedence. For example, a Council adopted Procedure will take precedence over a procedure adopted by an authorised Council staff member.

A procedure is a mandated way of undertaking a particular activity. It is the “how to” document, it is a written, approved specification for the execution of an activity - often composed of steps, using established methods and/or forms - designed to achieve a consistent approach to compliance with applicable policies.

1.4 Guideline

Guidelines can be adopted at various levels, by Council and within the organisation. The level of adoption will dictate precedence. For example, a Council adopted Guideline will take precedence over a guideline adopted by an authorised Council staff member.

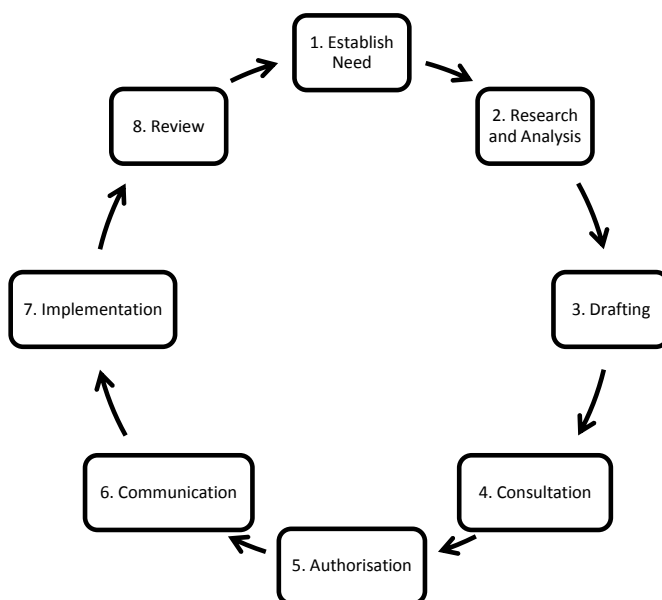
A guideline is a document that contains information about acceptable methods for implementing requirements found in policies and/or procedures that have been adopted. Guidelines do not mandate the actions that are to be taken, rather they offer suggested steps to follow in implementing a particular policy and/or procedure.

There may be situations where a guideline is more appropriate to use than a procedure, for example, where a degree of flexibility is required to ensure the efficient and effective operation of an activity.

It is permissible for a guideline to exist in the absence of a procedure.

PART 2: NEW COUNCIL POLICY

Proposed Council Policy will use the approved Council Policy template and will adhere to the Making of Council Policy Procedure:



2.1 Establish Need

This phase incorporates considerations of the following:

- Why has the issue/matter been identified?
- Do any precedents or already established Policy exist?
- Does the issue/matter require a Policy to be established?
- What are (if any) the implications?
- Can the issue/matter be addressed appropriately in another manner? Such as the establishment of a procedure or guideline.

At the conclusion of this phase, a clear and documented course of action will exist. If that action is the creation of Council Policy, continue through to Phase 2: Research and Analysis.

2.2 Research and Analysis

This phase incorporates the following:

- Examine how the issue/matter is currently managed.
 - Identify strengths and weaknesses of current approach(es), etc.
- Identify any areas of Council Policy overlap.
- Investigate legislative and regulatory requirements.
- Does any 'best practice' exist?
- Research and benchmark how the issue/matter is handled by other organisations.
- Evaluate different options, including the impact of the options.
- Assess implementation constraints.

Documented quality Policy option(s) that are appropriate and operationally feasible is the targeted outcome of this phase, so as to ultimately avoid inappropriate and unworkable Policy decisions.

2.3 Drafting

Policy should be drafted in plain English and formatted using the adopted Council Policy template. The Policy author is required to ensure that the new Policy is consistent with current legislation and any existing Policy.

During this phase the Policy author should also consider any financial and administrative implications and seek input from appropriate Council staff.

Draft Council Policy will be presented to the Executive Group and the Council prior to any external consultation.

2.4 Consultation

External consultation of all Council Policy is to be completed as per the Council adopted Community Engagement Policy and associated documents.

Draft Council Policy will be publicly exhibited for a minimum period of 28 days - unless a statutory exhibition period is required. During the exhibition period Council will accept submissions from the public.

2.5 Authorisation

Council Policy is required to be formally adopted by resolution of Council.

2.6 Communication

Whilst communication occurs throughout the entire Council Policy development process, specific communication of an adopted Council Policy is mandatory.

Appropriate communication will be undertaken, lead by the identified Council Policy responsible officer. Communication will include consideration of:

- Stakeholders (both external and internal).
- Liaison with appropriate Council staff to ensure inclusion of Council Policy in induction programs, etc.
- Education and training for relevant Council officials.

2.7 Implementation

Each Policy will have an identified Council officer responsible for that Policy and its development. The identified officer will develop a plan to effectively implement the Policy including the assignment of specific implementation responsibilities to appropriate Council staff.

2.8 Review

Periodic review of the content, communication, implementation and effectiveness of each Council Policy must occur every two (2) years, unless otherwise stated in the Policy document.

A regular review of Policy assists in ensuring that relevant and effective Policy is retained, Policy gaps identified and redundant Policy rescinded.

During any review, the Council Policy intent and implementation will be revisited and the effectiveness of the Policy's deployment and any unexpected outcomes will be considered.

Policy review continues the life cycle of a Policy, returning to a reconsideration of Phase 1: Establish Need. This ensures that Policy is regularly considered for removal based on changing legislation, Council needs or the creation of competing Policy.

PART 3: AMENDING COUNCIL POLICY

Amendments to existing Council Policy must follow the Making of Council Policy Procedure, unless the amendments are minor in nature.

Minor amendments include:

- Changes to the format of the Policy, grammar or spelling.
- Changes to the Policy number or changes to Policy owners or those responsible for implementing the Policy.

The General Manager has authority to approve minor amendments to Council Policy if, in the General Manager's opinion, the amendment does not:

- Change the intent of the Policy, or
- Impact on the community, or
- Result in conflict with an existing Policy; or
- Have legal and/or financial implications.

PART 4: RESCINDING COUNCIL POLICY

Council Policy can only be rescinded by a specific resolution of the Council to do so.

Prior to Council passing a motion to rescind a Council Policy (a resolution), the Council will place on public exhibition its intention to rescind the Policy.

During the public exhibition period the Council will call for and accept submissions from the public.

PART 5: REPORTING ON STATUS OF COUNCIL POLICY

An annual Council report will be presented to the Council outlining the status of all current Council Policy.

The Council report will include (as a minimum):

- Policy adoption date.
- Policy last reviewed date.
- Outcome of last review (No change, administrative amendments, Council approved).
- Policy next review date.



Authorised by: Council
Authorised date:
Effective date:
Next review date:
File Number:

COUNCIL POLICY

Unreasonable Customer Conduct Policy

1. INTRODUCTION

1.1 Statement of support

Port Macquarie-Hastings Council is committed to being accessible and responsive to all customers who approach Council's offices for assistance and/or with a complaint, request or issue **regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors**. At the same time the success of Council depends on:

- our ability to do our work and perform our functions in the most effective and efficient ways possible;
- the health, safety and security of our staff; and
- our ability to allocate our resources fairly across all the customers who approach our offices.

When customers or complainants behave unreasonably in their dealings with us, their conduct can significantly affect our success. As a result, Port Macquarie-Hastings Council will take proactive and decisive action to manage any conduct that negatively and unreasonably affects Council and will support our staff to do the same in accordance with this policy.

2. OBJECTIVES

2.1 Policy aims

This policy has been developed to assist all staff members to better manage unreasonable customer conduct ('UCC'). This policy has been based on the NSW Ombudsman's Unreasonable Conduct by a Complainant Model Policy (July 2022). Its aim is to ensure that all staff:

- Feel confident and supported in taking action to manage UCC.
- Act fairly, consistently, honestly and appropriately when responding to UCC.
- Are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used.
- Understand the types of circumstances when it may be appropriate to manage UCC
- **understand the criteria we will consider before we decide to change or restrict a customer's access to Council services**
- **be aware of the processes that will be followed to record and report UCC incidents, and the procedures for consulting and notifying customers about any proposed action or decision to change or restrict their access to Council services**
- **understand the procedures for reviewing decisions made under this policy, including specific timeframes for review.**

3. DEFINING UNREASONABLE CUSTOMER CONDUCT

3.1 Unreasonable customer conduct

Most customers or complainants who come to our office act reasonably and responsibly in their interactions with us, even when they are experiencing high levels of distress, frustration and anger about their complaint/issue. ~~However in a very small number of cases some customers or complainants behave in ways that are inappropriate and unacceptable — despite our best efforts to help them.~~ However, despite our best efforts to help them, in a very small number of cases customers display inappropriate and unacceptable behaviour. They ~~are~~ can be aggressive and verbally abusive towards our staff. They can threaten harm and violence, inundate our offices with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources and refuse to accept our decisions and recommendations in relation to their complaints/issues. When customers or complainants behave in these ways (and where there are no cultural factors that could reasonably explain their behaviour) we consider their conduct to be 'unreasonable'.

Unreasonable customer conduct ('UCC') is any behaviour by a current or former customer or complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our staff, other service users and customers or complainants or the customer/complainant himself/herself.

UCC can be divided into five categories of conduct:

3.1.1 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a customer or complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations, including final decisions that have been comprehensively considered and dealt with (even when it is evident the customer/complainant does understand the information provided).
- Persistently demanding a review simply because it is available, and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options, even after we have explained that a review is not warranted – and refusing to accept that we cannot or will not take further action on their complaint.
- Reframing a complaint in an effort to get it taken up again.
- Multiple and repeated phone calls, visits, letters, emails (including cc'd correspondence) after we have repeatedly asked them not to.
- Contacting different people within or outside our organisation to get a different outcome or a more sympathetic response to their complaint – this is known as internal and external 'forum shopping'.

3.1.2 Unreasonable demands

Unreasonable demands are any demands (express or implied) that are made by a customer or complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how to handle their complaint, the priority it should be given, or the outcome to be achieved.
- Insisting on talking to a senior manager, Director or the CEO personally when the reasons that this is not appropriate or warranted have been carefully explained to the complainant.
- Emotional blackmail and manipulation resulting in intimidation, harassment, shaming, seduction or portraying themselves as being victimised when this is not the case.

- Insisting on outcomes that are not possible or appropriate in the circumstances, for example asking for someone to be fired or prosecuted, or for an apology or compensation when there is no reasonable basis for this.
- Demanding services of a nature or scale that we cannot provide, even after we have explained this to them repeatedly.

3.1.3 Unreasonable lack of cooperation

Unreasonable lack of cooperation is an unwillingness and/or inability by a customer or complainant to cooperate with the organisation, staff, or complaints system and processes that results in a disproportionate and unreasonable use of Council services, time and/or resources.

Some examples of unreasonable lack of cooperation include:

- Sending us a constant stream of complex or disorganised information without clearly defining the issue at hand or explaining how the material provided relates to their complaint (where the complainant is clearly capable of doing this).
- Providing little or no detail around their complaint or providing information in 'drips and drabs'.
- Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Unhelpful behaviour such as withholding information, acting dishonestly and misquoting others.

3.1.4 Unreasonable arguments

Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon our organisation, staff, services, time, and/or resources. Arguments are unreasonable when they:

- fail to follow a logical sequence that the complainant is able to explain to staff
- are not supported by any evidence or are based on conspiracy theories.
- lead a complainant to reject all other valid and contrary arguments
- are trivial when compared to the amount of time, resources, and attention that the complainant demands
- are false, inflammatory, or defamatory.

3.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that a customer or complainant is – because it unreasonably compromises the health, safety and security of Council staff, other service users or the customer or complainant themselves. Some examples of unreasonable behaviours include:

- acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- harassment, intimidation, or physical violence
- rude, confronting, or threatening correspondence
- threats of harm to self or third parties, threats with a weapon or threats to damage property, including bomb threats
- stalking in person or online
- emotional manipulation.

Port Macquarie-Hastings Council has a zero tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this policy, and in accordance with our duty of care and workplace health and safety responsibilities.

It is also noted that the scope of unreasonable conduct extends to conduct directed to Council staff members outside of the work environment or standard work hours.

4. RESPONDING TO AND MANAGING UCC

4.1 Changing or restricting a complainant's access to our services

UCC incidents will generally be managed by limiting or adapting the ways that we interact with and/or deliver services to customers or complainants by restricting:

- **Who they have contact with** – e.g. limiting a customer or complainant to a sole contact person/staff member in Council.
- **What they can raise with Council** – e.g. restricting the subject matter of communications that will be considered and responded to.
- **When they can have contact** – e.g. limiting a customer or complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with Council.
- **Where they can make contact** – e.g. limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – e.g. limiting or modifying the forms of contact that the customer or complainant can have with Council. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating ~~our~~ provision of services altogether.

When using the restrictions provided in this section we recognise that discretion will need to be used to adapt them to suit a customer or complainant's personal circumstances, level of competency, literacy skills, ~~etc~~ and cultural background. In this regard, we also recognise that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

4.2 Completely terminating a customer or complainant's access to our services

In rare cases, and as a last resort when all other strategies have been considered and/or attempted, the Group Manager Governance and the Chief Executive Officer (General Manager) may decide that it is necessary for Council to completely restrict a customer or complainant's contact/access to Council's services.

A decision to have no further contact with a customer or complainant will only be made if it appears that the customer or complainant is unlikely to modify their conduct and/or their conduct poses a significant risk for Council staff or other parties because it involves one or more of the following types of conduct:

- Acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to Council property while on our premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – e.g. entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases the customer or complainant will be sent a letter notifying them that their access has been restricted. These types of conduct extend to Council staff outside of the work environment and standard work hours.

As previously stated, Port Macquarie-Hastings Council has a zero tolerance policy towards any harm, abuse or threats directed towards its staff. Any conduct of this kind will be dealt with under this policy, and in accordance with our duty of care and workplace health and safety responsibilities. If any of the types of conduct above are experienced, Council will refer the matter to the NSW Police or any other agency as required.

5. ALTERNATIVE DISPUTE RESOLUTION

5.1 Using alternative dispute resolution strategies to manage conflicts with customers or complainants

If the Group Manager Governance and the Chief Executive Officer (General Manager) determine that Council cannot terminate services to a customer or complainant in a particular case or that we/our staff bear some responsibility for causing or exacerbating their conduct, they may consider using alternative dispute resolution strategies ('ADR') such as mediation and conciliation to resolve the conflict with the customer or complainant and attempt to rebuild our relationship with them. If ADR is considered to be an appropriate option in a particular case, the ADR will be conducted by an independent third party to ensure transparency and impartiality.

However, we recognise that in UCC situations, ADR may not be an appropriate or effective strategy particularly if the customer or complainant is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own merits to determine the appropriateness of this approach.

6. RESPONSIBILITIES AND AUTHORITIES

6.1 All staff

All staff are responsible for familiarising themselves with this policy. Staff are also encouraged to explain the contents of this document to all customers or complainants, particularly those who engage in UCC or exhibit the early warning signs for UCC.

Staff are also encouraged and authorised to use the strategies and scripts provided at the NSW Ombudsman's website – see Part 2 of the Managing unreasonable conduct by a complainant Manual (3rd edition):

- Strategies and scripts for managing unreasonable persistence
- Strategies and scripts for managing unreasonable demands
- Strategies and scripts for managing unreasonable lack of cooperation
- Strategies and scripts for managing unreasonable arguments
- Strategies and scripts for managing unreasonable behaviours

Any strategies that change or restrict a customer's or complainant's access to our services must be considered at the Executive Team level or higher as provided in this policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Group manager Governance within 24 hours of the incident occurring. A file note of the incident should also be saved into Council's records management system.

6.2 The Group Manager Governance

The Group Manager Governance, in consultation with relevant staff and the Chief Executive Officer, has the responsibility and authority to change or restrict a customer or complainant's access to Council services in the circumstances identified in this policy.

6.3 Senior Leadership Team

All members of the Senior Leadership Team are responsible for supporting staff to apply the strategies in this policy, ~~as well as those in the practice manual~~. Senior Leadership Team managers are also responsible for ensuring compliance with the procedures identified in this policy and ensuring that all staff members are trained to deal with UCC – including on induction.

After a stressful interaction with a complainant, Senior Leadership Team managers should provide affected staff members with the opportunity to debrief their concerns either formally or informally. Senior Leadership Team managers will also ensure that staff are provided with proper support and assistance including medical or police assistance, and if necessary, support through programs like the Employee Assistance Program.

Senior Leadership Team managers may also be responsible for arranging other forms of support for staff, such as appropriate communication or intercultural training.

7. REFERENCES

- Unreasonable Customer Conduct Procedure
- Council's Code of Conduct
- Work Health and Safety Policies and Procedures
- NSW Ombudsman Managing Unreasonable Conduct by Complainants Model Policy (July 2022)

8. PROCESS OWNER

- Group Manager Governance

PORT MACQUARIE
HASTINGS COUNCIL

Data Breach Policy

Document Control

Content Manager Record No.:

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1. Purpose

Part 6A of the *Privacy and Personal Information Protection Act 1998* (PIIP Act) establishes the NSW Mandatory Notification of Data Breach (MNDB) Scheme. The MNDB Scheme requires Port Macquarie-Hastings Council (Council), as a public sector agency bound by the PIIP Act, to notify the Privacy Commissioner and affected individuals of eligible data breaches.

Under the MNDB Scheme, Council is required to prepare and publish a Data Breach Policy (this Policy) for managing such breaches, as well as maintaining an internal Eligible Data Breach Incident Register, and [Public Notification Register](#), of eligible data breaches.

This Policy outlines how Council complies with the MNDB Scheme, responds to data breaches involving personal information, the roles and responsibilities for reporting data breaches, and its strategies for containing, assessing, and managing eligible data breaches.

Effective breach management, including notifications, assists Council in avoiding or reducing possible harm to both the affected individuals/organisations and Council, and may prevent future breaches.

2. Statement

Port Macquarie-Hastings Council is committed to providing guidance to employees on data breaches of Council held data in accordance with the requirements of the PIIP Act and MNDB Scheme. Council acknowledges that not all data breaches will be eligible data breaches but regardless Council will take all data breaches seriously.

3. Scope

The Policy applies to:

- a. Councillors;
- b. Employees;
- c. Consultants and contractors;
- d. Volunteers, trainees, and apprentices;
- e. Employees of Council-owned businesses; and
- f. Committees, including community members of those committees which may be established under Section 355 of the *Local Government Act 1993* (LGA).

For the purposes of this Policy any reference to Council or Council employee is inclusive of the parties listed above.

4. Principles

This Policy details:

- a. What constitutes an eligible data breach under the PIIP Act;
- b. Roles and responsibilities for reporting, reviewing and managing data breaches; and
- c. Steps involved in responding to a data breach, and reviewing systems, policies, and procedures to prevent future data breaches.



5. What is an Eligible Data Breach?

The definition of personal information for the purposes of the MNDB Scheme includes 'personal information' as defined in section 4 of the PPIP Act, and 'health information' as defined in section 6 of the *Health Records and Information Privacy Act 2002* (HRIP Act). This means that for the purposes of the MNDB Scheme, 'personal information' means information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion and includes information about an individual's physical or mental health, disability, and information connected to the provision of a health service.

A data breach occurs when personal information held by Council (whether held in digital or hard copy) is subject to unauthorised access, unauthorised disclosure, or is lost in circumstances where the loss is likely to result in unauthorised access or unauthorised disclosure.

This may or may not involve disclosure of personal information external to Council, or publicly. For example, unauthorised access to personal information by a Council employee, or unauthorised sharing of personal information between teams within Council, may amount to a data breach.

A data breach may occur as the result of malicious action, systems failure, or human error. A data breach may also occur because of a misconception about whether a particular act or practice is permitted under the Information Protection Principles (IPPs).

Examples of data breaches include:

- a. Human error
 - When a letter or email is sent to the wrong recipient.
 - When system access is incorrectly granted to someone without appropriate authorisation.
 - When a physical asset such as a paper record, laptop, USB stick, or mobile phone containing personal information is lost or misplaced.
 - When an employee fails to implement appropriate password security, for example not securing passwords, or sharing password and log in information.
- b. System failure
 - Where a coding error allows access to a system without authentication, or results in automatically generated notices including the wrong information or being sent to incorrect recipients.
 - Where systems are not maintained through the application of known and supported patches.
- c. Malicious or criminal attack
 - Cyber incidents such as ransomware, malware, hacking, phishing, or brute force access attempts resulting in access to or theft of personal information.
 - Social engineering or impersonation leading into inappropriate disclosure of personal information.
 - Insider threats from Council employees using their valid credentials to access or disclose personal information outside the scope of their duties or permissions.
 - Theft of a physical asset such as a paper record, laptop, USB stick, or mobile phone containing personal information.

The MNDB Scheme applies where an 'eligible data breach' has occurred. For a data breach to constitute an 'eligible data breach' under the MNDB Scheme, there are two tests to be satisfied:



- a. There is an unauthorised access to, or unauthorised disclosure of, personal information held by Council, or there is a loss of personal information held by Council in circumstances that are likely to result in unauthorised access to, or unauthorised disclosure of, the information; and
- b. A reasonable person would conclude that the access or disclosure of the information would be likely to result in serious harm to an individual to whom the information relates.

The term 'serious harm' is not defined in the PPIP Act. Harms that can arise as the result of a data breach are context-specific and will vary based on the:

- Type of personal information accessed, disclosed, or lost, and whether a combination of types of personal information might lead to increased risk;
- Level of sensitivity of the personal information accessed, disclosed, or lost;
- Amount of time the information was exposed or accessible, including the amount of time
 - information was exposed prior to Council discovering the breach;
- Circumstances of the individuals affected and their vulnerability or susceptibility to harm (that is, if any individuals are at heightened risk of harm or have decreased capacity to protect themselves from harm);
- Circumstances in which the breach occurred; and
- Actions taken by Council to reduce the risk of harm following the breach.

Serious harm occurs where the harm arising from the eligible data breach has, or may, result in a real and substantial detrimental effect to the individual. The effect on the individual must be more than mere irritation, annoyance, or inconvenience.

Harm to an individual includes physical harm; economic, financial, or material harm; emotional or psychological harm; reputational harm; and other forms of serious harm that a reasonable person in Council's position would identify as a possible outcome of the data breach.

6. Systems and Processes for Managing a Data Breaches

Port Macquarie-Hastings Council has established a range of systems and processes for preventing and managing data breaches.

Council's IT network and infrastructure is managed by the Digital Technology team who have implemented a number of cyber security measures to mitigate the risk of data breaches. This has included projects to increase cyber security maturity, cyber security training for all staff (including threat trends), Data Loss Prevention, and procedures for the sharing of personal and sensitive information.

Council will ensure third-party providers who store personal and health information on behalf of Council are aware of the MNDB Scheme and the obligations under this Policy to report any data breaches to Council.

A voluntary Data Breach Procedure and Response Plan has been in place since 2018 and Council has voluntarily reported data breaches to the Privacy Commissioner since this time. The Data Breach Policy (this Policy) replaces the Data Breach Procedure and Response Plan.

Council maintains an internal register of data breaches and has implemented recommended changes to systems and policies in response to reviewing the causes of data breaches to assist in preventing future breaches.



Presentations and training will be provided to Council employees on the MNDB Scheme and reporting and managing data breaches. Council will continue to review the training needs of staff with respect to data breaches and provide training in reporting, managing, and responding to data breaches.

Council has included the risk of a cyber-security incident (which may involve a data breach) within its Risk Register and established controls to mitigate this risk and its impact on Council systems, data holdings, and individuals.

The loss of IT systems as a result of a cyber-security incident is included in the Cyber Crime and Security Incident Policy and Business Continuity Plan. Council conducts annual cyber security exercises to test its responsiveness to a cyber-attack on Council's IT systems. Cyber Security activities are overseen by the Cyber Security Officer, Digital Technology and Customer Services.

7. Reporting and Responding to a Data Breach

The Group Manager Governance is Council's Public Officer, and Privacy Officer. As Privacy Officer, the Group Manager Governance must be immediately informed of any data breach to ensure the application of this Policy, including making notifications to the Privacy Commissioner for eligible data breaches, and notifying affected individuals.

There are five key steps required in responding to a data breach:

- a. Initial report and triage;
- b. Contain the breach;
- c. Assess and mitigate;
- d. Notify; and
- e. Review.

Each step is set out in further detail below. The first four steps should be carried out concurrently where possible. The last step provides recommendations for longer-term solutions and prevention strategies.

Digital Technology and Customer Services supports Council in the supply and maintenance of its IT systems. The Group Manager Governance, as Privacy Officer, will coordinate with the Chief Information Officer, Digital Technology and Customer Services, to address and respond to identified data breaches related to Council's IT systems.

The Group Manager Governance will immediately inform the Chief Executive Officer (CEO), or CEO's delegate, and the Director Business and Performance of any suspected data breach.

7.1. Step One: Initial Report and Triage

Members of the public are encouraged to report any data breaches to Council in writing by using the contact options available at www.pmhc.nsw.gov.au.

Any employee, contractor, or third party supplier who becomes aware that a data breach has occurred, or suspects that a data breach has occurred, must report the breach within one business day of becoming aware of the breach. The breach is to be reported as follows:



- a. Employees, contactors, or third party providers are responsible for notifying Group Manager Governance within one business day of becoming aware that a suspected data breach has occurred and providing information about the type of data breach as detailed in [item 5](#) of this Policy.
- b. Group Manager Governance (or nominee) is responsible for:
 - Immediately notifying the CEO;
 - Notifying the relevant director/s;
 - Notifying the Chief Information Officer;
 - Completing the [Data Breach Self-Assessment Tool for Mandatory Notification of Data Breach](#);
 - Initiating the Data Breach Response Action Plan (Content Manager Record No. SF23/4710);
 - Notifying individuals, organisations, and regulatory bodies of eligible data breaches as outlined in the Data Breach Response Action Plan;
 - Maintaining the Eligible Data Breach Incident Register (Content Manager Record No. D2023/417561), and [Public Notification Register](#).

7.2. Step Two: Contain the Breach

Containing the breach is to be prioritised. All necessary steps possible must be taken to contain the breach and minimise any resulting damage. For example, recover the personal information, shut down the system that has been breached, suspend the activity that led to the breach, or revoke or change access codes or passwords.

If a third-party is in possession of the data and declines to return it, it may be necessary for Council to seek legal or other advice on what action can be taken to recover the data. When recovering data, Council will make sure that copies have not been made by a third party or, if they have, that all copies are recovered. This can include receiving written confirmation from a third-party that the copy of the data that they received in error, has been permanently deleted.

7.3. Step Three: Assess and Mitigate

Assess

The Data Breach Response Action Plan Template located in Content Manager (Record No. SF23/4710) must be used to authorise and implement actions in response to the data breach, and to report on the investigation post response.

The Data Breach Response Team, or relevant Director, will complete the Data Breach Response Action Plan and obtain approval from the CEO prior to implementation. The completed Data Breach Response Action Plan must be saved back to Content Manager (Record No. SF23/4710).

To determine what other steps are needed, an assessment must be undertaken of the type of data involved in the breach, whether the breach is an eligible breach under the MNDB Scheme, and the risks and potential for serious harm associated with the breach.

Some types of data are more likely to cause harm if it is compromised. For example, personal information, health information, and security classified information will be more significant than names and email addresses on a newsletter subscription list. However, Council will treat any data breach very seriously.



A combination of data will typically create a greater potential for harm than a single piece of data (for example, an address, date of birth, and bank account details, if combined, could be used for identity theft). Factors to consider include:

- a. **Who is affected by the breach?** Assessment will include reviewing whether individuals and organisations have been affected by the breach, how many individuals and organisations have been affected, and whether any of the individuals have personal circumstances which may put them at particular risk of harm.
- b. **What was the cause of the breach?** Assessment will include reviewing whether the breach occurred as part of a targeted attack or through inadvertent oversight. Questions include:
 - Was it a one-off incident, has it occurred previously, or does it expose a more systemic vulnerability?
 - What steps have been taken to contain the breach?
 - Has the data or personal information been recovered?
 - Is the data or personal information encrypted or otherwise not readily accessible?
- c. **What is the foreseeable harm to the affected individuals/organisations?** Assessment will include reviewing what possible use there is for the data or personal information. This involves considering:
 - The type of data (such as health information personal information subject to special restrictions under s.19(1) of the PPIP Act), if could it be used for identity theft, or lead to threats to physical safety, financial loss, or damage to reputation.
 - Who is in receipt of the data?
 - What is the risk of further access, use or disclosure, including via media or online?
 - Does it risk embarrassment or harm to a client and/or damage Council's reputation?
- d. **Guidance issued by the Privacy Commissioner on assessing eligible data breaches**
 - The [Guidelines on the Assessment of Data Breaches under Part 6A of the PPIP Act](#) supplement the provisions of the PPIP Act. Under section 59I of the PPIP Act, Council **must** have regard to the guidelines in carrying out an assessment.
 - The [Guidelines on the exemption for risk of serious harm to health or safety under section 59W \(nsw.gov.au\)](#) have been made under section 59ZI of the PPIP Act and are designed to help agencies understand and apply the exemption.

Breach Managed by Data Breach Response Team

The Group Manager Governance, in consultation with the relevant Director, will convene the Data Breach Response Team, in instances when the data breach:

- e. Was a result of action from a Council employee; or
- a. Involved highly sensitive information, has a high risk of harm to individuals and affects more than one individual; and

The CEO will determine whether the Mayor and Councillors are to be notified.

The Data Breach Response Team will consist of:



- a. Group Manager Governance (as Privacy Officer);
- b. Chief Information Officer (or nominee);
- c. Divisional Director (or nominee Group Manager);
- d. Communications Manager (or nominee); and
- e. Additional Council employees as required.

The Data Breach Response Team will be responsible for completing and implementing the Data Breach Response Action Plan.

Breach Managed by Division

Where the Group Manager Governance, in consultation with the relevant Director, determines that the breach is relatively minor in nature and can be managed at a local level, the Data Breach Response Team does not need to be convened. The Director (or Director nominated Group Manager) will be responsible for completing and implementing the Data Breach Response Action Plan.

Mitigate

In order to mitigate the breach, the following measures will be considered:

- a. Implementation of additional security measures within systems and processes to limit the potential for misuse of compromised information.
- b. Limiting the dissemination of breached personal information. For example, by scanning the internet to determine whether the lost or stolen information has been published and seeking its immediate removal from public sites.
- c. Engaging with relevant third parties to limit the potential for breached personal information to be misused for identity theft or other purposes, or to streamline the re-issue of compromised identity documents. For example, contacting an identity issuer or financial institution to advise caution when relying on particular identity documents for particular cohorts.

7.4. Step Four: Notify

If an eligible data breach has occurred, the notification process under Division 3 of the MNDB Scheme (Part 6A of the PPIP Act) is triggered. There are four elements of the notification process:

- a. **Notify the Privacy Commissioner:** immediately after an eligible data breach is identified using the [Data Breach Notification to the Privacy Commissioner Form](#).
- b. **Determine whether an exemption applies:** If one of the six exemptions set out in Division 4 of the MNDB Scheme applies in relation to an eligible data breach, Council may not be required to notify affected individuals. See the Information and Privacy Commission [Fact Sheet - MNDB: Exemptions from notification requirements](#) and [Guidelines on the Exemption for Compromised Cyber Security under Section 59X](#) for further information.
- c. **Notify individuals:** Unless an exemption applies, notify affected individuals or their authorised representative as soon as reasonably practicable.
- d. **Provide further information:** to the Privacy Commissioner.



Notification to individuals/organisations affected by a data breach can assist in mitigating any damage for those affected individuals/organisations. Notification demonstrates a commitment to open and transparent governance. If a data breach is not an eligible data breach under the MNDB Scheme, Council may still consider notifying individuals/organisations of the breach dependent upon the type of information that is involved, the risk of harm, repeated and/or systematic issues, and the ability of the individual to take further steps to avoid or remedy harm.

Notification should be undertaken promptly to help to avoid or lessen the damage by enabling the individual/organisation to take steps to protect themselves. The MNDB Scheme requires Council to take reasonable steps to notify affected individuals as soon as practicable.

The method of notifying affected individuals/organisations will depend in large part on the type and scale of the breach, as well as immediately practical issues such as having contact details for the affected individuals/organisations.

When to notify

Individuals/organisations affected by a data breach will be notified as soon as practicable. Whilst this Policy sets a target of notification within five (5) days; practical factors are also recognised. Where all individuals affected by an eligible data breach cannot be notified, Council will consider issuing a public notification.

How to notify

Affected individuals/organisations should be notified directly by telephone, letter, email, or in person. Indirect notification such as information posted on Council's website, a public notice in a newspaper, or a media release, should generally only occur where the contact information of affected individuals/organisations is unknown, or where direct notification is prohibitively expensive or could cause further harm (for example, by alerting a person who stole the laptop as to the value of the information contained).

A record of each public notification of a data breach must be recorded in the [Public Notification Register](#) and made available on [Council's website](#) for a period of twelve months.

What to say

Section 59O of the PPIP Act sets out specific information that must, if reasonably practicable, be included in a notification:

- a. The date the breach occurred;
- b. A description of the breach;
- c. How the breach occurred;
- d. The type of breach that occurred;
- e. The personal information included in the breach;
- f. The amount of time the personal information was disclosed for;
- g. Actions that have been taken or are planned to secure the information, or to control and mitigate the harm;
- h. Recommendations about the steps an individual should take in response to the breach;
- i. Information about complaints and reviews of Council conduct;
- j. Council's name and any other agencies that were subject to the breach; and
- k. Contact details for Council or the nominated person to contact about the breach.



See Appendix A - Notification Template.

Other obligations including external engagement or reporting

Council will consider whether notification is required by contract or by other laws or administrative arrangements to take specific steps in response to a data breach. These may include taking specific containment or remediation steps or engaging with or notifying external stakeholders (in addition to the Privacy Commissioner), where a data breach occurs.

Depending on the circumstances of the data breach this could include:

- a. [NSW Police Force](#) and/or [Australian Federal Police](#), where Council suspects a data breach is a result of criminal activity;
- b. [Cyber Security NSW](#) and the [Australian Cyber Security Centre](#), where a data breach is a result of a cyber-security incident;
- c. [Office of the Australian Information Commissioner](#), where a data breach may involve agencies under the Federal jurisdiction;
- d. Third-party organisations or agencies whose data may be affected;
- e. Financial services providers, where a data breach includes an individual's financial information;
- f. Professional associations, regulatory bodies or insurers, where a data breach may have an impact on these organisations, their functions and their clients;
- g. [Australian Cyber Security Centre](#) where a data breach involves malicious activity from a person or organisation based outside Australia;
- h. [Australian Taxation Office](#) where a data breach involves tax file information; and
- i. Professional associations, regulatory bodies, or insurers.

7.5. Step Five: Review

Council will further investigate the circumstances of the breach to determine all relevant causes and consider what short or long-term measures could be taken to prevent any reoccurrence. Depending on the nature of the breach step five may be completed as part of the assessment of the first four steps and mitigation of the breach as detailed in step three above.

Preventative actions could include a:

- a. Review of IT systems and remedial actions to prevent future data breaches;
- b. Security audit of both physical and technical security controls;
- c. Review of policies and procedures;
- d. Review of training practices; and
- e. Review of contractual obligations with contracted service providers.

Any recommendations to implement the above preventative actions are to be approved by the CEO and documented in Council's electronic record keeping system "INFORMATION MANAGEMENT – PRIVACY - Data Breach Reports and Investigations." Consideration will be given to reporting relevant matters to Council's Audit, Risk and Improvement Committee.

8. Communicating a Data Breach

The Director Business and Performance will be responsible for all communications issued under this Policy. Council will aim to notify affected individuals, and external reporting agencies within five (5) business days of a data breach of Council held information being reported to Council. Notifications to



individuals will have regard to this Policy, the Cybercrime and Security Incidents Policy, and Privacy Management Plan. Where engagement with external reporting authorities is required, the Director Business and Performance will consult with the Group Manager Governance and other Executive Team members as required.

9. References and Related Documents

Legislation and Guidelines

- [Data Breach Self-Assessment Tool for Mandatory Notification of Data Breach](#)
- [Fact Sheet - MNDB: Exemptions from notification requirements](#)
- [Fact Sheet - NSW Public Sector Agencies and Data Breaches Involving Tax File Numbers](#)
- [Form - Data Breach Notification to the Privacy Commissioner](#)
- *Government Information (Public Access) Act 2009*
- [Guide - MNDB Scheme: Managing Data Breaches in Accordance with the PPIP Act](#)
- [Guide - MNDB Scheme: Guide to Preparing a Data Breach Policy](#)
- [Guide to Making Privacy Management Plans](#)
- [Guide to Regulatory Action under the MNDB Scheme](#)
- [Guidelines on the Assessment of Data Breaches under Part 6A of the PPIP Act](#)
- [Guidelines on the Exemption for Compromised Cyber Security under Section 59X](#)
- [Guidelines on the Exemption for Risk of Serious Harm to Health or Safety under Section 59W](#)
- *Health Records and Information Privacy Act 2002*
- [Mandatory Notification of Data Breach Scheme](#)
- *Privacy and Personal Information Protection Act 1998*
- *Privacy Code of Practice for Local Government 2000*

Policy, Plans, and Procedures

- Acceptable Use Policy
- Business Continuity Plan
- Cloud Computing Policy
- Cybercrime and Security Incidents Policy
- Cyber Incident Response Plan
- Data Breach Response Action Plan Template (Content Manager Record No. SF23/4710)
- Eligible Data Breach Incident Register (Content Manager Record No. D2023/417561)
- Encryption Policy
- Information Management Policy
- Password and Authentication Policy
- Privacy Complaint Procedure
- Privacy Management Plan
- [Public Notification Register](#)
- Remote Access Policy

10. Definitions

Eligible Data Breach Incident Register - an internal Council register of eligible data breaches.

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Employee - any person working in a casual, temporary, or permanent capacity at Council including trainees, apprentices, consultants, contractors, and Councillors. For the purposes of this Plan also includes volunteers and volunteer committee members.

Health information - information or an opinion about a person's physical or mental health or disability, or a person's express wishes about the future provision of his or her health services or a health service provided or to be provided to a person. See [s6 HRIP Act](#).

Personal information - information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion, including such things as an individual's fingerprints, retina prints, body samples, or genetic characteristics. Exclusions to the definition of personal information are contained in s4(3) of the PPIP Act and includes health information; (see [s4 PPIP Act](#) and [s4\(3\) PPIP Act](#) and [s5 of the HRIP Act](#)).

Privacy principles - the Information Protection Principles set out in Division 1 of Part 2 of the PPIP Act and Health Principles set out in Schedule 1 of the HRIP Act. The privacy principles set out the minimum standards for all NSW public sector agencies when handling Personal and Health Information. Within these principles lawful exemptions are provided.

Public Notification Register - a public register of eligible data breaches made available on Council's website.

11. Responsible Officers

All Council Employees

- Immediately report a data breach in accordance with this Policy to the Group Manager Governance

Group Manager Governance (Privacy Officer)

- Receive report of suspected data breach
- Notify CEO, Director Business and Performance, and Chief Information Officer of breach
- Determine whether breach is an eligible data breach under the MNDB Scheme
- Maintain the Eligible Data Breach Incident Register, and [Public Notification Register](#)
- Determine whether a Data Breach Response Team will be convened
- Maintain this Policy

Director

- Review Data Breach Response Action Plan, gain CEO approval
- Provide advice on the communication strategy and messaging to affected individuals and external reporting agencies
- Ensure implementation of approved Data Breach Response Action Plan

Chief Executive Officer

- Approve Data Breach Response Action Plan

PORT MACQUARIE
HASTINGS COUNCIL**Appendix A - Notification Template**

Dear [name]

I am writing to you with important information about a recent data breach involving your [select personal information or information about your organisation].

Port Macquarie-Hastings Council became aware that a breach had occurred on [date] and occurred as follows:

- a. Description of the breach*
- b. How the breach occurred*
- c. The type of breach that occurred*
- d. The personal information included in the breach*
- e. The amount of time the personal information was disclosed for*
- f. Actions that have been taken or are planned to secure the information, or to control and mitigate the harm*
- g. Recommendations about the steps an individual should take in response to the breach;*
- h. Information about complaints and reviews of Council conduct*

Please contact me direct with any questions or concerns you may have regarding the data breach.

Port Macquarie-Hastings Council takes our role in safeguarding your data and using it in an appropriate manner seriously. Please be assured that we are doing everything we can to rectify the situation.

Under the *Privacy and Personal Information Protection Act 1998* you are entitled to register a complaint with the NSW Privacy Commissioner with regards to this breach. Complaints may be lodged via:

NSW Privacy Commissioner
GPO Box 7011
Sydney NSW 2001

1800 472 679
icinfo@ipc.nsw.gov.au
www.ipc.nsw.gov.au

Please do not hesitate to contact me if you have any questions regarding this notice.

Yours truly

[name
Position]

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Privacy Management Plan

Document Control

Content Manager Record No.:

Action	Version	Completed by	Completion Date	Approved by	Approval Date	Review Date
Reviewed	V01	Group Manager Governance	-	-	16/02/2022	16/02/24
Reviewed	V01.01	Governance and Legal Officer	27/10/2023			

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1. Purpose

The purpose of the Privacy Management Plan is to outline how Port Macquarie-Hastings Council (Council) manages the Personal and Health Information it collects, stores, accesses, uses, and discloses in the course of its business activities.

The objective of the Privacy Management Plan is to:

- a. Outline how Personal and Health Information is collected, used, and stored by Council;
- b. Educate Council employees of their obligations in relation to Personal and Health Information; and
- c. Maximise compliance with requirements relating to the protection of Personal and Health Information and the privacy of individuals under the:
 - i. [Health Records and Information Privacy Act 2002](#) (HRIP Act);
 - ii. [Privacy and Personal Information Protection Act 1998](#) (PPIP Act); and
 - iii. [Privacy Code of Practice for Local Government](#) (Code)

Any reference to Personal Information in this Plan should be read to include Health Information.

2. Statement

Port Macquarie-Hastings Council is committed to protecting the privacy of its customers, business contacts, Councillors, employees, contractors, and volunteers; and to building good privacy practices in its decision-making and initiatives. Council will take all reasonable steps to protect the privacy of individuals in an open and fair manner.

3. Scope

The Plan applies to:

- a. Councillors;
- b. Employees;
- c. Consultants and contractors;
- d. Volunteers, trainees, and apprentices;
- e. Employees of Council-owned businesses; and
- f. Committees, including community members of those committees which may be established under Section 355 of the *Local Government Act 1993* (LGA).

For the purposes of this Plan any reference to Council or Council employee is inclusive of the parties listed above.

4. Principles

Port Macquarie-Hastings Council will:

- a. Not disclose information in a public register unless it is satisfied that it is to be used for the purpose of the Register or the Act under which it is kept;



- b. Allow individuals to determine what Personal Information Council holds about them and how to access and amend it;
- c. Comply with the Information Protection Principles (IPPs) prescribed under the PPIP Act, and the Health Information Privacy Principles (HPPs) prescribed under the HRIP Act;
- d. Implement, review, and disseminate this Privacy Management Plan (Plan);
- e. Manage privacy complaints and conduct internal reviews in accordance with the Privacy Complaints Procedure;
- f. Collect, store, access, use, and disclose Personal and Health Information in compliance with the legislative requirements of the HRIP Act, PPIP Act, and the Code; and
- g. Assess, notify, and publish eligible data breaches in accordance with the Data Breach Policy and Mandatory Notification Data Breach Scheme.

5. Personal Information

5.1. What is Personal Information?

Personal Information is defined in section 4 of the PPIP Act as:

“information or an opinion... about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.”

Personal Information is anything that might reasonably identify an individual including their name, contact details, financial or employment information, photographs, biometric information, or an opinion about the individual regardless of whether it is true or correct. This information can be on a database and does not necessarily have to be recorded in a material form.

5.2. What is Not Personal Information?

Personal Information does not include information about an individual that is contained in a publicly available publication. The Information Protection Principles (IPPs) do not apply to publicly published information to the extent that it has been published. This means that even though Personal Information may appear in a publication, this does not mean other information related to the published information is exempt, nor that the same information is exempt if it has otherwise been collected or handled in an unrelated circumstance.

An example may be where a name and address of an individual is listed in a telephone directory. This does not exempt Council from providing required privacy notices when collecting that same information from the individual in another context such as a form submission on Council's website. Nor would the existence of the name and address in a telephone directory permit Council to use or disclose that information if Council also holds it. This may even prevent Council from disclosing that an individual's name and address might be in the telephone directory for a specific area as the opinion as to general location that would reasonably permit another to find the specific address is still Personal Information. Council Officers should only ever suggest that information might be published elsewhere, but that they cannot direct an enquirer to it.

5.3. What is Health Information?

The HRIP Act protects the privacy rights of individuals by ensuring Health Information is collected, stored, and used in a proper manner. It grants individuals the right to see and request changes to their Health Information and allows individuals to make complaints for the misuse of Health Information.



Health Information is defined in section 6 of the HRIP Act as:

“personal information that is information or an opinion about the physical or mental health or a disability (at any time) of an individual or an individual's express wishes about the future provision of health services to him or her or a health service provided or to be provided to an individual.”

Health Information also relates to Personal Information that is collected to provide, or in providing, a health service. Examples include blood test results or information about an individual's medical appointment such as their telephone number. Further, Health Information includes Personal Information in connection with an organ donation, genetic information about an individual, their relatives and descendants, and healthcare identifiers.

5.4. General Exclusions

Some categories of information are excluded from the scope of the PPIP Act and HRIP Act, including information about an individual:

- a. Who has been deceased for more than 30 years;
- b. Contained in a publicly available publication such as newspapers, books, radio, television, the internet or information made known at a public event;
- c. Who is subject to a witness protection program or other arrangement under the *Witness Protection Act 1995*;
- d. Arising out of a warrant issued under the *Telecommunications (Interception) Act 1979* (Cth);
- e. Contained in a public interest disclosure;
- f. Arising under the *Law Enforcement (Controlled Operations) Act 1997*;
- g. Arising out of a Royal Commission or Special Commission of Inquiry;
- h. Arising out of a complaint made under Part 8A of the *Police Act 1990*;
- i. Contained in Cabinet information or Executive Council information;
- j. Suitability for appointment or employment as a public sector official; and
- k. Obtained under the *Adoption Act 2000*.

5.5. Requests for Publicly Available Information

Once contained in a publicly available publication, information ceases to be covered by the PPIP Act to the extent and context of that specific publication. Where requested to provide access or make a disclosure about information that has already been publicly published, Council will rely on the provisions of the relevant Act that authorises Council to collect, use, and disclose the information. See [item 8.3](#) for more information on exemptions.

5.6. Personal and Health Information Held by Council

Council holds Personal Information concerning Councillors, including:

- a. Personal contact information;
- b. Complaints and disciplinary matters;
- c. Disclosure of interest returns; and
- d. Entitlements to fees, expenses and facilities.

Council holds Personal and Health Information concerning its customers, ratepayers, and residents, including:

- a. Rates records;

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- b. Customer requests;
- c. Library lending records;
- d. Fitness testing records;
- e. Financial information (e.g. debt recovery or financial hardship applications);
- f. Burial and cremation records;
- g. Community service utilisation e.g. Community Transport;
- h. Closed Circuit Television (CCTV) footage;
- i. Donation, grant, and sponsorship applications;
- j. Submissions and information collected through Council's community engagement and consultation activities includes entries to competitions from children;
- k. Public access forum applications; and
- l. Development applications and related submissions.

Council holds Personal and Health Information concerning its current and former employees and contractors including:

- a. Recruitment material;
- b. Pre-employment medical information;
- c. Workers compensation investigations;
- d. Public interest disclosure investigations;
- e. Leave and payroll data (including supporting medical certificates);
- f. COVID-19 and other vaccination status;
- g. Insurances;
- h. Personal contact information;
- i. Performance management plans;
- j. Disciplinary matters;
- k. Disclosure of interest returns; and
- l. Wage and salary entitlements.

5.7. Unsolicited Information and Petitions

Unsolicited information is Personal Information received by Council in circumstances where Council has not asked for or required the information to be provided. Such information is not deemed to have been collected by Council. However, if Council performs an administrative function with the information then it will be deemed collected and the IPPs relating to the security, use, and disclosure of the information will apply.

Personal Information contained in petitions received in response to a call for submissions or unsolicited petitions tabled at Council meetings will be treated the same as any other submission and be made available for release to the public.

6. Public Registers

Part 6 of the PPIP Act governs that public registers held by Council must not disclose information unless it is satisfied that the information is to be used for the purpose of the register or the Act under which it is kept. A list of Council's public registers, their purpose, and information on how to access them can be found below.



Legislation	Section	Register	Purpose	Access
<i>Local Government Act 1993</i>	Section 53	Land Register	Land vested in Council or under its control. Secondary purpose includes consideration of public accountability as to land held by Council. Third party access is a secondary purpose	Council Customer Service, Property management Port Macquarie Hastings Council (nsw.gov.au)
	Section 113	Records of Approvals	Identify approvals granted	Council Customer Service
	Section 602	Rates Records	Value and rate liability in relation to a parcel of land	Request an online certificate
	Chapter 14	Register of Disclosures of Interests	Matters involving a conflict of interest between Council duties and personal/private interests	Returns of interests of councillors, designated persons and delegates
	Section 375A	Register of voting on planning matters	Record of Councillor vote for a planning decision of Council	Register of voting on planning matters
	Section 377	Register of delegations	Authority to manage, control, administer Council	Register of delegations
	Section 328A	Register of current declarations of disclosures of political donations	Political donations and electoral expenditure disclosure declarations by Councillors	elections.nsw.gov.au
Code of Conduct	Clause 4.1 - 5.14	Returns of interests of councillors, designated persons and delegates	Matters involving a conflict of interest between Council duties and personal/private interests. Corresponding public accountability purpose and third party access is a secondary purpose	Returns of interests of councillors, designated persons and delegates
<i>Environmental Planning and Assessment Act 1979</i>	Section 4.58	Register of consents and certificates	Applications and determinations for development consent, determinations for complying development certificates, and decisions on appeal	Application tracker



Legislation	Section	Register	Purpose	Access
	Section 6.26	Register of building information certificates	Building certificates	Council Customer Service
<i>Protection of the Environment Operations Act 1997</i>	Section 308	Public register of notices and orders	Regulatory actions taken (notices issued, legal proceedings, penalties etc.)	Request an online certificate
<i>Public Spaces (Unattended Property) Act 2021, and Regulation 2022</i>	Section 33 (Act), Section 18 (Reg)	Record of property taken possession	Cost, storage, return, destruction, disposal, and proceeds of property	Council Customer Service
<i>Government Information (Public Access) Act 2009</i>	Section 25	Disclosure Log	Information released under formal access applications that may be of interest to other members of the public	Disclosure log
	Section 27	Register of Government Contracts	Government contracts greater than \$150,000	Contracts register
<i>Cemeteries and Crematoria Act 2013</i>	Section 63	Register of interment rights, memorials, cremations and interments	Interment rights, cremations, and interments of Council managed cemeteries and crematoriums	Council Customer Service
Local Environment Plan	Clause 4.6	Register of variations to development standards	Variations to development standards in the Port Macquarie-Hastings region each financial year	Register of variations to development standards
Other Public Registers	-	Register of road ownership	Classification as state, local or regional road	Register of road ownership
	-	Grant applications register	Status of grants applied for by Council	Grant applications register

6.1. Disclosure of Personal Information in Public Registers

Personal Information contained in a public register, other than where required by legislation, will only be disclosed where Council is satisfied that it is to be used for a purpose relating to the purpose of the register. A person seeking a disclosure concerning someone else's Personal Information from a public register must make application to Council and outline their reasons and purpose. Council requires a statutory declaration to verify the intended use of the information requested. Statutory Declarations can be found at www.dcj.nsw.gov.au.

6.2. Secondary Purpose of Public Registers



Council aims to be open and accountable and considers a secondary purpose for all public registers held by Council includes the provision of access to members of the public. Disclosure of specific records from public registers would normally be permitted. Requests for access, copying, or the sale of the whole or a substantial part of a public register will not necessarily fit within this purpose. Council will make an assessment as to the minimum amount of Personal Information that is required to be disclosed with regard to any request.

6.3. Other Registers

Council may keep other registers that are not public registers. The IPPs, this Plan, the Code, and PPIP Act apply to the use and disclosure of information in those registers.

The Rates Record is not considered a public register by Council. The primary purpose of the Rates Record is to record the value of a parcel of land and rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, a disclosure on a rating certificate that a previous owner was a pensioner is considered to be allowed as it relates to the secondary purpose of the register. Public access to the Rates Record will only be granted where the purpose of the access is to obtain information necessary for a statutory purpose such as the service of a notice under the *Dividing Fences Act 1991*, the *Environmental Planning and Assessment (Regulation) Act 2000*, or the *Rural Fires Act 1997*. The Rates Record will also be used by Council to notify relevant land owners of development applications and other matters where Council is required or wishes to consult the local community.

6.4. Application for Access to Own Records in a Public Register

An individual may access Personal Information that Council holds about them in a public register. Proof of identity is required prior to granting access. See [item 7](#) for more information.

6.5. Applications for Suppression of Personal Information in a Public Register

Public registers which contain, or propose to contain, Personal Information about an individual, may be removed or not placed on the register at the request of the individual, by submitting an application in the form of a Statutory Declaration. Statutory Declarations can be found at www.dcj.nsw.gov.au. Council will err in the favour of suppressing the information, unless public interest in maintaining access to the information outweighs any individual interest in suppressing the information. The information may still be used in the exercise of Council functions.

7. Accessing and Amending Personal Information

An individual has the right to access and/or amend any inaccurate Personal Information that Council holds about them. For example: updating an address or contact number.

7.1. Determining what Information Council Holds

An individual must complete and lodge a [Determine Whether Council Holds Personal Information About a Person or Access to Personal Information](#) form to determine if Council holds information about them. Please refer to this form for information regarding the lodgement process and timings. Further information may be found on our website at www.pmhc.nsw.gov.au.

7.2. Accessing your Information



An individual must complete and lodge a [Determine Whether Council Holds Personal Information About a Person or Access to Personal Information](#) form to access information held by Council. Please refer to this form for information regarding the lodgement process and timings. Further information may be found on our website at www.pmhc.nsw.gov.au.

7.3. Amending your Information

An individual may complete and lodge an [Update customer details](#) form on our website to amend Personal Information held by Council. Proof of the change in your Personal Information must be provided and Council may collect and use your Personal Information to contact you and confirm your identity and the details of your requested changes.

7.4. Accessing or Amending Other People's Information

The PPIP Act and the HRIP Act generally do not give people the right to access someone else's information. However, Section 26 of the PPIP Act allows a person to give consent to Council to disclose his or her Personal Information to someone else that would not normally have access to it. Sections 7 and 8 of the HRIP Act provide that an authorised person can act on behalf of an individual. There are also exceptions to when Council may disclose to a person other than the relevant individual. See [item 8.3](#) for more information on exemptions.

8. Information Protection Principles

Council complies with the twelve (12) Information Protection Principles (IPPs) prescribed under Division 1 of Part 2 of the PPIP Act, and fifteen (15) Health Information Privacy Principles (HPPs) prescribed under Schedule 1 of the HRIP Act. These are listed below.

Principle	Description	How Council Complies
IPP 1 & HPP 1	Lawful collection	Council collects Personal and Health Information that is reasonable, necessary, and for a lawful purpose that is directly related to its functions and/or activities. Such Personal and Health Information may include names, residential addresses, phone numbers, email addresses, signatures, medical certificates, photographs, and video footage (CCTV).
IPP 2 & HPP 2	Direct collection	Personal Information is collected directly from the individual, unless that person consents otherwise. Parents or guardians may give consent for minors. Health Information is collected directly from the person concerned, unless unreasonable or impracticable to do so. Collection may occur via phone, written correspondence to Council, email, facsimile, Council forms, or in person.
IPP 3 & HPP 3	Requirements when collecting information	Council informs individuals that their Personal Information is being collected, why it is being collected and who will be storing and using it, either before or as soon as practicable after collection. Council also informs the person how they can view and correct their information. A Privacy Statement is published on Council's website, intranet, and included on forms where Personal or Health Information is collected. Council informs individuals why Health Information is being collected about them, what will be done with it and who might see it, either before or as soon as practicable after collection. Council also informs the



Principle	Description	How Council Complies
		person how they can view and correct their Health Information and any consequences if they do not provide their information. If Health Information is collected about a person from someone else, reasonable steps will be taken to ensure that the person has been notified as above.
IPP 4 & HPP 4	Relevance of collection	Personal and Health Information collected is relevant to Council's functions and services, accurate, up-to-date, complete, and not excessive. The collection does not unreasonably intrude into the individual's personal affairs. Council, in normal circumstances, relies on the individual to supply accurate, complete information, although in special circumstances, some verification processes may be necessary.
IPP 5 & HPP 5	Secure storage	<p>Council stores Personal Information securely, for no longer than as required by the General retention and disposal authority: local government records (GA39) issued by State Records Authority of NSW, and will be disposed of appropriately. It will be protected from unauthorised access, use, or disclosure by application of appropriate access levels to Council's electronic data management system and employee training. If it is necessary for the information to be given to a person in connection with the provision of a service to Council (e.g. consultants and contractors), everything, reasonably within the power of the Council will be done to prevent unauthorised use or disclosure of the information.</p> <ul style="list-style-type: none"> • The Cybercrime and Security Incidents Policy ensures that correct procedures are followed should systems be affected by a security incident or other event. • The Data Breach Policy outlines Council's compliance to section 59ZD of the PPIP Act, and to the Information and Privacy Commission Mandatory Notification Data Breach Scheme. See item 13 for more information on the Data Breach Policy.
IPP 6 & HPP 6	Transparent access	Council provides reasonable detail about what Personal and Health Information is stored on an individual. Council stores information for the purpose of carrying out its services and functions and in order to comply with relevant record keeping legislation. Individuals have a right to request access to their own information to determine what, if any information is stored, how long it will be stored for and how it is stored.
IPP 7 & HPP 7	Access to own information	Council ordinarily provides a response to applications for access to Personal and Health Information without excessive delay or expense, generally within 28 calendar days of the application being made.
IPP 8 & HPP 8	Right to request to alter your own information	An individual may amend (i.e. correct, delete, or add to) their Personal and Health Information. Changes of name, address, and other minor amendments may require appropriate supporting documentation. Where substantive amendments are involved, an application form may be required and appropriate evidence must be provided as to why the amendment is needed.
IPP 9 & HPP 9	Accurate use of information collected	Considering the purpose for which the information is proposed to be used, Council takes all reasonable steps to ensure that Personal and Health Information is accurate before using it. Council takes all reasonable steps to ensure the information it proposes to use is the



Principle	Description	How Council Complies
		most recent information kept on file, is not unreasonably out of date or where it is reasonable and necessary to do so, writes to the individual to whom the information relates.
IPP 10 & HPP 10	Limits to use of information collected	Council only uses Personal and Health Information for the purpose for which it was collected, for a directly related purpose, or for a purpose for which a person has given consent. It may also be used without consent to deal with a serious and imminent threat to any person's life, health, or safety, for the management of a health service, for training, research or to find a missing person. Secondary purposes include investigation of suspected unlawful activity, to exercise complaint handling functions, or investigative functions.
IPP 11 & HPP 11	Restricted and limited disclosure of information	Council only discloses Personal and Health Information with the individual's consent or if the individual was told at the time of collection that it would do so. Council may also disclose information if it is for a related purpose and it considers that the individual would not object. Personal and Health Information may also be used without the individual's consent in order to deal with a serious and imminent threat to any person's life, health or safety, for the management of a health service, for training, research, or to find a missing person. Secondary purposes include investigation of suspected unlawful activity, to exercise complaint handling functions, or investigative functions.
IPP 12	Special limits on disclosure	Council does not disclose sensitive Personal Information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, or health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person. Council does not disclose this information to any person or body in a jurisdiction outside NSW unless a relevant privacy law that applies to the Personal Information concerned is in force in that jurisdiction, or the disclosure is permitted under a Privacy Code of Practice.

8.1. Specific Health Information Privacy Principles

The following additional principles apply specifically to the use and disclosure of Health Information.

Principle	Description	How Council Complies
HPP 12	Unique identifiers	Council only assigns identifiers to individuals if the assignment of identifiers is reasonably necessary to enable Council to carry out any of its functions efficiently.
HPP 13	Anonymity	Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving any health service(s) from Council.
HPP 14	Transfer of data outside NSW	Health Information is only transferred outside NSW if Council reasonably believes that the recipient is subject to laws or obligations substantially similar to those imposed by the HRIP Act, or consent has been given, or transfer is under a contract between Council and the individual, or transfer will benefit the individual, or to lessen a serious



		threat to an individual's health and welfare, or steps have been taken to ensure that the information will not be handled inconsistently with the HRIP Act, or transfer is permitted or required under any other law.
HPP 15	Cross-organisational linkages	Council seeks the express consent of individuals before participating in any system that links health records across more than one organisation. Health Information or the disclosure of their identifier for the purpose of the health records linkage system is only included if the person has given express consent.

8.2. Amendments under the Privacy Code of Practice for Local Government

The following amendments apply to the PPIP Act as outlined in the Code.

Reference	Description	Principle
Section 4.3, 4.4	Not required to comply when an award, prize, benefit or similar form of personal recognition is intended to be, or may be, conferred upon the person to whom the information relates	Section 9 (IPP 2) Section 10 (IPP 3)
Section 4.11	May use for a purpose other than the purpose for which it was collected when undertaking Council's lawful and proper function/s and necessary to exercise such functions, or award, prize, benefit, or personal recognition	Section 18 (IPP 11)
Section 4.12(1)	May disclose Personal Information to public sector agencies or utility providers	Section 19 (IPP 12)
Section 4.12(2)	May use for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition	Section 19 (IPP 12)
Section 4.12(3)	Where Council is requested by a potential employer in regards to duration, position, or status but may not provide reference without consent of that person	Section 19 (IPP 12)
Section 5.1	Modification to Public Registers allowing inspection on premises, copy of single entry without reason or proposed use	Section 57
Section 5.2	Statutory declaration as to reason or use for access to Pecuniary Interest Register, or register where returns of interests are made by Councillors or designated persons is not required	Section 57

8.3. Exemptions under the Privacy and Personal Protections Act

The following exemptions apply as outlined in the PPIP Act.

Reference	Description	Principle
Section 5	<i>Government Information (Public Access) Act 2009</i> not affected	Entire PPIP Act
Section 23	If the handing of information is reasonably necessary for law enforcement purposes or for the protection of public revenue	Section 9 (IPP 2) Section 10 (IPP 3) Section 17 (IPP 10) Section 18 (IPP 11) Section 19 (IPP 12)
Section 23A	Exemptions relating to ASIO	Section 13 (IPP 6) Section 14 (IPP 7) Section 18 (IPP 11)



Reference	Description	Principle
Sections 23(2), 23(5)	The information is collected or disclosed in connection with Court or Tribunal proceedings (whether commenced or not)	Section 9 (IPP 2) Section 18 (IPP 10)
Section 24	Exemptions relating to investigative agencies	Section 18 (IPP 11) Section 19 (1) (IPP 12)
Section 25	Exemptions where non-compliance is lawfully authorised or required to not comply, or non-compliance is otherwise permitted or implied by any other law	Section 9 (IPP 2) Section 10 (IPP 3) Section 13 (IPP 6) Section 14 (IPP 7) Section 15 (IPP 8) Section 17 (IPP 10) Section 18 (IPP 11) Section 19 (IPP 12)
Section 26(1)	If compliance would prejudice the interests of the individual	Section 9 (IPP 2) Section 10 (IPP 3)
Section 26(2)	If the individual expressly consents to Council not complying with the specified IPP	Section 10 (IPP 3) Section 18 (IPP 11) Section 19 (IPP 12)

9. Privacy Management Plan

Council is committed to reviewing and disseminating this Plan every 12 months as recommended by the Information and Privacy Commission [Guide to Making Privacy Management Plans](#).

Employees will be regularly reacquainted with the general provisions of the Plan, PPIP Act, HRIP Act, Information Protection and Health Privacy Principles, Public Register provisions, the Code, and any other applicable Code of Practice. New employees are informed of and instructed to read this Plan as part of the employee induction process. The Plan is made available to employees on Council's intranet and the website.

Council informs the community of their rights under PPIP Act, HRIP Act, and this Plan by:

- Publishing the Privacy Management Plan, Privacy Statement and associated information on Council's website together with a link to the Information and Privacy Commission website;
- Including a privacy notice on forms and invitations for community engagement; and
- Directing the public to the [Information and Privacy Commission](#) website for more information on individual rights and access.

10. Privacy Complaints

A privacy complaint is any expression of dissatisfaction relating to Council's handling of the complainant's Personal Information.

10.1. Internal Review

If an individual is not satisfied with Council's handling of their Personal Information they can make an application for internal review of Council's conduct or decision by completing the [Privacy Complaint](#):



[Internal Review Application](#) form available on Council's website. The Internal Review Application must include a return address in Australia, and be received by Council within 6 months of the individual becoming aware of the conduct or the decision that is the subject of the application.

The following principles apply to internal reviews conducted by Council:

- a. An internal review must be conducted in accordance with the Privacy Complaint Procedure;
- b. An internal review must be completed as soon as is reasonably practicable, or within 60 days;
- c. If not completed within 60 days, the applicant may make an application under section 55 of the PPIP Act, to the NSW Civil and Administrative Tribunal (NCAT), for an administrative review of the conduct;
- d. A draft of the Privacy Internal Review - Report must be sent to the Information and Privacy Commission, allowing for sufficient time for the Privacy Commissioner to make submissions back to Council on the internal review; and
- e. Upon reply from the Privacy Commissioner, the finalised Privacy Internal Review - Report, must be provided to the applicant as soon as practicable, or within 14 days.

Council may request that a legal consultant conduct an Internal Review on its behalf. This may occur in situations such as where Council has insufficient resources to resolve the complaint or the complaint involves the Officer who would otherwise perform the review.

10.2. Review by the Privacy Commissioner

If an individual does not want to lodge a [Privacy Complaint: Internal Review Application](#) with Council, they may contact the Privacy Commissioner to request a review. The Privacy Commissioner may refuse to deal with the complaint following a preliminary assessment. For more information visit www.ipc.nsw.gov.au.

10.3. Review by NSW Civil and Administrative Tribunal

If the applicant is dissatisfied with the outcome of an Internal Review conducted by Council, an application for a review of Council's conduct may be made to the NSW Civil and Administrative Tribunal (NCAT) within 28 days of receiving Council's decision. If the applicant is dissatisfied with an order or decision made by NCAT, an appeal may be made to an NCAT Appeal Panel. For more information visit www.ncat.nsw.gov.au.

10.4. Offences

Offences under the PPIP Act or HRIP Act and their penalties are outlined in the below table.

Offence	Maximum Penalty	Reference
It is a criminal offence for a public sector official to disclose or use Personal or Health Information about another person, other than in connection with the lawful exercise of their official functions	Fine of up to 100 penalty units (\$11,000), or Imprisonment for two years, or both	Section 62 of the PPIP Act; section 68 of the HRIP Act
It is a criminal offence for a person to offer to supply Personal or Health Information that the person ought reasonably know has been or is proposed to be disclosed in contravention of the above provision	Fine of up to 100 penalty units (\$11,000), or Imprisonment for two years, or both	Section 63 of the PPIP Act; section 69 of the HRIP Act



Offence	Maximum Penalty	Reference
It is a criminal offence for a person – by threat, intimidation or misrepresentation – to persuade or attempt to persuade an individual: <ul style="list-style-type: none"> to refrain from making or pursuing a request to access Health Information, a complaint to the Privacy Commissioner or NCAT; or an application for an internal review; or to withdraw such a request, complaint; or application. 	Fine of up to 100 penalty units (\$11,000) to refrain from making or pursuing a request to access Health Information, a complaint to the Privacy	Section 70(1) of the HRIP Act
A person must not – by threat, intimidation or misrepresentation – require another person to give consent under HRIP Act, or require a person to do, without consent, an Act for which consent is required	Fine of up to 100 penalty units (\$11,000)	Section 70(2) of the HRIP Act
It is a criminal offence for a person to: <ul style="list-style-type: none"> wilfully obstruct, hinder or resist the Privacy Commissioner or a member of the staff of the Privacy Commissioner; or refuse or wilfully fail to comply with any lawful requirement of the Privacy Commissioner or a member of the staff of the Privacy Commissioner; or wilfully make any false statement to or mislead; or attempt to mislead, the Privacy Commissioner or a member of the staff of the Privacy Commissioner in the exercise of their functions under PPIP Act or any other Act 	Fine of up to 10 penalty units (\$1,100)	Section 68(1) of the PPIP Act
It is an offence for an individual to directly or indirectly represent that they are an employee, agent or the Commissioner of the Information and Privacy Commission	Fine of up to 10 penalty units (\$1,100)	Section 68(2)
It is a criminal offence to access or modify restricted data held in a computer where authorisation has not been provided	2 years imprisonment	Section 308H of the Crimes Act

11. Collection of Personal Information

11.1. Provided to Council

Personal Information may be provided to Council by phone, written correspondence, email, facsimile, online or paper forms, Council's website, associated partner websites and applications, other government agencies, or in person. Individuals may provide Council with their own Personal Information or information about other people. Written correspondence, forms and enquiries containing Personal Information are maintained by Council electronically in a document management system. Phone calls may also be recorded with the individual's consent.

When individuals use applications or websites that partner with Council or provide services on Council's behalf, Council may have agreements in place to collect the Personal Information provided. Council includes clauses in new contracts with partners that require both parties to comply with relevant privacy obligations. Individuals are encouraged to also view the privacy statements of these partners.

Personal Information may be provided by:



- a. Members of the community;
- b. Council employees;
- c. Public sector agencies;
- d. Businesses;
- e. Non-government organisations; and
- f. Medical practitioners.

Council considers privacy at all times when Personal Information is provided. Council employees are trained on privacy requirements including a commitment to data minimisation and understanding the IPPs and HPPs. Council employees are sensitive to intrusion on an individual's privacy and are trained to take particular care when providing information that may be distressing for the individual involved.

11.2. Collected by Council

Council collects Personal and Health Information in accordance with the PPIP Act, the HRIP Act, and the Privacy Code of Practice for Local Government. The following table outlines the requirements under each piece of legislation.

Principle	PPIP Act	Privacy Code	HRIP Act
IPP 1 & HPP 1 Lawful Collection	Section 8: Council must collect Personal Information for a lawful purpose that is directly related to a function or activity of Council and is necessary for that purpose.	Section 4.2: In line with section 8 of the PPIP Act.	Section 1 of Schedule 1: Council must collect Health Information for a lawful purpose that is directly relate to a function or activity of Council and is necessary for that purpose.
IPP 2 & HPP 2 Direct Collection	Section 9: Council must collect Personal Information from the individual to whom the information relates unless the individual has authorised collection from someone else or is under 16 years of age.	Section 4.3: Council can collect information indirectly if reasonably necessary when an award, prize, benefit, or similar recognition is conferred upon the person to whom the information relates.	Section 3 of Schedule 1: Council must collect Health Information only from the individual it relates to unless it is unreasonable or impracticable to do so.
IPP 3 & HPP 3 Open Collection	Section 10: Council must inform the individual to whom the information relates that information is being collected, the purpose of the collection, intended recipients, whether the individual is legally required to provide the information, and if there are any rights of access to the information.	Section 4.4: Council can collect information indirectly if reasonably necessary when an award, prize, benefit, or similar recognition is conferred upon the person to whom the information relates.	Section 4 of Schedule 1: Council must inform the individual why their Health Information is being collected, what Council intend to do with it, and who may have access.



Principle	PPIP Act	Privacy Code	HRIP Act
IPP 4 & HPP 3 Relevance of Collection	Section 11: Council must ensure that the collection of Personal Information is relevant, not excessive, accurate, up to date, complete, and does not intrude on the personal affairs of the individual to whom the information relates.	Section 4.5: In line with section 11 of the PPIP Act.	Section 2 of Schedule 1: Council must ensure that the collection of Health Information is relevant, not excessive, accurate, up to date, complete, and does not intrude on the personal affairs of the individual to whom the information relates.
Exemptions	Council does not have to comply with the IPPs about collection provided for in: <ul style="list-style-type: none"> • Section 23(2) • Section 23(6A): • Section 26(1): • Section 27A; and • Section 27B. 		Section 4(4) of Schedule 1: Council does not have to comply with the Privacy Principles about collection.

Council perform a range of functions involving the collection of Personal and Health Information. This includes:

- Collecting and levying rates;
- Consulting with the community, visitors, businesses, committees, and other stakeholders;
- Providing services such as waste collection;
- Conducting investigations;
- Managing complaints and allegations;
- Assessing project applications;
- Conducting site inspections and audits;
- Issuing approvals, consents, licences, fines, and permits;
- Providing funding grants;
- Managing incidents;
- Enforcing regulations and legislation; and
- Maintaining the register of electoral information.

Council may collect Personal and Health Information through the following examples:

- Rates notices;
- Development applications and submissions;
- Online application forms and enquiries;
- Incident reports;
- Public registers;
- Submissions;
- Closed circuit television footage;
- Written correspondence;
- Contracts;
- Emails;
- Phone enquiries; and



- In person enquiries.

To ensure Council complies with the PPIP Act, the HRIP Act, and the Code, a Privacy Notice is included on all forms and documents (including digital and electronic) collecting Personal and Health Information such as names, addresses, telephone numbers or email addresses. The purpose of the Privacy Notice is to inform the individual of the following before information is collected:

- The purpose for which the information is being collected;
- The intended recipients of the information;
- If the supply of information is voluntary or mandatory by law;
- The consequences of non-provision;
- How the information can be accessed, corrected or updated; and
- The name and address of the area of Council who will collect and hold the information.

Council may collect Personal Information from someone other than the individual it relates to in certain circumstances. The exception is made only when it would be unreasonable or impracticable for the information to be collected from the individual concerned. An example is collecting information from an authorised representative if the individual lacks capacity and their ability to provide information is impaired.

11.3. Recruitment and Employment

Council collects Personal Information relating to candidates and employees as part of the recruitment process and ongoing employment, including:

- Recruitment material;
- Contact details;
- Medical history;
- Financial information;
- Leave and payroll data;
- Performance information;
- Disciplinary matters;
- Wage and salary entitlements;
- Family and care arrangements;
- Employment history;
- Conflicts of interest;
- Vaccination status; and
- Police checks.

This Personal Information is retained and managed securely by Council's human resources department. Council will never request more Personal Information than is required for the purposes of recruitment and employment.

In managing employee engagement, training, and recruitment, Council will utilise third-party providers. Third-party providers have their own privacy and security policies which Council will notify employees and prospective employees of during the recruitment process and throughout their employment. See [item 11.8](#) for more information.

11.4. Visitors and Enquiries



Members of the public can visit Council's customer service centres for assistance with matters such as making a rates payment or reporting an issue. Personal Information collected during a visit will be collected and stored in accordance with this Plan.

Individuals may provide Council with Personal or Health Information when making an enquiry on Council's website, in writing, over the phone or in person. This can include names, contact details, opinions, housing information, financial information, employments details, education, or details about an individual's health.

Enquiries are immediately directed to the appropriate area of Council to avoid disclosing Personal Information to more employees than necessary. A decision will be made as to what and how much Personal Information is to be collected in order to answer an enquiry on a case-by-case basis. If necessary Council will seek verification of the individual's identity. Council may also request that the individual outlines their previous dealings with Council to assist with the enquiry.

Personal Information may be used for a purpose other than the purpose for which it was provided or collected where the use or disclosure is necessary to action or facilitate a response to an enquiry.

11.5. Feedback, Policies, and Reports

Personal Information such as contact details and personal opinions are collected when Council is given feedback. The information may be about the complainant or Personal Information may be disclosed about another person. Feedback can be provided anonymously where it is lawful and practicable to do so, however, Council may request further information to clarify any issues raised. Council maintains Personal Information obtained through feedback securely, unless required to disclose same by law.

Council publishes draft policies on its website and invites members of the community to provide their feedback through a survey format. Participation is voluntary and any Personal Information collected from the survey is treated in accordance with the PPIP Act. A Privacy Notice is provided in the feedback collection point which outlines how Council will use and handle the Personal Information and data gathered.

Council is also obliged to make reports publicly available subject to the provisions of the GIPA Act. Council takes reasonable steps to exclude an individual's Personal Information from reports unless it relates to the purpose for which the information was collected or if the individual has provided consent. Individuals can request that Council suppress their information if they consider that the personal safety of any person would be affected if it was not suppressed.

11.6. Reviews, Assessment, Complaints, and Investigations

Council performs reviews, assessments, and investigations that may involve the collection of an individual's Personal Information. Council is required to investigate complaints as outlined in the [Customer Complaints Policy](#) which may be allocated to another employee or public agency for action. Council also investigates and reviews allegations made against individuals in terms of Council's compliance and enforcement, and other regulatory powers such as development and building compliance. Privacy complaints will be managed as outlined by the Privacy Complaints Procedure. See [item 10](#) for more information.

11.7. Subscriber, Mailing, and Contact Lists



Members of the public may subscribe to Council's newsletter and mailing list. By doing so the individual's Personal Information including name and email address will form part of Council's subscriber list. Individuals may unsubscribe from the newsletter and mailing list by contacting Council. Council takes reasonable steps to ensure that the information collected is correct and used only for the intended purpose.

11.8. Community Outreach

Council promotes and holds community-run not for profit events in the Port Macquarie-Hastings region. During such events, Personal Information may be collected by Council. Examples include names and contact details for enrolment and general information such as the number of visitors.

Members of the community can list their event on Council's website by registering their organisation on the [MyCommunity directory](#). Any Personal Information collected for this purpose will be done in accordance with the PPIP Act and HRIP Act. The same applies for any feedback provided as a result of community outreach. Such information will not be made available for release to the public without the writer's consent.

11.9. Website, and Media Consent

Council publishes information and resources related to the services it provides to the local community on its website. Information provided to, or collected by, Council via its website is managed as outlined in the [Privacy Statement](#), and stored on a secure electronic database. Personal Information will not be published on Council's website unless required by legislation or with the consent of the individual.

Personal media i.e. photographs and video is collected and managed with the same care as other Personal Information. If Council wishes to use media for promotional purposes, it will do so with consent, or as per the purpose listed on the signed Media Consent form. Permission will continue until revoked in writing by emailing council@pmhc.nsw.gov.au and referencing the activity named on the Media Consent form.

11.10. Collected by Third Party Providers

Third Party Providers may collect and store the Personal Information of individuals. Privacy statements for Providers must be made available in conjunction with Council's [Privacy Statement](#) wherever such collection may occur. Individuals are encouraged to view the privacy statements in order to understand how providers handle and store Personal Information.

Council has service agreements for the provision of records or information management services as listed in the following table.

Provider	Function	Provider Privacy Policy
Bang The Table	Community engagement	https://engage.bangthetable.com/privacy
Benestar	Employee assistance program	https://www.benestar.com/privacy-policy-australia#:~:text=Benestar%20uses%20your%20information%20as,services%20it%20provides%20to%20you
Breakr	Complaint and public interest disclosure reporting	https://clearviewconnects.com/documents/PrivacyPolicy-en.html
Burst SMS	Ferry service updates	https://burst.transmitsms.com/legals-privacy

PORT MACQUARIE
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Provider	Function	Provider Privacy Policy
Campaign Monitor	Bulk email management	https://www.campaignmonitor.com/policies/
Civica - Authority	Enterprise management system	https://www.civica.com/en-au/policies-and-statements/privacy-notice/
Coastsnap	Coastline monitoring system	https://www.coastsnap.com/privacy-policy
Community Directory/Diary	Local providers and events	https://www.mycommunitydirectory.com.au/Resources/Privacy
Content manager	Record management system	https://www.opentext.com/about/privacy
Development tracker	Development information	https://datracker.pmhc.nsw.gov.au/Home/Disclaimer
Disaster dashboards	Emergency information	n/a
e-notice	Previous rates notices	https://pmhc.enotices.com.au/terms-and-conditions
e-procure	Tendering portal	https://app.eprocure.com.au/assets/documents/footer_privacy_document.pdf
e-service	Rates and certificates	https://www.civica.com/en-au/policies-and-statements/privacy-notice/
EventPro	Glasshouse venue booking	https://www.eventpro.net/privacy-policy.html
Geocortex	Mapping	https://maps.pmhc.nsw.gov.au/MapsPMHC/
Grant Finder	Grant opportunities	https://pmhc.grantguru.com.au/privacy-policy/
InfoCouncil	Council meeting management	https://velasoftwaregroup.com.au/index.php/privacy-policy/
Microsoft	Sharepoint, 365, Windows	https://www.microsoft.com/en-au/trust-center/privacy
Monday.com	Project management	https://monday.com/trustcenter/privacy
OpenCities	Website and intranet	https://help.opencities.com/hc/en-us/articles/115000756006-Privacy-Policy
Open Forms	Online forms	https://granicus.com/privacy-policy/
Orikan	Notices and infringements	https://orikan.com/privacy-policy/#:~:text=We%20will%20collect%20your%20personal,on%20behalf%20of%20those%20clients.
PayStay	Beach permits	https://www.paystay.com.au/assets/pdf/privacypolicy.pdf
Pet rescue	Animal shelter adoptions	https://www.petrescue.com.au/privacy
Pulse	People, and performance management	https://www.pulsesoftware.com/privacy-policy/
Scout	Recruitment	https://scouttalenthq.com/privacy-policy
Skedda	Booking co-working space	https://support.skedda.com/en/articles/663173-privacy-policy-for-venue-users
TicketSearch	Glasshouse ticket booking	https://bo.ticketsearch.com/privacy-policy
Vault	Workplace health and safety	https://damstratechnology.com/terms-conditions#privacy-policy
Vendor Panel	Source to pay procurement	https://vendorpanel.com/privacy#:~:text=We%20process%20Customer%20Generated%20Information,may%20be%20required%20by%20law.
Welldone international	After hours call centre	https://www.welldone.net.au/privacy.php



Provider	Function	Provider Privacy Policy
Workplace	Employee engagement	https://pmhcouncil.workplace.com/legal/FB_Work_EnterpriseAgreement/
Whispir	Bulk SMS animal registration reminder	https://www.whispir.com/en-us/terms/privacy-policy/

12. Management of Personal Information

12.1. Access and Accuracy

Council must provide access to, and ensure the accuracy of, Personal and Health Information that it holds. A summary of these provisions and obligations can be found in the table below.

Principle	PIIP Act	HRIP Act
IPP 6 & HPP 6 Transparency	Enough detail must be given about what Personal Information is held, the purposes it is used for, and what rights an individual has to access it.	Council must advise what Health Information is held, the purposes it is used for, and what rights an individual has to access it.
IPP 7 & HPP 7 Accessibility	If an individual requests, Council must allow that individual to access Personal Information about that individual, without unreasonable delay or expense.	If an individual requests, Council must allow that individual to access Health Information about that individual, without excessive delay or expense.
IPP 8 & HPP 8 Correct	At the request of the individual to who the information relates, Council must make appropriate amendments to ensure that the Personal Information is accurate, relevant, up to date and not misleading.	At the request of the individual to who the information relates, Council must make appropriate amendments to ensure that the Health Information is accurate, relevant, up to date and not misleading.
IPP 9 & HPP 9 Accurate	Council must take reasonable steps to ensure that the Personal Information is relevant, accurate, up to date and complete before it is used.	Council must take reasonable steps to ensure that the Health Information is relevant, accurate, up to date, complete, and not misleading before it is used.
Exemptions	Council does not have to comply with the IPPs regarding access and accuracy in the circumstances provided for in: <ul style="list-style-type: none"> • Section 23; • Section 24; • Section 25; and • Section 26. 	Council does not have to comply with the HPPs regarding access and accuracy in circumstances provided for in: <ul style="list-style-type: none"> • Section 6(2) of Schedule 1; • Section 7(2) of Schedule 1; and • Section 8(4) of Schedule 1.

12.2. Use

The use of Personal Information and Health Information by Council is limited by the PPIIP Act as modified by the Privacy Code of Practice for Local Government, and HRIP Act. A summary of these provisions and obligations can be found in the table below.



Principle	PIIP Act	Privacy Code	HRIP Act
IPP 10 & HPP 10 Limited	<p>Council may only use Personal Information for the purpose for which it was collected unless:</p> <ul style="list-style-type: none"> The individual to whom the information relates consents to another specified use; or The other purpose is directly related to the purpose for which the information was collected; or The other purpose is necessary to prevent or lessen a serious and imminent threat to life or health of the individual or another person 	<p>Council may use Personal Information for a purpose other than the purpose for which it was collected in the following circumstances:</p> <ul style="list-style-type: none"> The use is for the purpose of undertaking Council's lawful and proper function(s) and Council is satisfied that the Personal Information is reasonably necessary for the exercise of such function(s); or Personal Information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of Personal recognition. 	<p>Council may only use Health Information for a purpose other than the purpose for which it was collected if:</p> <ul style="list-style-type: none"> The individual to whom the information relates consents to another specified use; or The other purpose is directly related to the original purpose and the individual would reasonably expect Council to use the information for that other purpose; or The other purpose is to assist in a stage of an emergency, is reasonably necessary to assist, and it is impracticable or unreasonable to seek consent of the individual; or The other purpose is necessary to lessen or prevent a serious and imminent threat to the life, health or safety of the individual, another person, or to public health or safety; or Is genetic information and the use is to prevent a serious threat to the life, health, or safety of a genetic relative (whether or not the threat is imminent); or Used for the management of health services, training of health practitioners, and medical research, all with specific limitations; or To find a missing person; or Investigating suspected unlawful activity or medical professional misconduct; or For law enforcement purposes, or by an investigative agency; or Lawfully authorised or required not to comply, or where otherwise permitted under an Act or other Law.



Exemptions	Council does not have to comply as outlined in: <ul style="list-style-type: none"> • section 23(4); • section 23(6A); • section 24(2); • section 25; • section 27A; • section 27B; and • section 28(3). 		
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12.3. Disclosure

Council may only disclose Personal or Health Information as permitted by the PPIP Act, the HRIP Act or as modified by the Code. A summary of these provisions and obligations can be found in the table below.

Principle	PPIP Act	Privacy Code	HRIP Act
IPP 11 & HPP 11	Council may disclose Personal Information: <ul style="list-style-type: none"> • With the individual's consent; or • If the individual is likely to have been aware, or has been made aware during collection, that information of that kind is usually disclosed to that other individual; or • If the use is for a directly related purpose and Council considers that the individual would not object; or • Disclosure is necessary to prevent or lessen a serious and imminent threat to the life and health of a person. 	Council may disclose Personal Information to Public sector agencies or utility providers on the condition that <ul style="list-style-type: none"> • Approach is made in writing; and • Council is satisfied the information is to be used by agency or utility provider; and • Council is satisfied the Personal Information is reasonably necessary for the exercise of agency or utility provider's function(s). Council may disclose Personal Information: <ul style="list-style-type: none"> • For the purpose of conferring an award, prize, benefit or similar form of Personal recognition; • Where a prospective 	Council must disclose Health Information for the purpose for which it was collected unless: <ul style="list-style-type: none"> • Individual has consented to the Health Information being used for another purpose - secondary purpose; or • the secondary purpose of the information is directly related to the primary purpose and the individual would reasonably expect Council to disclose the information for that purpose; or • The other purpose is to assist in a stage of an emergency, it is reasonably necessary to assist in this stage of an emergency, and it is impracticable or unreasonable to seek the consent of the individual; or • The other purpose is necessary to lessen or prevent a serious and imminent threat to the life, health or safety of the individual, another person, or to public health or safety; or • Information is genetic information and used to prevent a serious threat to the life, health, or safety of a genetic relative (whether or not the threat is imminent); or • Information to be used for management of health services,



Principle	PIIP Act	Privacy Code	HRIP Act
		employer seeks to verify current or former employee works or has worked for Council, the duration, and the position during that time.	training health practitioners, and medical research, all with specific limitations; or <ul style="list-style-type: none"> • To find a missing person; or • Investigating suspected unlawful activity or medical professional misconduct; or • Information to be used for law enforcement purposes, or by an investigative agency; or • Council is lawfully authorised or required not to comply, or where it is otherwise permitted under an Act or any other Law.
IPP 12 and HPP 12	Council cannot disclose an individual's sensitive information unless: <ul style="list-style-type: none"> • Council believes the recipient will handle the information in accordance with the IPPs or similar provisions; or • The individual has consented; or • To effect contractual rights as requested by the individual; • To lessen or prevent a serious and imminent threat to life, health or safety; or • The disclosure is permitted or required by any other Law. 		Council should only use healthcare identifiers to identify individuals if it is reasonably necessary.
Exemptions	Council does not have to comply as outlined in: <ul style="list-style-type: none"> • section 23(5) and (6); • section 23A(2); • section 24(1), (3), (4) and (5); • section 25; • section 26(2); • section 27A; 		



Principle	PIIP Act	Privacy Code	HRIP Act
	<ul style="list-style-type: none"> section 27B; and section 28(3). 		

12.4. Government Information (Public Access) Act

Individuals may request access to Personal Information about themselves and/or third parties under the *Government Information (Public Access) Act 2009* (GIPA Act).

The GIPA Act restricts Council from disclosing information to an individual or an organisation with respect to Council's operations and services, undertaking reviews, assessments or investigations, or processing complaints where Council has decided there is an overriding public interest against disclosure. This often includes Personal Information.

12.5. Legal Counsel

Council reserves the right to seek legal counsel and may disclose Personal Information of individuals to such legal counsel. Personal Information disclosed in this manner, and any Act of such disclosure, is subject to legal professional privilege and nothing in this Privacy Management Plan constitutes a waiver of this privilege.

12.6. Storage and Security

Council stores Personal Information electronically and in hard copy files. Hard copy case files are secured at the end of the day or when not in use where practicable. Council employees may take files off-site in order to tend to their duties, such as when conducting inspections. Council employees do not leave sensitive files unattended and do not let anyone else access them. Council records details of each enquiry on electronic enquiry registers and stores electronic and hard copies of written enquiries. No one other than Council employees can access these registers. All Council electronic information is stored securely as outlined in Council's internal Information Management Policy.

Principle	PIIP Act	HRIP Act
IPP5 & HPP5 Secure	Council must take all practicable and reasonable steps to ensure Personal Information is: <ul style="list-style-type: none"> Kept securely; Not stored for longer than required by the General Retention and Disposal Authority for Local Government Records; Disposed of appropriately; and Not subject to unauthorised access, use, disclosure or modification. 	Council must take all practicable and reasonable steps to ensure Health Information is: <ul style="list-style-type: none"> Kept securely; Not stored for longer than required by the General Retention and Disposal Authority for Local Government Records; Disposed of appropriately; and Not subject to unauthorised access, use, disclosure or modification.
Exemptions	N/A	Council does not have to comply with the HPPs regarding storage as outlines in Section 5(2) of Schedule 1.

12.7. Private Sector Companies, Government Agencies, and Contractors



Council may use private sector companies, contractors, or other government agencies for services. If these organisations or individuals have or are likely to have access to Personal Information, Council ensures that Personal and Health Information is managed in line with the PPIP Act, HRIP Act and information security policies. Council might do this by asking for evidence of their information handling practices and/or inserting a privacy clause into contracts.

Council may enter into a formal arrangement with other NSW Government or Australian Government Agencies with regard to the sharing of Personal Information or Data generally. Documents relating to such arrangements may be requested under the GIPA Act, and if the request is deemed valid provided to the requesting individual.

12.8. Social Media

Council utilises social media platforms to interact with individuals and the general public and may collect Personal Information through these platforms. Where social media platforms permit, Council will moderate interactions such as comments on posts or to prevent or rectify any disclosure of Personal Information on any page or account that Council administers.

All social media platforms, accounts, pages, and/or groups administered by Council will include a Privacy Notice and link to Council's Privacy Statement to the extent that such notice and links are permitted by the relevant platform.

Council does not accept complaints, applications, submissions, or any other formal interaction that require an action by Council, through social media platforms. In the event such communication is received by a Council social media platform, the individual will be directed to the correct formal method for such communication.

12.9. Closed Circuit Television

All information collected by Council's closed circuit television system will be handled in accordance with this Plan, and Council's internal Information Management Policy, and CCTV (Closed Circuit TV) and Camera Monitoring Policy.

12.10. Transborder Data Flow to State or Commonwealth Agencies

Council will only provide Personal and Health Information to another person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency, where the transfer is:

- a. Legally required and upholds the Privacy Principles; or
- b. Consented to; or
- c. Necessary to action a customer request; or
- d. Reasonably necessary to lessen or prevent serious and imminent threat to the life, health, or safety of a person; or
- e. Reasonable steps have been taken to ensure the Privacy Principles will be complied with; or
- f. The transfer is permitted or required by legislation or law; or
- g. Satisfies each of the following criteria:
 - i. for the customer's benefit; and
 - ii. impracticable to obtain consent; and
 - iii. if it were practicable to obtain consent it would likely be given.



12.11. Rangers and Authorised Officers

Council Rangers and other Authorised Officers may collect Personal Information in connection with law enforcement activities without needing to comply with all of the IPPs under section 23 of the PPIP Act. When collecting Personal Information, regardless of the application of section 23, Rangers will verbally notify individuals that their Personal Information is being collected by Council and may be provided to the Police or other law enforcement agencies. Where Personal Information collected by Rangers is not exempt by section 23, Council acknowledges that all of its Officers, including Rangers, will be required to comply with the IPPs and HRIPs when handling such Personal Information.

12.12. Executive Assistants

Management, senior leadership, and Councillors utilise and may share the services of Executive Assistants who are required to handle significant volumes of Personal Information. Council ensures that Executive Assistants receive regular privacy training. Any correspondence shared with a manager, senior leader, or Councillor may require an Executive Assistant to access, use, disclose, or collect Personal Information.

If an Executive Assistant believes a direction by management, senior leader, or a Councillor may breach an IPP or HRIP they may request that the direction be given in writing, and shall not be subject to disciplinary measures in the event the requested act or omission contributes to or causes a breach of an individual's privacy.

12.13. Third-Party Providers

Council may disclose Personal Information to a third party in connection with the provision of a service such as consultants, contractors, or agents of Council. In such circumstances, Council only authorises use of the information in order to provide the services or to perform the functions required.

Council takes all reasonable steps to prevent unauthorised use or disclosure of the information. Any contractors, sub-contractors, or agents of Council are contractually required to collect, use, disclose and handle Personal Information in compliance with the PPIP Act. All third-party providers will be made aware of this Plan and their obligations either at induction or as a part of their contract, as well as through ongoing awareness and training where relevant.

Individuals should read the Privacy Notices at each collection point as these disclose any known or likely disclosures. Individuals should read the privacy policies or statements of Council providers in order to understand where the provision of information to Council or a provider is not a disclosure as contemplated under the PPIP Act. See [item 11.10](#) for more information.

13. Mandatory Notification of Data Breaches

Any breach of data held by Council is managed as outlined in the Data Breach Policy.

The Data Breach Policy sets out the procedures and practices used by Council to ensure compliance with the obligations and responsibilities set out in Part 6A of the PPIP Act for the [Mandatory Notification of Data Breach Scheme](#).



14. About Council

Port Macquarie-Hastings Council is a local government area that spans Port Macquarie, Wauchope, Laurieton and surrounding townships. It is comprised of 3,686km² total land area and governed by an elected Mayor and Councillors. The elected body sets the strategic direction of Council which is formed by the community. The Chief Executive Officer is responsible for the operationalising the strategic direction set by the elected body.

Council is guided by a range of statutory instruments to ensure decisions made create positive outcomes for the community. Relevant legislation includes:

- *Administrative Decisions Review Act 1997*
- *Airports Act 1996 and Regulations*
- *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*
- *Annual Holidays Act 1944 and Regulation*
- *Anti-Discrimination Act (NSW) 1977 and Regulation*
- *Aviation Transport Security Act 2004*
- *Biodiversity Conservation Act 2016 and Regulation*
- *Biosecurity Act 2015*
- *Building and Construction Industry Security of Payment Act 1999 and Regulation*
- *Building and Development Certifiers Act 2018 and Regulations*
- *Building Products (Safety) Act 2017*
- *Cemeteries and Crematoria Act 2013*
- *Charitable Fundraising Act 1991*
- *Child Protection (Working with Children) Act 2012 & Regulation*
- *Children (Education and Care Services National Law Application) Act 2010*
- *Children and Young Persons (Care and Protection) Act 1998 and Regulation*
- *Children's Guardian Act 2019*
- *Civil and Administrative Tribunal Act 2013 and Regulation*
- *Civil Aviation Act 1988*
- *Civil Liability Act 2002 and Regulation*
- *Civil Procedure Act 2005 and Regulation*
- *Coastal Management Act 2016*
- *Coastal Protection Act 1979 and Regulation*
- *Commercial Arbitration Act 2010*
- *Commons Management Act 1989 and Regulation*
- *Community Land Development Act 2021 and Regulation*
- *Community Land Management Act 2021 and Regulation*
- *Community Welfare Act 1987*
- *Companion Animals Act 1998 and Regulation*
- *Competition and Consumer Act 2010*
- *Constitution Act 1902*
- *Contaminated Land Management Act 1997 and Regulation*
- *Contracts Review Act 1980*
- *Conveyancing Act 1919 and Regulation*
- *Copyright Act 1968 and Regulation*
- *Crimes Act 1900 and Regulation*
- *Criminal Procedures Act 1986 and Regulation*
- *Crown Lands Management Act 2016 and Regulation*

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- *Dams Safety Act 2015*
- *Defamation Act 2005*
- *Disability Discrimination Act 1992*
- *Disability Inclusion Act 2014*
- *Dividing Fences Act 1991*
- *Drug Misuse and Trafficking Act 1985 and Regulation*
- *Duties Act 1997*
- *Education and Care Services National Regulations 2011*
- *Electoral Funding Act 2018 and Regulation*
- *Electricity Supply Act 1995 and Regulation*
- *Electronic Transactions Act 2000 and Regulation*
- *Energy and Utilities Administration Act 1987*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Environmental Hazardous Chemicals Act 1985 and Regulation*
- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Model Provisions 1980*
- *Environmental Planning and Assessment Regulation 2000*
- *Essential Services Act 1988*
- *Evidence Act 1995*
- *Fair Trading Act 1987*
- *Fair Work Act 2009*
- *Fines Act 1996 and Regulation*
- *Fire and Rescue NSW Act 1989 and Regulation*
- *Fisheries Management Act 1994 and Regulation*
- *Fluoridation of Public Water Supplies Act 1957 and Regulation*
- *Food Act 2003 and Regulation*
- *Fringe Benefit Tax 1986 and Regulation*
- *Gas Supply Act 1996*
- *Geographical Names Act 1966*
- *Government Information (Public Access) Act 2009 and Regulation*
- *Graffiti Control Act 2008 and Regulation*
- *Growth Centres (Development Corporation) Act 1974*
- *Health Records and Information Privacy Act 2002 and Regulation*
- *Heavy Vehicle National Law*
- *Heritage Act 1977 and Regulation*
- *Holiday Parks (Long Term Casual Occupation) Act 2002*
- *Home Building Act 1989 and Regulation*
- *Housing Act 2011*
- *Inclosed Lands Protection Act 1901*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Independent Commission Against Corruption Act 1988 and Regulation*
- *Independent Pricing and Regulatory Tribunal Act 1992 and Regulation*
- *Industrial Relations Act 1996 and Regulation*
- *Industrial Relations Act 1996 and Regulation*
- *Insurance Contracts Act 1984*
- *Interpretation Act 1987*
- *Land Acquisition (Just Terms Compensation) Act 1991*
- *Land and Environment Court Act 1979*

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- *Land Development Contribution Management Act 1970*
- *Library Act 1939 and Regulation*
- *Liquor Act 2007 and Regulation*
- *Local Government Act 1993*
- *Local Government Amendment (Governance and Planning) Act 2016*
- *Local Government (General) Regulation 2021*
- *Local Government (Financial Assistance) Act 1995*
- *Local Government and Other Authorities (Superannuation) Act 1927*
- *Local Government (Manufactured Home Estates, Caravan Parks, Camping, Grounds and Moveable Dwellings) Regulation 2021*
- *Local Government (State) Award 2023*
- *Local Land Services Act 2013*
- *Mining Act 1992 and Regulation*
- *Modern Slavery Act 2018*
- *National Disability Insurance Scheme Act 2013*
- *National Parks and Wildlife Act 1974 and Regulation*
- *Ombudsman Act 1974 & Regulation*
- *Payroll Tax Act 2007*
- *Pesticides Act 1999 and Regulation*
- *Pipelines Act 1967 and Regulation*
- *Plantations and Reafforestation Act 1999 and Regulation*
- *Plumbing and Drainage Act 2011*
- *Powers of Attorney Act 2003*
- *Prevention of Cruelty to Animals Act 1979*
- *Privacy Act 1988 (Cth)*
- *Privacy and Personal Information Protection Act 1998 and Regulation*
- *Protection of the Environment Administration Act 1991*
- *Protection of the Environment Operations Act 1997*
- *Protection of the Environment Operations (Clean Air) Regulation 2021*
- *Protection of the Environment Operations (General) Regulation 2021*
- *Protection of the Environment Operations (Noise Control) Regulation 2017*
- *Protection of the Environment Operations (Waste) Amendment Regulation 2020*
- *Public Health Act 2010 and Regulations*
- *Public Health (Tobacco Act) 2008*
- *Public Interest Disclosures Act 1994 and Regulation*
- *Public Spaces (Unattended Property) Act 2021*
- *Public Works and Procurement Act 1912*
- *Racial Discrimination Act 1975*
- *Real Property Act 1900 and Regulation*
- *Recreation Vehicles Act 1983*
- *Regional Environmental Planning Policies*
- *Registered Clubs Act 1976 and Regulation*
- *Residential Tenancies Act 2010*
- *Roads Act 1993 and Regulation*
- *Roads Transport Act 2013 and Regulation*
- *Rural Fires Act 1997 and Regulation*
- *Sex Discrimination Act 1984 (Cth)*
- *Smoke-Free Environment Act 2000 and Regulation*
- *Soil Conservation Act 1938*

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- *Spam Act 2003*
- *State Emergency Service Act 1989*
- *State Emergency and Rescue Management Act 1989 and Regulation*
- *State Environmental Planning Policy 2018*
- *State Records Act 1988 and Regulation*
- *Statutory and Other Offices Remuneration Act 1975*
- *Strata Schemes Development Act 2015 and Regulation*
- *Strata Schemes Management Act 2015*
- *Superannuation Guarantee (Administration) Act 1992 (Cth)*
- *Surveying & Spatial Information Act 2002 and Regulation*
- *Swimming Pools Act 1992 and Regulation*
- *Transport Administration Act 1988 and Regulation*
- *Trees (Dispute Between Neighbours) Act 2006 and Regulation*
- *Unclaimed Money Act 1995*
- *Valuation of Land Act 1916 and Regulation*
- *Waste Avoidance and Resource Recovery Act 2001 and Regulation*
- *Water Act 1912 and Regulation*
- *Water Management Act 2000 and Regulation*
- *Work Health and Safety Act 2011 and Regulation*
- *Workers Compensation Act 1987 and Regulation*
- *Workplace Injury Management and Workers Compensation Act 1998*
- *Workplace Surveillance Act 2005 and Regulation*

Regulatory bodies include:

- Environmental Protection Authority
- Independent Commission Against Corruption
- Independent Pricing and Regulatory Tribunal
- Information Privacy Commissioner
- Office of Local Government
- Office of the Children's Guardian
- NSW Civil and Administrative Tribunal
- NSW Electoral Commission
- NSW Ombudsman
- SafeWork NSW

For more information about Council, and to view Council policies, plans, and strategies, please visit our website at www.pmhc.nsw.gov.au.

15. References and Related Documents

Legislation and Guidelines

- *Cemeteries and Crematoria Act 2013*
- *Code of Conduct*
- *Dividing Fences Act 1991*
- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment (Regulation) Act 2000*



- *Government Information (Public Access) Act 2009*
- [Guide to Making Privacy Management Plans](#)
- *Health Records and Information Privacy Act 2002*
- *Law Enforcement (Controlled Operations) Act 1997*
- *Local Environment Plan*
- *Local Government Act 1993*
- [Mandatory Notification of Data Breach Scheme](#)
- *Police Act 1990*
- *Privacy and Personal Information Protection Act 1998*
- *Privacy Code of Practice for Local Government 2000*
- *Protection of the Environment Operations Act 1997*
- *Public Spaces (Unattended Property) Act 2021*
- *Public Interest Disclosures Act 2022*
- *Rural Fires Act 1997*
- *Telecommunications (Interception) Act 1979 (Cth)*
- *Witness Protection Act 1995*

Policy, Plans, and Procedures

- Acceptable Use Policy
- Business Continuity Plan
- Cloud Computing Policy
- Cybercrime and Security Incidents Policy
- Data Breach Policy
- Encryption Policy
- Information Management Policy
- Password and Authentication Policy
- Privacy Complaint Procedure
- Remote Access Policy

16. Definitions

Collection - (of personal information) the way in which Council acquires personal or health information, which can include a written or online form, a verbal conversation, a voice recording, video footage, or a photograph.

Data Breach Policy - sets out Council's procedures for managing a data breach, including the assessment and notification requirements for the [Mandatory Notification of Data Breach Scheme](#) under the PPIP Act.

Disclosure - (of personal information) occurs when Council makes known to an individual or entity personal or health information not previously known to them.

Employee - any person working in a casual, temporary, or permanent capacity at Council including trainees, apprentices, consultants, contractors, and Councillors. For the purposes of this Plan also includes volunteers and volunteer committee members.



Health information – information or an opinion about a person's physical or mental health or disability, or a person's express wishes about the future provision of his or her health services or a health service provided or to be provided to a person. See [s6 HRIP Act](#).

Personal information – information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion, including such things as an individual's fingerprints, retina prints, body samples, or genetic characteristics. Exclusions to the definition of personal information are contained in s4(3) of the PPIP Act and includes health information; (see [s4 PPIP Act](#) and [s4\(3\) PPIP Act](#) and [s5 of the HRIP Act](#)).

Privacy principles – the Information Protection Principles set out in Division 1 of Part 2 of the PPIP Act and Health Principles set out in Schedule 1 of the HRIP Act. The privacy principles set out the minimum standards for all NSW public sector agencies when handling Personal and Health Information. Within these principles lawful exemptions are provided.

Public Register - means "a register of Personal Information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)" (see s3 of the PPIP Act).

17. Responsible Officers

Chief Executive Officer (or delegate)

- Ensure this Plan is accurate and up to date.
- Ensure Council meets its obligations under the PPIP Act, HRIP Act, and this Plan.
- Appoint a Privacy Officer.
- Determine requests for the suppression of Personal Information.
- Conduct internal reviews about Council's Privacy Officer or their delegate, or the Mayor in accordance with this Plan.
- Conduct internal reviews in accordance with this Plan where Council's Privacy Officer or their delegate, the Mayor or Councillors were initially involved.

Privacy Officer (or delegate)

- Assist the Chief Executive Officer to meet their responsibilities pursuant to the PPIP Act, HRIP Act, and this Plan.
- Create awareness about this Plan.
- Coordinate steps to ensure Council complies with the PPIP Act, HRIP Act, and this Plan.
- Coordinate requests for the suppression of Personal Information.
- Assess and determine applications to access or amend Personal or Health Information.
- Conduct internal reviews in accordance with this Plan.
- Report data breaches to the Privacy Commissioner.
- Provide advice on matters relating to privacy and Personal Information.

Governance Team

- Provide assistance to the Privacy Officer and Chief Executive Officer or delegate as required.
- Provide advice on matters relating to privacy and Personal Information.



- Promote this Plan within Council.
- Coordinate with People, Safety and Performance to provide training on Privacy obligations.

All Council Employees

- Collect, store, access, use, and disclose Personal Information in accordance with this Plan, PPIP Act, and HRIP Act.
- Report all breaches of this Plan, PPIP Act, and HRIP Act to the Privacy Officer and Governance Team.
- Provide Privacy Notices whenever collecting Personal Information on behalf of Council.

18. Contact Information

This Plan should only be used as a guide in the application of the PPIP Act and HRIP Act. For more information relating to Council's privacy practices please contact the Privacy Officer. Where specific information is required please refer to the relevant Act, the Information and Privacy Commission NSW, or the NSW Civil and Administrative Tribunal, as listed below.

Port Macquarie-Hastings Council

Privacy Officer
Group Manager Governance
Phone: 02 6581 8111
Email: council@pmhc.nsw.gov.au
Web: www.pmhc.nsw.gov.au

Information and Privacy Commission NSW

GPO Box 7011
SYDNEY NSW 2001
Phone: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au

NSW Civil and Administrative Tribunal

PO Box K1026
Haymarket NSW 1240
Phone: 1300 006 228
Web: www.ncat.nsw.gov.au

Port Macquarie-Hastings Council

Privacy Management Plan

Adopted: 16 February 2022

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Background

Port Macquarie-Hastings Council is committed to protecting the privacy of our customers, business contacts, Councillors, employees, contractors and volunteers.

This Plan has been developed in order to outline that Council collects and holds personal and health information for the purpose of facilitating its business. It is important that the use of this information is confined to the purpose for which it was acquired. In order to properly manage the personal information it holds, it is essential for the provisions of this Plan to be observed by Councillors, employees, contractors and volunteers.

The [Privacy and Personal Information Protection Act 1998](#) (PPIPA) requires Council to prepare and implement a Privacy Management Plan. The Information and Privacy Commission guidelines for Privacy Management Plans recommend review at least every two years. This Plan outlines how Port Macquarie-Hastings Council complies with the legislative requirements of the PPIPA, the [Health Records and Information Privacy Act 2002](#) (HRIPA) and the [Privacy Code of Practice for Local Government](#) (Code).

Objective

The main objectives of this Plan are to inform the community and educate staff on access to personal information and to maximise compliance with the PPIPA and HRIPA.

This Plan aims to ensure Port Macquarie-Hastings Council manages the personal and health information it collects, stores, accesses, uses and discloses in the course of its business activities.

Contact Information

The Group Manager Governance is Port Macquarie-Hastings Council's Public Officer and is assigned the role of Privacy Contact Officer.

The Privacy Contact Officer can provide advice as to:

- Whether the personal or health information is collected for a lawful purpose;
- If that lawful purpose is directly related to a function of Council;
- If Council's documents, contracts, forms and notices comply with the PPIPA and HRIPA; and
- Whether the collection of personal or health information is reasonably necessary for the specified purpose.

This Plan should only be used as a guide in the application of the PPIPA and HRIPA. Where more specific information is required please refer to the relevant Act or seek information from Council's Privacy Contact Officer.

To contact Council relating to any Privacy matters, information in this Plan or to send privacy related forms please email: council@pmhc.nsw.gov.au or phone: 02 6581 8111.

For assistance in understanding the processes under the PPIPA and HRIPA, please contact the Information & Privacy Commission NSW.

Information & Privacy Commission NSW

GPO Box 7011
SYDNEY NSW 2001

Phone: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au

NSW Civil & Administrative Tribunal

Level 10, John Maddison Tower
86-90 Goulburn Street
SYDNEY NSW 2000

Phone: 1300 006 228

Part 1 – Introduction

1.1 What Is Personal Information?

Personal information is defined in the PPIPA as:

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

1.2 What Is Not Personal Information?

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

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

In accordance with GIPAA, when inviting public submissions, Council will advise people that their submission, including any personal information in the submission, may be made publicly available.

1.3 What Is Health Information?

Health information is defined in the HRIPA as:

“personal information that is information or an opinion about the physical or mental health or a disability (at any time) of an individual or an individual’s express wishes about the future provision of health services to him or her or a health service provided or to be provided to an individual.”

1.4 Application Of This Plan

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

- Councillors;
- Council employees;
- Consultants and contractors of Council;
- Volunteers;
- Council owned businesses; and
- Council committees (including community members of those committees which may be established under Section 355 of the *Local Government Act 1993* (LGA)).

For the purposes of this Plan any reference to *Council or Council staff*, is inclusive of the parties listed above.

1.5 Personal and Health Information Held By Council

Council holds personal information concerning Councillors, including:

- Personal contact information;
- Complaints and disciplinary matters;
- Disclosure of interest returns; and
- Entitlements to fees, expenses and facilities.

Council holds personal and health information concerning its customers, ratepayers and residents, including:

- Rates records;
- Customer requests;
- Library lending records;
- Fitness testing records;
- Financial information (eg debt recover or financial hardship applications);
- Burial and cremation records;
- Community service utilisation e.g. Community Transport;
- Closed Circuit Television (CCTV) footage;

- Donation, grant and sponsorship applications;
- Submissions and information collected through Council's community engagement and consultation activities includes entries to competitions from children;
- Public access forum applications; and
- Development applications and related submissions.

Council holds personal and health information concerning its current and former employees and contractors including:

- Recruitment material;
- Pre-employment medical information;
- Workers compensation investigations;
- Public interest disclosure investigations;
- Leave and payroll data (including supporting medical certificates);
- COVID-19 vaccination status;
- Insurances;
- Personal contact information;
- Performance management plans;
- Disciplinary matters;
- Disclosure of interest returns; and
- Wage and salary entitlements.

1.6 Unsolicited Information

Unsolicited information is personal or health information received by Council in circumstances where Council has not asked for or required the information to be provided. Such information is not deemed to have been collected by Council, but the retention, use and disclosure principles of the information will apply to any such information in Council's possession. Personal information contained in petitions received in response to a call for submissions or unsolicited petitions tabled at Council meetings will be treated the same as any other submission and be made available for release to the public.

Part 2 - Public Registers

2.1 Definition

A public register is defined as *"a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)."*

Council holds public registers under the LGA, including:

- Land Register;
- Records of Approvals; and
- Register of Disclosures of Interests.

*Note - this is purely indicative. Council may, by virtue of its own practice, hold other public registers, to which PPIPA applies.

Council holds public registers under the *Environmental Planning and Assessment Act 1979* (EPA), including:

- Register of consents and certificates; and
- Register of building certificates.

Council holds a public register under the *Protection of the Environment Operations Act 1997* (POEO):

- Public register of notices and orders

Council holds a public register under the *Impounding Act 1993* (IA):

- Record of impounding

Council holds a public register under the *Cemeteries and Crematoria Act 2013*:

- Register of interment rights, memorials, cremations and interments up until 1 July 2020 when the Innes Gardens Memorial Crematorium and Lawn Cemetery was sold to a new owner.

Council holds public registers under the *Government Information (Public Access) Act 2009 (GIPAA)*:

- Disclosure Log; and
- Register of Government Contracts.

The purpose of each of these public registers is set out in this Plan.

2.2 Disclosure Of Personal Information Contained In Public Registers

Personal information contained in a public register, other than where required by legislation, will only be disclosed where Council is satisfied that it is to be used for a purpose relating to the purpose of the register.

Disclosure in relation to personal information not contained in a public register must comply with the Information Protection Principles as outlined in this Plan.

A person seeking a disclosure concerning someone else's personal information from a public register must make application to Council and outline their reasons and purpose.

2.3 Purposes Of Public Registers

The "primary" purpose for each identified register is listed below. In some cases, a "secondary" purpose has also been identified. This section is for guidance only and is not an exhaustive list.

Disclosure Log - The primary purpose is to identify information released under formal access applications that may be of interest to other members of the public, which is a requirement of the GIPAA.

Government Contracts Register - The primary purpose is to keep a register of government contracts worth more than \$150,000 between agencies and private sector bodies, which is a requirement of the GIPAA.

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

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

Register of Pecuniary Interests - The primary purpose is to determine whether or not a member of Council staff has a pecuniary interest in any matter with which Council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Register of Consents and Approvals - The primary purpose is to identify applications for development consent and other approvals, confirm determination on appeal and identify applications for complying development certificate.

Record of Building Certificates - The primary purpose is to identify all building certificates.

Public Register of Notices, Prosecutions and Audits - The primary purpose is to record regulatory actions taken (notices issued, legal proceedings, penalties etc.) under the POEO.

Record of Impounding - The primary purpose is to identify any impounding action by Council.

Register of interment rights, memorials, cremations and interments - The primary purpose is to record all details relating to interment rights, cremations and interments of Council managed cemeteries and crematoriums. *Note: As of 1 July 2020, the Innes Gardens Memorial Park Crematorium and Lawn Cemetery is no longer managed by Council.*

2.4 Secondary Purpose Of All Public Registers

Council aims to be open and accountable and it is considered that a secondary purpose for which all public registers are held by Council includes the provision of access to members of the public. Disclosure of specific records from public registers would normally be permitted.

Requests for access, copying or the sale of the whole or a substantial part of a public register will not necessarily fit within this purpose. Council will make an assessment as to the minimum amount of personal information that is required to be disclosed with regard to any request.

Council requires a statutory declaration to verify the intended use of the information requested. Statutory Declarations can be found at www.jp.nsw.gov.au.

2.5 Other Registers

Council may keep other registers that are not public registers. The Information Protection Principles, this Plan, the Code and PPIPA apply to the use and disclosure of information in those registers.

The Rates Record is not a public register and Council's position on this record is as follows:

Rates Record - The primary purpose is to record the value of a parcel of land and rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, a disclosure on a rating certificate that a previous owner was a pensioner is considered to be allowed as it relates to the secondary purpose of the register.

Public access to the Rates Record will only be granted where the purpose of the access is to obtain information necessary for a statutory purpose such as the service of a notice under the *Dividing Fences Act 1991* the *Environmental Planning and Assessment (Regulation) Act 2000* or the *Rural Fires Act 1997*. The Rates Record will also be used by Council to notify relevant land owners of development applications and other matters where Council is required or wishes to consult the local community.

2.6 Applications For Access To Own Records On A Public Register

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

2.7 Applications For Suppression Of Personal Information In A Public Register

A person about whom personal information is contained (or is proposed to be contained) in a public register, may request Council to have the information removed from or not placed on the register by submitting an application in the form of a Statutory Declaration. Statutory Declarations can be found at www.jp.nsw.gov.au.

Council will err in the favour of suppressing the information, unless public interest in maintaining access to the information outweighs any individual interest in suppressing the information.

The information may still be used in the exercise of Council functions, but it cannot be disclosed to other parties.

Part 3 - Policies and Legislation

Policies and legislation affecting the processing of information and related to this Plan include but is not limited to:

- Council's Information Guide - Facilitates public access to information and documents held by Council. The Publication Guide refers to the *Government Information (Public Access) Act 2009* (GIPAA), *Government Information (Public Access) Regulation 2009* and the *Local Government Act 1993* (LGA) and should be read in conjunction with the *Privacy Code of Practice for Local Government*.
- *Environmental Planning and Assessment Act 1979* (EPAA) - Contains provisions that require Council to make development applications and accompanying information publicly available and provides a right for people to inspect and make copies of elevation plans during the submission period. Available at www.legislation.nsw.gov.au
- *Health Records and Information Privacy Act 2002* (HRIPA) - Governs both the public and private sector in NSW, contains a set of 15 Health Privacy Principles and sets up a complaints mechanism to ensure agencies abide by these Principles. Available at www.ipc.nsw.gov.au
- *Privacy and Personal Information Protection Act 1998* (PPIPA) - Prohibits disclosure of personal information by public sector officers not in accordance with the performance of their official duties and is generally directed at corrupt or irregular disclosure of information rather than inadvertent failure to follow procedures or guidelines. Available at www.ipc.nsw.gov.au

- *Public Interest Disclosures Act 1994 (PIDA)* - Encourages and facilitates the disclosure, in the public interest of corrupt conduct, maladministration, serious and substantial waste, government information contravention and Local Government pecuniary interest contravention in the public sector. Available at www.legislation.nsw.gov.au
- *Privacy Code of Practice for Local Government 2000* - Modifies Part 2, Information Protection Principles and Part 6, Public Registers of the PPIPA as they relate to Local Government. Available at www.ipc.nsw.gov.au

Part 4 - Information Protection Principles

4.1 Information Protection Principles And Health Privacy Principles

Council complies with the Information Protection Principles (IPPs) prescribed under PPIPA and the Health Privacy Principles (HPPs) prescribed under HRIPA as follows:

IPP 1 & HPP 1 **LAWFUL COLLECTION**

Council will collect personal and/or health information that is reasonable necessary and for a lawful purpose that is directly related to its functions and/or activities. Such personal and health information may include names, residential addresses, phone numbers, email addresses, signatures, medical certificates, photographs and video footage (CCTV).

IPP 2 & HPP 2 **DIRECT COLLECTION**

Personal information will be collected directly from the individual, unless that person consents otherwise. Parents or guardians may give consent for minors.

Health information will be collected directly from the person concerned, unless unreasonable or impracticable to do so.

Collection may occur via phone, written correspondence to Council, email, facsimile, Council forms or in person.

IPP 3 & HPP 3 **REQUIREMENTS WHEN COLLECTING INFORMATION**

Council will inform individuals that their personal information is being collected, why it is being collected and who will be storing and using it, either before or as soon as practicable after collection. Council will also inform the person how they can view and correct their information. A Privacy Statement is published on Council's website, intranet and included on forms where personal or health information is collected.

Council will inform individuals why health information is being collected about them, what will be done with it and who might see it, either before or as soon as practicable after collection. Council will also inform the person how they can view and correct their health information and any consequences if they do not provide their information. If health information is collected about a person from someone else, reasonable steps will be taken to ensure that the person has been notified as above.

IPP 4 & HPP 4 **RELEVANCE OF COLLECTION**

Personal and health information collected will be relevant to Council's functions and services, accurate, up-to-date, complete and not excessive. The collection will not unreasonably intrude into the individual's personal affairs.

Council will, in normal circumstances, rely on the individual to supply accurate, complete information, although in special circumstances, some verification processes may be necessary.

IPP 5 & HPP 5 **SECURE STORAGE**

Council will store personal information securely, for no longer than as required by the *General retention and disposal authority: local government records* (GA39) issued by State Records Authority of NSW, and will be disposed of appropriately. It will be protected from unauthorised access, use or disclosure by application of appropriate access levels to Council's electronic data management system and staff training.

If it is necessary for the information to be given to a person in connection with the provision of a service to Council (e.g. consultants and contractors), everything, reasonably within the power of the Council will be done to prevent unauthorised use or disclosure of the information.

Council has an internal Cybercrime and Incidents policy. In accordance with that policy, if there is a legal or statutory requirement to disclose security incidents affecting Council's computer systems or networks, Council will follow an established Data Breach Procedure.

If Council experiences a significant cyber crime incident an investigation must be carried out to determine the cause and effect of the event. The Chief Information Officer may lead the investigation but may call in additional expertise if required.

Management is responsible for ensuring that a thorough investigation is carried out by the Chief Information Officer. The incident investigation must be fully documented in such a manner that it meets the requirements of court evidence. The investigation will highlight areas where security needs improving to prevent a similar incident occurring again and systems reinstated to a previously trusted state.

IPP 6 & HPP 6 TRANSPARENT ACCESS

Council will provide reasonable detail about what personal and/or health information is stored on an individual. Council stores information for the purpose of carrying out its services and functions and in order to comply with relevant record keeping legislation.

Individuals have a right to request access to their own information to determine what, if any information is stored, how long it will be stored for and how it is stored (e.g. electronically with open or restricted access to staff, in hard copy in a locked cabinet etc.).

IPP 7 & HPP 7 ACCESS TO OWN INFORMATION

Council will ordinarily provide a response to applications for access to personal and/or health information without excessive delay or expense, generally within 28 days of the application being made.

IPP 8 & HPP 8 RIGHT TO REQUEST TO ALTER OWN INFORMATION

Council will, at the request of an individual, allow them to make appropriate amendments (i.e. corrections, deletions or additions) to their own personal and health information.

Changes of name, address and other minor amendments may require appropriate supporting documentation. Where substantive amendments are involved, an application form may be required and appropriate evidence must be provided as to why the amendment is needed.

IPP 9 & HPP 9 ACCURATE USE OF INFORMATION COLLECTED

Taking into account the purpose for which the information is proposed to be used, Council will take all reasonable steps to ensure that personal and health information is accurate before using it. Council will take all reasonable steps to ensure the information it proposes to use is the most recent information kept on file, is not unreasonably out of date or where it is reasonable and necessary to do so, write to the individual to whom the information relates.

IPP 10 & HPP 10 LIMITS TO USE OF INFORMATION COLLECTED

Council will only use personal and health information for the purpose for which it was collected, for a directly related purpose or for a purpose for which a person has given consent. It may also be used without consent in order to deal with a serious and imminent threat to any person's life, health or safety, for the management of a health service, for training, research or to find a missing person. Additionally, a secondary purpose includes investigation of suspected unlawful activity, to exercise complaint handling functions or investigative functions.

IPP 11 & HPP 11 RESTRICTED AND LIMITED DISCLOSURE OF INFORMATION

Council will only disclose personal and health information with the individual's consent or if the individual was told at the time of collection that it would do so. Council may also disclose information if it is for a related purpose and it considers that the individual would not object. Personal and health information may also be used without the individual's consent in order to deal with a serious and imminent threat to any person's life, health or safety, for the management of a health service, for training, research or to find a missing person. Additionally, a secondary purpose includes investigation of suspected unlawful activity, to exercise complaint handling functions or investigative functions.

IPP 12 SPECIAL LIMITS ON DISCLOSURE

Council will not disclose sensitive personal information relating to an individual's:

- Ethnic or racial origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade union membership; or
- Health or sexual activities

unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Council will not disclose this information to any person or body in a jurisdiction outside NSW unless:

- A relevant privacy law that applies to the personal information concerned is in force in that jurisdiction; or
- The disclosure is permitted under a *Privacy Code of Practice*.

Specific Health Information Privacy Principles

Health information is given a higher level of protection regarding use and disclosure than is other personal information. In addition to the privacy principles above that apply to both personal and health information, the following four principles apply specifically to health information.

HPP 12 UNIQUE IDENTIFIERS

Council will only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable Council to carry out any of its functions efficiently.

HPP 13 ANONYMITY

Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving any health service(s) from Council.

HPP 14 TRANSFER OF DATA OUTSIDE NEW SOUTH WALES

Health information must only be transferred outside NSW if Council reasonably believes that the recipient is subject to laws or obligations substantially similar to those imposed by the HRIPA or consent has been given or transfer is under a contract between Council and the individual or transfer will benefit the individual or to lessen a serious threat to an individual's health and welfare, or steps have been taken to ensure that the information will not be handled inconsistently with the HRIPA or transfer is permitted or required under any other law.

HPP 15 CROSS-ORGANISATIONAL LINKAGES

Council will seek the express consent of individuals before participating in any system that links health records across more than one organisation. Health information or the disclosure of their identifier for the purpose of the health records linkage system will only be included if the person has given express consent.

4.2 How The Privacy Code Of Practice For Local Government Affects The Ipps

The Code makes provisions under IPP's 2, 3, 10 and 11 for Council to depart from these Principles where the collection of personal information is reasonable necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

The Code makes provision under IPP 10, in addition to the above, for Council to use personal information for a purpose other than the purpose for which it was collected where the use is in pursuance of Council's lawful and proper functions and Council is satisfied that the personal information is reasonable necessary for the exercise of such functions.

The Code makes provision under IPP 11, in addition to the above, for Council to depart from this Principle in the circumstances described below:

1. Council may disclose personal information to public sector agencies or public utilities on condition that:
 - a. The agency has approached Council in writing;
 - b. Council is satisfied that the information is to be used by that agency for the proper and lawful functions of that agency; and

- c. Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's functions.
2. Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which they have applied.

Part 5 - Dissemination of the Privacy Management Plan

5.1 Compliance Strategy

During induction and on a regular basis all employees will be made aware of this Plan and it will be made available on Council's intranet and website.

Councillors, employees, contractors and volunteers will be regularly acquainted with the general provisions of the PPIPA and HRIPA and, in particular, this Plan, the Information Protection and Health Privacy Principles, the Public Register provisions, the Privacy Code of Practice for Local Government and any other applicable Code of Practice.

5.2 Communications Strategy

Council informs its employees, Councillors and the community of their rights under PPIPA, HRIPA and this Plan by:

- Publishing the Privacy Management Plan and associated documents on Council's website together with a link to the Information and Privacy Commission website;
- Including privacy statements on application forms and invitations for community engagement; and
- Council will direct the public to the Information Privacy Commission website for more information on individual rights and access.

Part 6 - Complaints and Procedures for Internal Review

6.1 Internal Review

If an individual is not satisfied with Council's conduct in relation to their privacy request, disclosure of personal information on a public register or believe Council is contravening a privacy principle or code of practice, they can make an application for internal review of Council's conduct or decision by completing the *Privacy Complaint: Internal Review Application Form* available on Council's website.

The completed form must include a return address in Australia and be received by Council within 6 months of the individual becoming aware of the conduct or decision that is the subject of the application.

6.2 How Does The Process Operate?

The Group Manager Governance will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application and must be an employee who is suitably qualified to deal with the matters raised.

The review is to be completed within 60 days of receipt of the application. The applicant will be notified of the outcome within 14 days of determination.

The Privacy Commissioner will be notified of an application for review as soon as practicable after it is received. Council will brief the Privacy Commissioner on the progress of an internal review and notify them of the outcome.

The Privacy Commissioner may make submissions to Council in relation to the subject matter of the application.

6.3 What Happens After An Internal Review?

If the applicant is dissatisfied with the outcome of a review, an application may be made to the NSW Civil and Administrative Tribunal (NCAT) for a review of Council's conduct.

If the applicant is dissatisfied with an order or decision made by the Tribunal, an appeal may be made to an Appeal Panel of the Tribunal.

6.4 Alternative To Lodging An Application For Internal Review

If a person does not want to lodge an application for internal review with Council, they may contact the Privacy Commissioner directly.

Part 7 - Specific exemptions in PPIPA and HRIPA relevant to Council

There are a number of exemptions from compliance with the PPIPA and HRIPA that apply directly to Council. These relate to situations where:

- Information is collected in connection with proceedings (whether commenced or not) before any Court or Tribunal;
- Information is collected for law enforcement purposes;
- Information is used for a purpose reasonably necessary for law enforcement purposes or to protect the public revenue;
- Council is authorised or required by a subpoena or search warrant or other statutory instrument;
- Council is investigating a complaint that may be referred or made to an investigative agency;
- Council is permitted by a law or Act not to comply;
- Compliance would prejudice the interests of the individual to whom the information relates;
- The individual to whom the information relates has given express consent to Council not to comply; or
- Disclosure is permitted under the Privacy Code of Practice for Local Government.



Legislative Compliance Policy

Document Control

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1. Purpose

Port Macquarie-Hastings Council (Council) has a responsibility to comply with a range of statutory instruments. The purpose of the Legislative Compliance Policy (Policy) is to establish the principles that Council will use to meet its compliance requirements and commitments.

2. Statement

Port Macquarie-Hastings Council is committed to maintaining a Compliance Management System that meet compliance obligations, promotes a culture of compliance, takes corrective action when non-compliance is identified, and mitigates compliance risk to achieve financial, operational, and strategic objectives. At the core of Council's Compliance Management System is the Legislative Compliance Register.

3. Scope

The Legislative Compliance Policy applies to all employees and Councillors.

4. Principles

Given the highly regulated nature of Local Government, legislative compliance is an integral component of Council's governance, risk management, and internal audit functions. To ensure compliance obligations are met, Council will:

- a. Maintain and continually improve a Compliance Management System;
- b. Develop and maintain a Legislative Compliance Register;
- c. Promote enterprise-wide compliance culture;
- d. Operate under the oversight of the Audit, Risk and Improvement Committee;
- e. Align Integrated Planning and Reporting Framework with compliance obligations;
- f. Maintain a Policy Framework that supports legislative and other compliance obligations;
- g. Ensure mandatory licenses, permits, and qualifications are held by employees; and
- h. Promote reporting of non-compliance.

5. Compliance Management System

Operating in conjunction with Council's Risk Management Framework, the Compliance Management System includes:

- a. Legislative Compliance Policy (this Policy);
- b. Legislative Compliance Register; and
- c. Legislative Compliance Register Procedure.

The following resources support the Compliance Management System:

- a. Delegations Register;
- b. Disclosure of Interests Register;
- c. Gifts and Benefits Register;
- d. Government Information Public Access (GIPA) Act Contracts Register;



- e. Government Information Public Access (GIPA) Act Disclosure Log;
- f. Policy Register;
- g. Register of current declarations of disclosures of political donations; and
- h. Register of variations to development standards.

6. Legislative Compliance Register

The purpose of the Legislative Compliance Register (Register) is to:

- a. Identify compliance obligations;
- b. Maintain current, identify new, and record amendments to compliance obligations;
- c. Identify, analyse, and evaluate current and emerging compliance risks;
- d. Notify compliance owners of changes to compliance obligations;
- e. Ensure statutory reporting within mandated timeframes; and
- f. Report performance to the Audit, Risk and Improvement Committee.

See the Legislative Compliance Register, and Legislative Compliance Register Procedure for more information.

7. Enterprise-Wide Compliance Culture

To support employees and promote a culture of compliance; supervisors, managers, and senior leadership will:

- a. Maintain policy that supports strategy, promotes governance best practice, manages risk, and complies with legislation;
- b. Establish, maintain, and review procedures;
- c. Educate employees on their obligations under the Code of Conduct;
- d. Assign accountability for compliance obligations;
- e. Encourage reporting of non-compliance;
- f. Respond, investigate, escalate, and resolve reports of non-compliance; and
- g. Implement improvements recommended by reviews, audits, and the Audit, Risk and Improvement Committee.

To promote a culture of compliance employees and councillors will:

- a. Operate in accordance with Council policy;
- b. Implement controls by correctly following Council procedures;
- c. Act in accordance with Council's Code of Conduct;
- d. Maintain current licenses, permits, and qualifications; and
- e. Consider risks, and report all instances of non-compliance.

8. Audit, Risk and Improvement Committee

Under the Local Government Act (section 428A) two functions of the Audit, Risk and Improvement Committee (ARIC) is to provide independent review and advice on Council's:

- a. Compliance with legislation, regulations, and other legal requirements; and
- b. Implementation of the strategic plan, delivery program, and strategies.



Commencing in 2024-2025, the CEO and the Audit, Risk and Improvement Committee (ARIC), must publish an attestation statement as to whether Council has complied with the [Guidelines for Risk Management and Internal Audit for Local Government](#) (Guidelines). Non-compliance with the Guidelines may result in enforcement action by the Office of Local Government, and/or, the NSW Auditor General.

9. Alignment with Integrated Planning and Reporting Framework

Where appropriate, Council strategy is supported through the alignment of objectives with compliance obligations. The [Integrated Planning and Reporting Framework](#) provides an overview of Council's strategic planning and reporting process.

The Performance Reporting Framework provides quarterly reports to senior management against the Operational Plan and Functional Business Plans, and an [Annual Report](#) to the community against the Operational Plan, budget, and mandatory statutory information.

10. Policy Framework

The Policy Framework provides direction for the creation, review, amendment, and rescission of Council policies, procedures, and guidelines to:

- a. Implement and execute strategy;
- b. Establish standards of employee and Councillor behaviour (our Values);
- c. Promote governance best practice and manage risk;
- d. Comply with legislative requirements; and
- e. Effectively run the business of Council.

See the Policy Framework for more information.

11. Licenses, Permits and Training

Supervisors are required to complete the [Training Course Requirement Form](#) for each new employee on commencement with Council. This form determines which licenses, permits, and other training the employee has, or is required to complete, to perform their role. Supervisors ensure employees retain licenses, permits, and other qualifications as part of the ongoing Employee Engagement Process.

Council policies and procedures provide further information on license, permit, and training requirements and are available to all employees on the [Staff handbook](#) page of the intranet. Relevant policies and procedures include, but are not limited to:

- a. [Asbestos Procedure](#);
- b. [Chemical and Substances Procedure](#);
- c. [Certification and Licensing of Workers Procedure](#);
- d. [Drivers License Disqualification, Suspension, or Non-Renewal Policy](#);
- e. [Electrical Work Procedure](#);
- f. [Learning, Training and Conferences Procedure](#);
- g. [Training Course Requirement Form](#); and
- h. [Vehicle Policy](#).



12. Reporting Non-Compliance

As a Council employee, and in accordance with the Code of Conduct:

- “You must not conduct yourself in a manner that...is contrary to statutory requirements or the Council’s administrative requirements or policies.” (Section 3.1b); and
- “You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act.” (Section 3.2).

This includes reporting instances of non-compliance.

Reports may be made directly to supervisors or via Council’s hotline/online service which allows for anonymous reporting. Please see the Public Interest Disclosure Policy for more information on how to make a report of serious wrongdoing at Council.

As failures in compliance can have a profound impact on Council and employees, all reports of non-compliance will be taken seriously. Consequences of breach in compliance include:

- a. Reputational damage;
- b. Financial loss;
- c. Increased work, health and safety risks in the workplace;
- d. Regulatory sanctions or fines against Council and/or employees;
- e. Disciplinary action including termination of employment;
- f. Non-certification of audits or financial statements; and
- g. Potential litigation.

The below are examples of non-compliance:

- a. Failing to submit a statutory report;
- b. Making a false or understated declaration;
- c. Intentionally concealing or failing to disclose an instance of non-compliance; or
- d. Knowingly supporting others to avoid disclosure.

13. References and Related Documents

- AS ISO 19600:2015 Compliance management systems — Guidelines (AS ISO 19600:2015)
- Delegations Register
- [Guidelines for Risk Management and Internal Audit for Local Government](#)
- [Integrated Planning and Reporting Framework](#)
- Legislative Compliance Policy
- Legislative Compliance Register Procedure
- [Local Government Act 1993](#)
- Policy Framework
- Policy Framework Procedure
- [Policies, plans and strategies](#)
- [Public Interest Disclosures Act](#)
- [Public Interest Disclosure Internal Reporting Policy](#)
- [Risk Management and Internal Audit for Local Government in NSW Guidelines](#)
- [Risk Management Assessment Tool](#)



- [Risk Management Framework](#)
- [Risk Management Policy](#)

14. Definitions

Compliance - means meeting all compliance obligations.

Compliance commitment - means compliance mandated by Council, i.e. Policy Framework.

Compliance obligation - means compliance commitment or requirement.

Compliance owner - means the employee accountable for implementing, monitoring, and improving a compliance obligation in accordance with their respective role and responsibility.

Compliance requirement - means compliance mandated by legislation, regulations, rules, or guidelines.

Compliance risk - means risk of legal or regulatory sanction, material financial loss, or reputational loss as a result of failure to comply with legislation, regulations, rules, policy, or mandatory guidelines.

Non-Compliance - means non-fulfilment of a compliance obligation.

Statutory instrument - means rules, regulations, by-laws, ordinances, rules of the court or proclamations made under certain Acts.

15. Responsible Officer

For more information on the Legislative Compliance Framework or its associated documents please contact the Governance and Legal Officer.

2 Your Community Life

What we are trying to achieve

A healthy, inclusive and vibrant community.

What the result will be

We will have:

- Community hubs that provide access to services and social connections
- A safe, caring and connected community
- A healthy and active community that is supported by recreational infrastructure
- A strong community that is able to identify and address social issues
- Community participation in events, programs, festivals and activities

How we will get there

- 2.1 Create a community that feels safe
- 2.2 Advocate for social inclusion and fairness
- 2.3 Provide quality programs, community facilities and public spaces, for example, community halls, parks and vibrant town centres
- 2.4 Empower the community through encouraging active involvement in projects, volunteering and events
- 2.5 Promote a creative and culturally rich community



Authorised by:
 Authorised date:
 Effective date:
 Next review date:
 File Number: D2023/350660

Smoke Free Environments Policy

1. INTRODUCTION

Council is legally obligated to control exposure to environmental tobacco smoke through the Smoke-Free Environment Act (2000), Smoke Free Environment Regulation 2016 and Work Health and Safety Act 2011. Council has powers under the Local Government Act (1993) to prohibit smoking in any public place and we have a commitment to smoke free workplaces.

The Smoke Free Environments Policy and Smoke Free Workplace Policy provide guidance and awareness to the community and staff of smoke free zones and restrictions. The Policies outline the legislative controls and our commitment to support education and compliance monitoring.

The Smoke Free Environments Policy applies to electronic cigarettes (or e-cigarettes) which are battery powered devices which heat liquid into an aerosol which is inhaled into a person's lungs. The aerosol is often called "vapour" and the practice called "vaping". In NSW e-cigarettes and e-liquids containing nicotine are a prescription only medicine. E-cigarettes are also called electronic nicotine delivery systems (ENDS) alternative nicotine delivery systems (ANDS) or e-cigs.

The Smoke Free Environments Policy aims to support safe and healthy communities by:

- reducing the prevalence of smoking and vaping;
- de-normalising smoking and vaping behaviour;
- providing people with public places that are free of cigarette smoke and e-cigarette vapour;
- having a framework for management of smoking and vaping on Council properties;
- protecting the environment from the impacts of smoking and vaping litter.

2. POLICY STATEMENT AND SCOPE

The Smoke Free Environments Policy objectives are to:

- a. Support the Smoke-free Environment Act 2000 and Smoke Free Environment Regulation 2016 by prohibiting smoking and vaping:
 - Within 10 metres of children's play equipment in outdoor public spaces;
 - At public swimming pools;
 - In spectator areas at sport grounds or other recreational areas at organised sporting events;
 - At public transport stops, bus stops, taxi ranks and ferry wharves;
 - Within 4 metres of a pedestrian access point to a public building; and
 - In commercial outdoor dining areas.
- b. Enhance the state controls with additional measures for the Port Macquarie Hastings Local Government Area, with the exclusion of designated smoking areas, further restricting smoking and vaping at:
 - Sport and recreation facilities, public plazas, parks, nature reserves and walking trails;
 - Beaches;
 - In and around Council owned buildings and workplaces
 - Outdoor dining areas on Council land including footpaths and other access ways;
 - Council property or managed land under community lease or licence;
 - Within four (4) metres of Council owned or managed building entrances including balconies and covered areas of those buildings
 - Council events;
 - Within ten (10) metres of a non-smoking person at a Council owned or managed building where there is no designated smoking area.

- c. Bring about positive social change in the community through:
 - Supporting awareness and education campaigns;
 - Regulatory and advisory signage; and
 - The inclusion of smoke and vape free clauses in Council buildings and outdoor dining area lease and licence agreements.

3. LEGISLATIVE FRAMEWORK AND ENFORCEMENT

Smoking restrictions listed in 2a of this Policy are regulated by NSW Health. Complaints relating to people smoking in those areas identified in the Act should be referred to NSW Health.

Under the NSW Local Government Act 1993 (LG Act) Council has the power to:

- Erect notices and signage in public places (including public roads) restricting smoking and vaping in accordance with s.632 of the LG Act;
- Demand by means of an authorised person, the name and address of any person reasonably suspected of failing to comply with the terms of any such notice under s. 680 of the LG Act;
- Remove, by means of an authorised person, from community land any person who fails to comply with the terms of any such notice s. 681 of the Act.

Council also has a common law right as a condition of entry to restrict smoking on properties it owns or occupies. All Council buildings and facilities are smoke-free environments other than in designated smoking areas.

Enforcement of this policy will rely on signage, positive persuasion (messaging) and self-policing through the community. In certain instances, enforcement may also include the issuing of penalty infringement notices by authorised officers if necessary to achieve compliance. Council Rangers and Environmental Health Officers are authorised officers for the purpose of enforcement action in accordance with this policy. NSW Police Officers are also authorised officers under the provisions of the Local Government Act.

3. RESPONSIBILITIES AND AUTHORITIES

Council's Group Manager Liveable Communities is responsible for:

- Implementing and communicating this policy; and
- Ensuring the policy is reviewed and updated as required.

Council's Group Manager Environment and Regulatory Services is responsible for enforcement of the policy. Council's Property and Leasing group are responsible for implementation and monitoring of Smoke-free clauses in Licence and Leasing Agreements.

4. REFERENCES

Smoke-free Environment Act 2000, Smoke-free Environment Regulation 2016, NSW Health - Smoke Free NSW program and Local Government Act 1993.

5. DEFINITIONS

The relevant definitions of the Smoke Free Environment Act 2000, Smoke Free Environment Regulation 2016, and the Local Government Act 1993 apply to this Policy.

6. PROCESS OWNER

Group Manager Liveable Communities.

7. AMENDMENTS

Replaces Smoke Free Outdoor Areas Policy 2018-2022.

ENGAGEMENT SUMMARY

Project name	Draft Smoke Free Environments Policy
Project manager	Samantha Johnsen
Consultant	
Engagement Officer	Addam Lockley

Background

We are a smoke free Council with existing policies in place that prohibit smoking in all Council workplaces. We also have a role in advocating for better public health for our community.

Council is legally obligated to control exposure to environmental tobacco smoke through the Smoke-Free Environment Act (2000), Smoke Free Regulation 2016 and Work Health and Safety Act 2011. Council also has powers under the Local Government Act (1993) to prohibit smoking in any public place.

The existing Smoke Free Outdoor Policy has been reviewed and while there were no material changes to the policy, Councillors resolved to change its name from the Smoke Free Outdoor Policy to the Smoke Free Environments Policy.

The Smoke Free Environments Policy seeks to:

- Protect the community from the health and social impacts of exposure to smoke from cigarettes and e-cigarettes (vaping) in public places.
- Improve the look and enjoyment of our beaches, parks and other recreation spaces.
- Minimise the adverse environmental impacts of discarded cigarette butts.

Engagement approach

The engagement approach was *Involve*, with any submissions received to be considered through the Have Your Say platform and written feedback.

The *Draft Smoke Free Environments Policy* was on public exhibition from Thursday 6 February 2024 to Tuesday 5 March 2024 and available for download in the Document Library on Councils website.



Engagement activities

Have Your Say

The community was invited to have their say by reviewing the proposed draft policy and providing their feedback by completing a short online survey.

ENGAGEMENT SUMMARY

Find a project Contact us PMHC website

Home Projects Search   xylie.j

Home / Draft Smoke Free Environments Policy

You are already signed in.

Draft Smoke Free Environments Policy

Consultation is concluded

We are a smoke free Council with existing policies in place that prohibit smoking in all Council workplaces. We also have a role in advocating for better public health for our community.

Council is legally obligated to control exposure to environmental tobacco smoke through the Smoke-Free Environment Act (2000), Smoke Free Regulation 2016 and Work Health and Safety Act 2011. Council also has powers under the Local Government Act (1998) to prohibit smoking in any public place.

The existing Smoke Free Outdoor Policy has been reviewed and while there were no material changes to the policy, Councilors resolved to change its name from the Smoke Free Outdoor Policy to the Smoke Free Environments Policy.

The policy is now open for public feedback.

The **Smoke Free Environments Policy** seeks to:

- Protect the community from the health and social impacts of exposure to smoke from cigarettes and e-cigarettes (vaping) in public places.
- Improve the look and enjoyment of our beaches, parks and other recreation spaces.
- Minimise the adverse environmental impacts of discarded cigarette butts.

You can provide your feedback on the proposed Draft Policy by:

- **Completing the survey** below.
- Emailing council@pmhc.nsw.gov.au or
- Posting to:
Chief Executive Officer
Port Macquarie-Hastings Council
PO Box 84
Port Macquarie NSW 2444

The exhibition period closes on **Tuesday 5 March 2024**.

SIGN UP to get involved

Who's Listening


Sam Johnson

Senior Community
Development Officer
Port Macquarie Hastings
Council

Phone 0431 871

Email engagement@pmhc.nsw.gov.au

Documents

 Draft Policy - Smoke Free Environments (55 KB) (pdf)

Submission

Submissions close Tuesday 5 March 2024

Writing a submission is one way of sharing your views and opinions with Council. All submissions are considered before making a decision and your submission may be included in a report to Council.

Note: Information collected via submissions and petitions is public information, this information may form part of Council reports or made public in their entirety subject to the provisions of the Local Government Act 1993 or the Government Information (Public Access) Act 2009 (GIPA Act). You may request, in writing, that Council suppress the personal information in your submission from public release, if you consider that the personal safety of any person would be affected if the information was not suppressed Any such request will be dealt with in accordance with the GIPA Act and the Privacy and Personal Information Protection Act 1998.

You will be submitting this survey as to change this [logout](#)

All fields marked with an asterisk (*) are required.

- 1. Name**

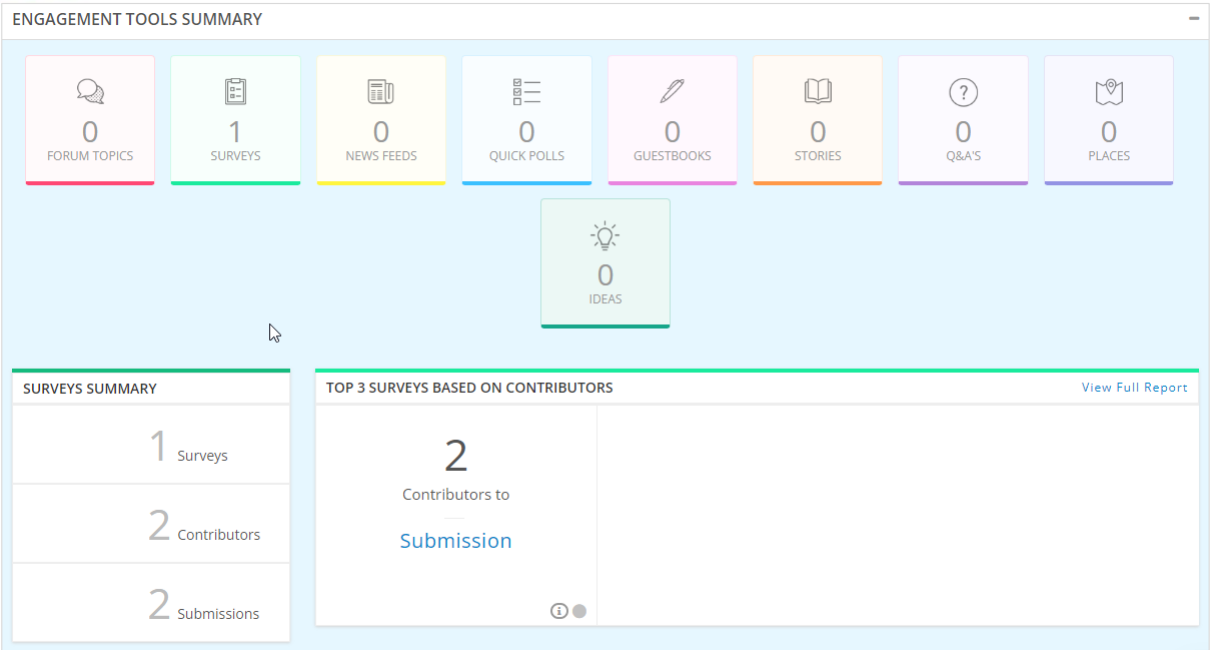
Maximum 255 characters 0/255
- 2. Email Address ***
- 3. Postcode ***

Maximum 255 characters 0/255
- 4. Please provide your feedback on the Draft Smoke Free Environments Policy**

Submit



ENGAGEMENT SUMMARY



Communications

The *Draft Smoke Free Environments Policy* was promoted as part of the *Have Your Say* e-newsletter sent on Thursday 8 February 2024. This newsletter was sent to 4,440 subscribers with an overall open rate of 50.11%. The draft policy received a total of 23 clicks.

Draft Smoke Free Environments Policy

We have a role in advocating for better public health for our community and meeting legal obligations to control exposure of environmental tobacco smoke.

We recently reviewed our existing Smoke Free Outdoor Policy and while there were no material changes to the policy, Councillors resolved to change its name from the Smoke Free Outdoor Policy to the Smoke Free Environments Policy.

Feedback is open on the draft policy. Have a look and have your say before Tuesday 5 March 2024.

HAVE YOUR SAY

ENGAGEMENT SUMMARY

Results/Conclusion

During the public exhibition period, two submissions were received. Of these submissions, the two are from community members.

The following points provide a summary of the responses received through Have Your Say:

- Community members should not have to walk down a public path, or anywhere in a public space and ingest stale cigarette smoke.
- Port Macquarie-Hastings Council should ban smoking in all public places.
- Port Macquarie Hastings Council should not entertain further smoke free environments.

Verbatim responses can be found in Appendix A below.

Next Steps

This report will be presented at the March Council Meeting.

Appendix A - Verbatim submissions

Submission Date	Submission Feedback
Feb 08 24 01:45:04 pm	Sick of walking down a footpath somewhere, or past buildings and shops, and there are gronks standing around, often several, smoking on the footpath, causing those who walk past including children, to ingest stale cigarette smoke. It should be banned in ANY place where members of the public go about there daily business, as we should not have to suffer the filthy habits and consequences of others.
Feb 08 24 02:33:56 pm	I do not agree with PMHC entertaining further Smoke Free Environments

3 Your Business and Industry

What we are trying to achieve

A region that is a successful place that has vibrant, diversified and resilient regional economy that provides opportunities for people to live, learn, work, play and invest.

What the result will be

We will have:

- A strong economy that fosters a culture supportive of business and ensures economic development of the region
- Townships, villages and business precincts that are vibrant commercial, cultural, tourism, recreational and/or community hubs
- A region that attracts investment to create jobs
- Partnerships that maximise economic return and create an efficient and effective business environment

How we will get there

- 3.1 Embrace business and a stronger economy
- 3.2 Create vibrant and desirable places
- 3.3 Embrace opportunity and attract investment to support the wealth and growth of the community
- 3.4 Partner for success with key stakeholders in business, industry, government, education and the community

AGENDA

ORDINARY COUNCIL
15/02/2024LEADERSHIP AND
GOVERNANCE

Item: 10.13**Subject: PAYMENT OF WATER FUND AND SEWER FUND DIVIDEND FOR
THE YEAR 2022-2023****Presented by: Business and Performance, Keith Hentschke**

Alignment with Delivery Program

1.5.1 Manage Council's financial assets and provide accurate, timely and reliable information.

RECOMMENDATION**That Council:**

1. Note Council has complied with sections 4.2 and 4.3 of the Guidelines (Regulatory and Assurance Framework for Local Water Utilities) for council dividend payments for water supply or sewerage services and any direction under s.409(6)(b) of the Local Government Act.
2. Authorise the payment of a dividend of \$961,254 to the General Fund from the surplus in Water Supply operations for 2022-2023.
3. Authorise the payment of \$106,806 for tax equivalents to the General Fund from the Water Supply operations for 2022-2023.
4. Authorise the payment of a dividend of \$930,015 to the General Fund from the surplus in the Sewerage Fund for 2022-2023.
5. Authorise the payment of \$103,335 for tax equivalents to the General Fund from the Sewerage Fund for 2022-2023.
6. Note that once the information provision requirement in section 4.4 of the Guidelines is finalised, a separate report will be provided to Council outlining proposed expenditure of the dividend.

Executive Summary

This report provides Council with information on compliance with the new Regulatory and Assurance Framework for Local Water Utilities (the Framework) and recommends that Council authorise payment of a dividend from the Water Supply and Sewerage Funds to General Fund for 2022-2023 in accordance with the Framework.

If authorised, relevant information will be provided to the NSW Department of Planning and Environment (DPE) in accordance with section 4.4 of the Framework. A subsequent report will be provided to Council recommending how the dividend should be allocated. This may include the recommendation that the dividend remain in the Water Supply and/or Sewerage funds.



Item 10.13

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AGENDA

ORDINARY COUNCIL
15/02/2024LEADERSHIP AND
GOVERNANCE

Discussion

Under section 409(5) of the Local Government Act, Council may pay an annual dividend from its water supply and sewerage business surplus to its General Fund. The dividend is a return on investment paid to the "shareholder", which in this case is Council as it is responsible for managing and investing in the local water utility's water supply and sewerage functions. Dividends can be paid for each business at the end of the financial year after meeting the Guidelines (S409(7)) of the Local Government Act. The Guidelines are the Regulatory and Assurance Framework for Local Water Utilities issued by DPE.

Under the Guidelines, where a council's water or sewerage operation has:

- An operating surplus for the year in question, and
- A sufficient cumulative operational surplus over the last three years,

it may be eligible to make a dividend payment from the surplus if it:

1. Has in place effective, evidence-based strategic planning in accordance with section 3 of the Framework
2. Obtains an unqualified financial audit report for its water supply/and or sewerage business(es)
3. Resolves at a council meeting open to the public of its decision to pay a dividend from the Water and/or Sewerage operations, and
4. Complies with the information provision requirement under Section 4.4 of the Framework.

Any dividend taken from the water and sewerage funds can be transferred to the General Fund and is unrestricted.

For 2022-2023, the surplus requirements for both the Water Supply operations and the Sewerage operations have been met.

Regulatory and Assurance Framework for Local Water Utilities

In July 2022, the DPE issued the Framework which includes the following requirements that Council must meet for a dividend to be paid:

1. Calculate any dividend payment in accordance with the prescribed methodology.
2. Demonstrate there is a surplus.
3. Demonstrate full cost-recovery pricing and developer charges.
4. Have in place effective, evidence-based strategic planning in accordance with the framework.
5. Demonstrate financial reports are a true and accurate reflection of the business (unqualified audit report).
6. Demonstrate that the overhead reallocation charge is a fair and reasonable cost.

Council has complied with each of these requirements. While payment of the dividend is no longer subject to approval by the NSW Government, there is a requirement to provide relevant documents to DPE under Section 4.4 of the Framework to demonstrate compliance. Following that process, a separate report will be provided to Council recommending how the dividend should be allocated. This may include the recommendation that the dividend remain in the Water Supply and/or Sewerage funds.



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AGENDAORDINARY COUNCIL
15/02/2024LEADERSHIP AND
GOVERNANCE**Options**

Council has the option of paying a dividend and tax equivalents of \$2,101,410 from the Water Supply and Sewerage funds or it can choose not to.

Community Engagement & Internal Consultation

Consultation has occurred with the Water and Sewerage sections, the Executive and Independent Auditors.

Planning & Policy Implications

There are no planning and policy implications in relation to this report.

Financial & Economic Implications

A total dividend from surplus of \$1,891,269 is proposed to be paid from surpluses in Water Supply and Sewerage operations. In addition, tax equivalents of \$210,141 proposed to be paid as a dividend. These funds are unrestricted and could be spent on General Fund activities.

Attachments

1.  Regulatory and Assurance Framework for local water utilities



Item 10.13

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Item 12.01
Attachment 1

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**MINUTES**
Ordinary Council Meeting
15/02/2024

Item 10.11 Monthly Budget Review - January 2024, has been addressed previously within the meeting.

Item 10.12 Quarterly Budget Review Statement - December 2023, has been addressed previously within the meeting.

10.13 PAYMENT OF WATER FUND AND SEWER FUND DIVIDEND FOR THE YEAR 2022-2023

MOTION

MOVED: Roberts/Maltman

That Council:

1. Note Council has complied with sections 4.2 and 4.3 of the Guidelines (Regulatory and Assurance Framework for Local Water Utilities) for council dividend payments for water supply or sewerage services and any direction under s.409(6)(b) of the Local Government Act.
2. Authorise the payment of a dividend of \$961,254 to the General Fund from the surplus in Water Supply operations for 2022-2023.
3. Authorise the payment of \$106,806 for tax equivalents to the General Fund from the Water Supply operations for 2022-2023.
4. Authorise the payment of a dividend of \$930,015 to the General Fund from the surplus in the Sewerage Fund for 2022-2023.
5. Authorise the payment of \$103,335 for tax equivalents to the General Fund from the Sewerage Fund for 2022-2023.
6. Note that once the information provision requirements in section 4.4 of the Guidelines is finalised, apply the dividends as noted in Points 2,3,4 and 5, to first hold in reserve the amount required to pay out the loan associated with the Town Centre Master Plan, with any residual amount being the subject of a future report to Council before further allocation.

AMENDMENT

MOVED: Sheppard/Intemann

That Council:

1. Note Council has complied with sections 4.2 and 4.3 of the Guidelines (Regulatory and Assurance Framework for Local Water Utilities) for council dividend payments for water supply or sewerage services and any direction under s.409(6)(b) of the Local Government Act.
2. Authorise the payment of a dividend of \$961,254 to the General Fund from the surplus in Water Supply operations for 2022-2023.
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5. Authorise the payment of \$103,335 for tax equivalents to the General Fund from the Sewerage Fund for 2022-2023.



MINUTES
Ordinary Council Meeting
15/02/2024

6. Note that once the information provision requirement in section 4.4 of the Guidelines is finalised, a separate report will be provided to Council outlining proposed expenditure of the dividend.

EQUAL: 4/4

FOR: Edwards, Intemann, Lipovac and Sheppard

AGAINST: Maltman, Pinson, Roberts and Slade

CASTING VOTE: Against
LOST

THE AMENDMENT ON BEING PUT WAS LOST

AMENDMENT

MOVED: Sheppard/Intemann

That Council:

1. Note Council has complied with sections 4.2 and 4.3 of the Guidelines (Regulatory and Assurance Framework for Local Water Utilities) for council dividend payments for water supply or sewerage services and any direction under s.409(6)(b) of the Local Government Act.
2. Authorise the payment of a dividend of \$961,254 to the General Fund from the surplus in Water Supply operations for 2022-2023.
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4. Authorise the payment of a dividend of \$930,015 to the General Fund from the surplus in the Sewerage Fund for 2022-2023.
5. Authorise the payment of \$103,335 for tax equivalents to the General Fund from the Sewerage Fund for 2022-2023.
6. Note that once the information provision requirement in section 4.4 of the Guidelines is finalised, a separate report will be provided to Council outlining proposed expenditure of the dividend including comments in relation to the potential to allocate dividends to payout the loan associated with the Town Centre Master Plan.

LOST: 3/5

FOR: Edwards, Lipovac and Sheppard

AGAINST: Intemann, Maltman, Pinson, Roberts and Slade

THE AMENDMENT ON BEING PUT WAS LOST

ADJOURNMENT

RESOLVED: Pinson/Roberts

That the meeting adjourn for 10 minutes.

CARRIED: 8/0

FOR: Edwards, Intemann, Lipovac, Maltman, Pinson, Roberts, Sheppard and Slade

AGAINST: Nil

The Ordinary Council Meeting adjourned at 11.42am

The Ordinary Council Meeting recommenced at 11:59am



MINUTES
Ordinary Council Meeting
15/02/2024

THE MOTION ON BEING PUT WAS CARRIED

RESOLVED: Roberts/Maltman

That Council:

1. Note Council has complied with sections 4.2 and 4.3 of the Guidelines (Regulatory and Assurance Framework for Local Water Utilities) for council dividend payments for water supply or sewerage services and any direction under s.409(6)(b) of the Local Government Act.
2. Authorise the payment of a dividend of \$961,254 to the General Fund from the surplus in Water Supply operations for 2022-2023.
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5. Authorise the payment of \$103,335 for tax equivalents to the General Fund from the Sewerage Fund for 2022-2023.
6. Note that once the information provision requirements in section 4.4 of the Guidelines is finalised, apply the dividends as noted in Points 2,3,4 and 5, to first hold in reserve the amount required to pay out the loan associated with the Town Centre Master Plan, with any residual amount being the subject of a future report to Council before further allocation.

EQUAL: 4/4

FOR: Maltman, Pinson, Roberts and Slade

AGAINST: Edwards, Intemann, Lipovac and Sheppard

CASTING VOTE: For

CARRIED

Item 10.14 2023-2024 Operational Plan Second Quarter Status Report as at 31 December 2023, has been addressed previously within the meeting.

Item 10.15 2022-2026 Delivery Program (Year 2) - Six Month Progress Report as at 31 December 2023, has been addressed previously within the meeting.

10.16 IMPACTS AND OPTIONS IN RELATION TO A PROPOSED RATE FREEZE FOR 2024-2025

MOTION

MOVED: Roberts/Pinson

That Council:

1. Request the Chief Executive Officer prepare the Draft 2024-2025 Operational Plan with a 0.0% Rate Peg applied to Ordinary and Special Rates, excluding the Town Centre Master Plan component of the Port Macquarie CBD ordinary business rate.
2. Include in the Draft 2024-2025 Operational Plan and resultant communication with ratepayers, a clear understanding of the measures to mitigate all the financial impacts that a 0.0% Rate Peg in the Ordinary and

1 INTRODUCTION

This Code of Meeting Practice is made under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation).

This Code incorporates:

- the mandatory provisions of the Model Code of Meeting Practice prescribed by the Regulation on 12 November 2021 (Model Code),
- some non-mandatory provisions of the Model Code; and
- supplementary provisions prepared by Council, which must not be inconsistent with the mandatory provisions of the Model Code.

This code and all its provisions applies to all meetings of Port Macquarie-Hastings Council (Council) and committees of Council of which all the members are Councillors.

The Council and such committees must conduct meetings in accordance with this Code.

Council committees whose members include persons other than Councillors may adopt their own rules for meetings unless Council determines otherwise.

2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

- Transparent:* Decisions are made in a way that is open and accountable.
- Informed:* Decisions are made based on relevant, quality information.
- Inclusive:* Decisions respect the diverse needs and interests of the local community.
- Principled:* Decisions are informed by the principles prescribed under Chapter 3 of the Act.
- Trusted:* The community has confidence that Councillors and staff act ethically and make decisions in the interests of the whole community.
- Respectful:* Councillors, staff and meeting attendees treat each other with respect.
- Effective:* Meetings are well organised, effectively run and skilfully chaired.
- Orderly:* Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.
- Note:** A point of order cannot be made by a Councillor with respect to adherence to the meeting principles: see clause 15.2.

4 Your Natural and Built Environment

What we are trying to achieve

A connected, sustainable, accessible community and environment that is protected now and into the future.

What the result will be

We will have:

- Effective management and maintenance of essential water, waste and sewer infrastructure
- A community that is prepared for natural events and climate change
- Sustainable and environmentally sensitive development outcomes that consider the impact on the natural environment
- Accessible transport network for our communities
- Infrastructure provision and maintenance that meets community expectations and needs
- Well planned communities that are linked to encourage and manage growth
- Accessible and protected waterways, foreshores, beaches and bushlands
- An environment that is protected and conserved for future generations
- Renewable energy options that are understood and accessible by the community

How we will get there

- 4.1 Provide (appropriate) infrastructure and services including water cycle management, waste management, and sewer management
- 4.2 Aim to minimise the impact of natural events and climate change, for example, floods, bushfires and coastal erosion
- 4.3 Facilitate development that is compatible with the natural and built environment
- 4.4 Plan for integrated transport systems that help people get around and link our communities
- 4.5 Plan for integrated and connected communities across the Port Macquarie-Hastings area
- 4.6 Restore and protect natural areas
- 4.7 Provide leadership in the development of renewable energy opportunities
- 4.8 Increase awareness of issues affecting our environment, including the preservation of flora and fauna

OFFICIAL

The Hon Jenny Aitchison MP
Minister for Regional Transport and Roads

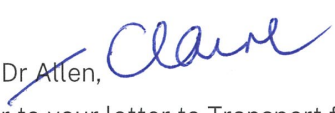


Ref: BN24/00011
29 February 2024

Dr Claire Allen
Chief Executive Officer
Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Re: Operation and maintenance of the Hibbard and Settlement Point ferries

Dear Dr Allen,


I refer to your letter to Transport for NSW about the operation of the two vehicular ferries over the Hastings River at Port Macquarie and your request for the NSW Government to take over the operation of the service.

I understand the Hibbard and Settlement Point ferries have always been provided, operated and maintained by Port Macquarie Hastings Council. The ferry service provides Port Macquarie's north shore residents with access to Port Macquarie and gives the local community and tourists access to the National Park and beaches to the north.

I have considered your request carefully and given the current financial position of the Government and financial commitments to be fulfilled we are not in a position to take on the operation and maintenance of the Port Macquarie ferry services.

If you require any further information, please contact Ms Anna Zycki, Regional Director North, Community and Place, Regional and Outer Metropolitan, Transport for NSW, on 0477 755 905.

Sincerely,

Jenny Aitchison MP
Minister for Regional Transport and Roads



Authorised by: Council
Authorised date: 19/10/2016
Effective date: 20/10/2016
Next review date: 19/10/2019
File Number: SF12/9051

DEVELOPMENT CONTRIBUTIONS ASSESSMENT POLICY

1. INTRODUCTION

This Policy nominates a relationship between the contributions levied for a single density dwelling lot (one lot with one dwelling entitlement or one Equivalent Tenement (ET)) and the contributions levied upon another development types for Section 94 Contributions under Council's Development Contributions Plans and Water and Sewer Developer Charges under Council's Development Servicing Plans

This Policy also outlines the process by which development contributions required as condition of development consent will be indexed prior to payment of the contributions and how contributions will be recalculated.

2. POLICY STATEMENT AND SCOPE

This Policy:

- Provides simple and standard criteria to assess contributions for developments (Section 64 and Section 94 Contributions).
- Provides a standard procedure for the recalculation of contributions following the issue of development consent.
- Allows for the deferral of the payment of development contributions in relation to residential and rural residential subdivision, building works and other development.
- Applies to all development consents that require the payment of development contributions.

2.1 Contribution Rates

Schedule 1 lists the percentage-based relationships for the various residential uses covered by this policy. Schedule 2 lists the criteria for assessment of load on water and sewer headworks for non-residential development.

2.2 Short Term or Emergency Accommodation

Development involving short term or emergency accommodation primarily for stays of less than two (2) weeks are exempt from the payment of contributions, provided that the community organisation carrying out the development has received endorsement for the project as a deductible gift recipient by the Australian Taxation Office under the category of a "public benevolent institute".

Exempt development under this clause is not included in the calculation of demand under Council's Development Contributions Plans. Any shortfall in contributions resulting from exempt development is to be met by the relevant Contributions Plan.

2.3 Development by non-profit organisations

Development by non-profit organisations on Council owned or controlled land is exempt from the payment of development contributions, provided that the Council determines that the development is for an essential community service.

Exempt development under this clause is not included in the calculation of demand under Council's Development Contributions Plans or Development Servicing Plans. Any shortfall in contributions resulting from exempt development is to be met by the relevant Contributions Plan or Development Servicing Plan.

2.4 Contribution Offsets for Ecologically Sustainable Development

2.4.1 Introduction

Port Macquarie-Hastings Council recognises the importance of Ecologically Sustainable Development (ESD) in providing for a high quality life for future generations of residents. In order to encourage a level of ESD that exceeds current legislative requirements and to provide examples highly efficient ESD subdivisions Council will provide development contribution offsets where the development can comply with the criteria in this clause.

2.4.2 Definition of Ecologically Sustainable Development

For the purpose of this clause, Ecologically Sustainable Development (ESD) means residential subdivisions for permanent occupants of at least 50 residents where the development can demonstrate reduced water and energy consumption as provided by table 1.

Table 1: Reduced Energy and Water Consumption Criteria

Item	Criteria
Water Consumption	80% reduction on historical consumption rates calculated in accordance with BASIX
Energy Consumption	60% reduction on historical consumption rates calculated in accordance with BASIX

2.4.3 Contribution Offsets

Where a development complies with the provisions in table 1, a contribution offset will be provided where Council is satisfied that the development will have a reduced demand on Council provided facilities by complying with the criteria in table 2 and the provisions of clause 2.4.4.

Table 2: Contribution Offsets

Contribution	Criteria	Offset
S94 Roads	Independent monitoring of traffic generation to demonstrate that a reduction in traffic generation equal to or greater than the percentage of the local road contribution compared to the total road contribution has been achieved 2 years after the final dwelling in the development is occupied.	No local contribution requirement.
S94 Open Space	Provision of onsite active and passive communal recreational facilities having a minimum area of 100m ² per ET.	
S94 Community Facilities	The development must demonstrate an ongoing commitment to the social well being of residents through the provision of communal meeting places.	

Contribution	Criteria	Offset
Water Supply	Installation of a full independent water supply system to the satisfaction of Council.	Full contribution offset.
Sewerage Services	Installation of a full independent sewerage system to the satisfaction of Council.	Full contribution offset.

2.4.4 Additional Criteria for Contribution Offsets

To qualify for a contribution offset a development must:

- Provide ongoing monitoring of the development (by consultants acceptable to Council), for a minimum of 2 years after the final dwelling in the development is occupied, to establish that the development has achieved the criteria in tables 1 and 2.
- Provide an unconditional Bank Guarantee to Council for the extent of the S94 Contribution offsets. The Bank guarantee will be returned 2 years after the final dwelling in the development is occupied provided Council is satisfied that the development has achieved the criteria in tables 1 and 2.
- Pay full Developer Charges for Water Supply and Sewerage Services, at the rates applicable at the time, should the development connect to Council operated facilities of these services in the future.
- Pay full S94 Developer Charges, at the rates applicable at the time, should the development be re-subdivided or be subject to a change in the title structure of the development.
- Be subject to a form of title whereby all infrastructure for the development including roads becomes the responsibility of the owners within the development e.g. Community Schemes Legislation.

2.4.5 Calculation of Contribution Offsets

- (a) Where there is no local community facilities contribution Council will allow an offset at the lowest community facilities contribution of other areas.
- (b) Where a development is carried out in stages a prorata reduction in contributions will be given however the development must still meet the criteria in tables 1 and 2 and the provisions of clause 2.4.4 for the particular stage.

2.5 Secondary Dwellings ("Granny Flats")

No Section 94, water and sewer contributions apply to development for the purposes of a secondary dwelling ("granny flat") with a floor area up to and including 60m² (within external walls) on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling.

2.6 Indexation and Recalculation of Contributions

- Council will generate a Notice of Payment – Developer Charges (NOP) for all developer charges. The charges will be fixed for 90 days from the date of issue.
- An application for a NOP can be made at any time. The NOP will be provided at no charge with the development consent and subsequently for a fee of \$25.00.
- The applicant is able to pay some or all of the charges within the 90 day period. The existing requirement for payment for buildings before issue of a construction certificate and for subdivisions before issue of the subdivision certificate will continue.
- The charge will be determined at the date the development consent is prepared or at the date of an application for a NOP.
- Council will not accept payment of a contribution unless the payment matches a time valid NOP as issued by Council.
- All NOP's whether generated by a development consent or a separate application will be checked by Council's Development Contribution staff.

2.7 Deferral of Payment of Development Contributions

Council will allow deferral of the payment of development contributions in relation to residential and rural residential subdivision, building works and other development not involving subdivision for a period of up to two years subject to the following provisions:

1. Residential and Rural Residential Subdivision.

Prior to the release of the subdivision certificate contributions must be secured to Council's satisfaction and subject to:

- a. The deferral period being for a maximum of 2 years from the release of the subdivision certificate.
- b. Contributions being paid prior to the sale of the lot and outstanding contributions being secured to Council's satisfaction by either:
 - Bank Guarantee,
 - Charge on Land,
 - Caveat on each individual lot, or
 - Voluntary Planning Agreement.
- c. Where security is by way of a bank guarantee or charge, a 2 year interest amount calculated at the average rate of Council's investments performance over the past 12 months plus 1% is to be added to the amount secured.
- d. Contributions to be calculated at the rate applicable at the time of payment.
- e. Submission of an application made in writing for consideration of deferral of development contributions.
- f. The incorporation of a relevant condition of development consent relating to the deferral of payment of contributions (This may require lodgement of a s.96 application for existing development consents).
- g. All costs associated with lodgement of a bank guarantee or preparation/registration of a Deed of Agreement in the form of a caveat to be borne by the landowner/applicant.

2. Building development or other development not involving subdivision.

Deferral of payment of development contributions must be secured to Council's satisfaction and subject to:

- a. The deferral period being for a maximum of 2 years from the release of the construction or complying development certificate for building works or from the date of occupation/use commencing where no building works are proposed.
- b. An application made in writing to defer the payment of contributions.
- c. Contributions being secured by an irrevocable, non-time limited Bank Guarantee for the amount of the contributions plus a 2 year interest amount calculated at the average rate of Council's investments performance over the past 12 months plus 1%.
- d. Contributions to be calculated at the current rate applicable at the time of payment, including contributions paid by instalment during the approved deferral period.
- e. The incorporation of a relevant condition of development consent relating to the deferral of payment of contributions (This may require lodgement of a s.96 application for existing development consents).

- f. All costs associated with lodgement of a bank guarantee or preparation/registration of a Deed of Agreement in the form of a caveat to be borne by the landowner/applicant.

2.8 Student Accommodation

- a. Payment of contributions can be deferred for a maximum period of 5 years from the issue of a Construction Certificate or until the sale of the land, whichever is the sooner.
- b. Payment of contributions being secured by way of a deed of deferral and a registered charge on the land or a bank guarantee.
- c. The amount of the charge or bank guarantee is to be calculated based on the amount of the outstanding contributions together with an interest component.

2.9 Non Residential Development

1. Payment of development contributions/headworks charges by instalment without security

- a. All Non Residential Development being in all land use zones (not being for residential accommodation or tourist and visitor accommodation).
- b. It only applying to developments where the total contributions payable do not exceed \$50,000.
- c. The total contributions permitted to be paid by instalment without security being limited to \$50,000.
- d. The maximum amount of s94/s94A development contributions that can be paid by instalment without security being limited to \$5,000 excluding s94 contributions for up to one (1) car parking contribution.
- e. Payment of an interest charge based on the Council's investment portfolio performance plus 1% to be added to the contribution instalments.
- f. The contributions and interest to be paid in 24 equal monthly instalments by a direct debit arrangement.
- g. Any default in the payment of the contribution instalments will result in the full amount of the contributions becoming due and payable.
- h. The interest charge on default payments being in accordance with the interest rate on overdue rates & charges as per the rate determined by the Division of Local Government.

2. Exemption from Water and Sewerage headworks charges - Not exceeding \$2,000

Council will allow an exemption from the payment of water and sewerage headworks charges for development involving a change of use or extension of an existing premises, where the combined total of the water and sewerage headworks charges do not exceed \$2,000, in all land use zones, including home businesses in residential zones (not being development for residential accommodation or tourist and visitor accommodation). The \$2,000 exemption amount will be indexed annually in line with the Consumer Price Index (Sydney All Groups).

3. RESPONSIBILITIES AND AUTHORITIES

3.1 Roles and Responsibilities

Assessment of contribution rates will be carried by the Development Assessment Planner assessing the Development Application and will be checked by Development Contributions Staff prior to issue of the development consent.

Recalculation and new Notices of Payment - Developer Charges will be prepared by Development Contributions Staff.

3.2 Determination of Applications for Exemption

The Director of Corporate and Business Services has delegated authority to determine applications for exemption under this Policy.

3.3 Support and Advice

Council's Development Contributions staff will provide support and advice on the implementation of the policy.

3.4 Review

The Group Manager, Environmental Services will review this Policy on an as needs basis and as part of Council's routine Policy review process.

4. REFERENCES

This policy clarifies the method of calculation and indexation of contributions to be applied in accordance with Council's Development Contributions Plans prepared in accordance with the Environmental Planning and Assessment Act 1979 and Development Servicing Plans prepared in accordance with the Water Management Act 2000.

5. DEFINITIONS

Bed & Breakfast Establishment - means a building used as a single dwelling and for providing holiday accommodation. Such holiday accommodation is to be limited to four bedrooms and is not to include self-contained accommodation.

Bedroom - means any enclosed habitable room that is capable of being used for sleeping purposes, including any study or similar utility room. Note: Council may use discretion to determine whether a particular room is to be regarded as bedroom for the purposes of this definition by having regard to the nature of the design and/or layout of the room and its situation in the building.

Commercial, Industrial or Other Development - means any use listed in Schedule 2.

Development - means:

- the erection of a building on that land
- the carrying out of a work in, on, over or under that land
- the use of that land or of a building or work on that land
- the subdivision of that land.

Residential Development - means any use listed in Schedule 1 whether or not the use is intended for temporary, short term, long term, permanent, or tourist accommodation.

Student Accommodation - means residential accommodation for students where:

- the development is for a minimum of 20 beds;
- the maximum floor area for each unit is 15m² excluding bathroom facilities;
- arrangements satisfactory to Council are in place to ensure that:
 - i) The development is occupied by persons attending or enrolled at a local educational establishment (It is acknowledged that student accommodation would be sometimes used in association with other campus activities such as summer schools, conferences and training);
 - ii) If the nature of the occupancy changes to another form of housing, the developer to pay the appropriate contribution rate at that time; and
 - iii) Each room is to be single occupancy.

6. PROCESS OWNER

Group Manager, Environmental Services

7. AMENDMENTS

Amendments authorised by Council 31/5/2004, 06/03/2006, 18/12/2006, 06/08/2007, 20/04/2011, 16/07/2014, 19/11/2014, 18/03/2015, 20/05/2015, 19/10/2016.

Schedule 1

Description	S94	Water	Sewer
A house - single density (one lot with one dwelling entitlement) detached dwelling in Rural RU1 or RU2 zones (eg Managers Residence or Rural Worker's Dwelling), Lots > 450 & < 2000m²	100	100	100
A house - single density (one lot with one dwelling entitlement) detached dwelling in Rural RU1 or RU2 zones (eg Managers Residence or Rural Worker's Dwelling), Lots > 2000m²	100	120	100
Flats, Units, Town Houses, Villas, Dual Occupancies, Integrated Housing designed for lots less than 450m ² etc. and permanent self-contained Caravan Park accommodation			
one (1) bedroom	50	40	50
two (2) bedroom	67	60	75
three (3) bedroom	90	80	100
four (4) or more bedrooms	100	80	100
High density (3 or more storeys)			
one (1) bedroom	50	33	50
two (2) bedroom	67	50	75
three (3) bedroom	90	67	100
four (4) or more bedrooms	100	67	100
Secondary Dwelling ("Granny Flat") – with a floor area up to and including 60m ² (within external walls). Refer to Clause 2.5.	Nil	Nil	Nil
Boarding Houses, Guest Houses, Hostels, B&Bs etc			
not self-contained, shared facilities for cooking, laundry and bathrooms per bedroom not dormitory or bunk rooms	25	25	25
partially self contained, shared facilities for cooking & laundry but own ensuite per bedroom not dormitory or bunk rooms	35	35	35
not self-contained, shared facilities for cooking, laundry and bathrooms per bed, dormitory or bunk rooms	12.5	12.5	12.5
partially self contained, shared facilities for cooking & laundry but own ensuite per bed, dormitory or bunk rooms	17.5	17.5	17.5
B&Bs (up to and including four (4) bedrooms) are currently contributions exempt for a trial period	Nil	Nil	Nil
Student Accommodation - Per unit .	17.5	17.5	17.5
Motel unit			
partially self contained (shared facilities for cooking & laundry but own ensuite)	25	30	45
self contained (ensuite and kitchen) Equates to a 1 bedroom unit. For motel suites in excess of 1 bedroom, apply the percentages for high density units	50	40	50
Aged unit where the development is approved under SEPP (Housing for Seniors or People with a Disability (2004)) or the Applicant demonstrates to Council's satisfaction that the development will be occupied by older persons as defined in the SEPP and the maximum occupancy for any unit is 2 persons			
self contained (ensuite & kitchen) 1 bedroom	40	33	50
self contained 2 bedroom	55	50	75
self contained 3 or more bedrooms	75	67	100
Nursing Home/Hostels			
High Dependency/Residential Care Facility (per bed)	Nil	50	75
Low Dependency/Hostel (per bed)	35	30	45
Caravan Parks and or Camping Sites (applies only to new caravan parks and/or new sites within existing caravan parks/campgrounds)			
transient, not permanent (not self-contained)	25	25	25
transient, not permanent (partially self-contained)	35	35	35
permanent (not self-contained)	25	25	25
permanent (partially self-contained, ensuite)	35	35	35
permanent (self-contained, ensuite & kitchen)	see flats, units, townhouses etc		
dormitory or bunk rooms - not self-contained, shared facilities for cooking, laundry and bathrooms per bed,	12.5	12.5	12.5
dormitory or bunk rooms partially self contained, shared facilities for cooking & laundry but own ensuite per bed,	17.5	17.5	17.5

Schedule 2

COMMERCIAL	Unit	Water ET	Sewer ET
Shops - Dry Trade	m ²	0.0025	0.0025
Shops - Florists, Garden Supplies, Supermarkets	m ²	0.0038	0.0038
Shops - Food & Assoc Hairdressers	m ²	0.0050	0.0050
Restaurants, Cafes, Coffee Shops Etc	m ²	0.0050	0.0050
Drive In Restaurants, Liquor Stores Etc	m ²	0.0038	0.0025
Offices, Banks, Professional Rooms Etc	m ²	0.0020	0.0020
Professional Consulting Rooms (Dentists, Doctors Etc)	m ²	0.0038	0.0038
Car Sales - Showrooms Etc	m ²	0.0025	0.0025
- Open Display Area	m ²	0.0003	Nil
Service Stations - Workshop Etc	m ²	0.0025	0.0025
- Driveway Etc	m ²	0.0003	Nil
Car Wash	m ²	0.0375	0.0375
Tyre Sales And Service	m ²	0.0025	0.0025
Multi-Purpose Recreational Complex	m ²	0.0010	0.0010
Squash Courts	m ²	0.0010	0.0010
Ten Pin Bowling Alley (Service Area)	m ²	0.0100	0.0100
Marinas, Boating Facility			
Showroom	m ²	0.003	0.003
Display & Storage	m ²	0.001	Nil
Ramps, Slips, Jetties	m ²	0.019	Nil
Brothel	Room	0.425	0.425
Storage Premises - capped at 1 ET for water and 0.2 ET for sewer for premises not exceeding a floor area of 3,000m ² . Storage Premises over 3000m ² assessed on case by case	m ²	0.00125	0.0025
INDUSTRIAL	Unit	Water ET	Sewer ET
Low Service Loading - Warehouses, Timber Mills, Hardware Supplies, Furniture Manufacture, Transport Terminals, Joinery, Plumbers Supply, Fuel Depots, Dry Food Processing, Manufacturing And Packaging	m ²	0.00125	0.00025
Medium Service Loading - Steel Fabrication, Panel Beaters, Motor Workshops, Frozen Foods, Oyster Processing	m ²	0.00250	0.00050
Heavy Service Loading - Ready Mixed Concrete Plant, Concrete Products, Commercial Nursery, Market Garden	m ² Site	0.00250	0.00025
Very Heavy Service Loading - Laundries, Dry Cleaners, Cordial Factory, Slaughter Yards, Wet Food Processing Etc	m ²	0.00375	0.00250
OTHER	Unit	Water ET	Sewer ET
Licensed Clubs			
- Social (RSL Etc)		As For Hotels	
- Bowling - Clubhouse		As For Hotels	
- Bowling - Greens	Green	2.5000	Nil
- Golf - Clubhouse		As For Hotels	
- Golf - Course	Hole	0.5000	Nil
Churches		No Charge	
Church Halls, Theatres Etc	m ²	0.0003	0.0005
Schools, Educational Establishments, Child Care	Pupil	0.0425	0.0425
Funeral Parlour		No Charge	
Hospitals	Bed	0.8500	0.8500
Hotels - Service Area (Including Bar, Lounge, Beer Garden, Toilets Etc)	m ²	0.0100	0.0100



Authorised by: Council
 Authorised date: DD/MM/YYYY
 Effective date: DD/MM/YYYY
 Next review date: DD/MM/YYYY
 File Number: #####

DEVELOPMENT CONTRIBUTIONS ~~ASSESSMENT~~ ADMINISTRATION POLICY

1. INTRODUCTION

~~This Policy nominates a relationship between the contributions levied for a single density dwelling lot (one lot with one dwelling entitlement or one Equivalent Tenement (ET)) and the contributions levied upon another development types for Section 94 Contributions under Council's Development Contributions Plans and Water and Sewer Developer Charges under Council's Development Servicing Plans~~

~~This Policy also outlines the process by which development contributions required as condition of development consent will be indexed prior to payment of the contributions and how contributions will be recalculated.~~

Development Contributions, also known as Local Infrastructure Contributions, are a levy charged by Council when new development occurs. These contributions are collected for funding public infrastructure that is required as a direct or indirect result of development, for example local roads, footpaths, community centres, sporting fields and parks. In addition, Developer Charges are collected to fund water and sewer infrastructure required to support providing these services.

This Policy is supported by and to be used in conjunction with Council's Local Infrastructure Contributions Plans (LICP) and water supply and sewerage developer charges under Council's Development Servicing Plans (DSP).

The purpose of this Policy is to:

- Guide Council decision making on the implementation and collection of development contributions and charges.
- Provide predictability and certainty to stakeholders in how development contributions and charges are to be administered.
- Provide information for those involved in development to make fair payments to the Council to reflect the demand their development will have on Council infrastructure and the benefits residents and businesses occupying these developments will derive from Council infrastructure.
- Outline the process by which development contributions are required as a condition of development consent

2. POLICY STATEMENT AND SCOPE

This Policy:

- Provides the standard criteria to assess contributions for developments (Section 64 and Section 947.11 Contributions).
- Provides a standard procedure for the recalculation of contributions following the issue of development consent.
- Allows for the deferral of the payment of development contributions, at Council's discretion, in relation to residential development.
- ~~Applies to all development consents that require the payment of development contributions.~~

2.1 Contribution Rates

Schedule 1 lists the percentage-based relationships for the various residential uses covered by this Policy. Schedule 2 lists the criteria for assessment of load on water and sewer headworks for non-residential development.

2.2 ~~Short Term or~~ Emergency Accommodation

Development involving ~~short term or~~ emergency accommodation primarily for stays of less than two (2) weeks are exempt from the payment of contributions, provided that the community organisation carrying out the development has received endorsement for the project as a deductible gift recipient by the Australian Taxation Office under the category of a "public benevolent institute".

Exempt development under this clause is not included in the calculation of demand under Council's ~~Development Contributions Plans LICPs~~. Any shortfall in contributions resulting from exempt development is to be met by the relevant Contributions Plan.

2.3 Development by non-profit organisations

Development by non-profit organisations on Council / ~~Government~~ owned or controlled land is exempt from the payment of development contributions, provided that the Council determines that the development is for ~~an essential community service~~ a community facility. ~~Evidence will need to be provided that the organisation is a not-profit, being an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run the organisation, or their friends or family) and is registered with the Australian Charities and Not-for-profits Commission and Australian Taxation Office as a non-profit organisation.~~

Exempt development under this clause is not included in the calculation of demand under Council's ~~Development Contributions Plans LICPs or Development Servicing Plans DSPs~~. Any shortfall in contributions resulting from exempt development is to be met by the relevant ~~Development Contributions Plans LICP or Development Servicing Plans DSP~~.

2.4 ~~Contribution Offsets for Ecologically Sustainable Development~~

2.4.1 Introduction

~~Port Macquarie Hastings Council recognises the importance of Ecologically Sustainable Development (ESD) in providing for a high quality life for future generations of residents. In order to encourage a level of ESD that exceeds current legislative requirements and to provide examples highly efficient ESD subdivisions Council will provide development contribution offsets where the development can comply with the criteria in this clause.~~

2.4.2 Definition of Ecologically Sustainable Development

~~For the purpose of this clause, Ecologically Sustainable Development (ESD) means residential subdivisions for permanent occupants of at least 50 residents where the development can demonstrate reduced water and energy consumption as provided by table 1.~~

Table 1: Reduced Energy and Water Consumption Criteria

Item	Criteria
Water Consumption	80% reduction on historical consumption rates calculated in accordance with BASIX
Energy Consumption	60% reduction on historical consumption rates calculated in accordance with BASIX

2.4.3 Contribution Offsets

~~Where a development complies with the provisions in table 1, a contribution offset will be provided where Council is satisfied that the development will have a reduced demand on Council provided facilities by complying with the criteria in table 2 and the provisions of clause 2.4.4.~~

Table 2: Contribution Offsets

Contribution	Criteria	Offset
S94 Roads	Independent monitoring of traffic generation to demonstrate a reduction in traffic generation equal to or greater than	No local contribution requirement.

	the percentage of the local road contribution compared to the total road contribution has been achieved 2-years after the final dwelling in the development is occupied.	
S94 Open Space	Provide an onsite active and passive communal recreational facilities having a minimum area of 100m ² per ET.	No local contribution requirement.
S94 Community Facilities	The development must demonstrate an ongoing commitment to the social well being of residents through the provision of communal meeting places.	No local contribution requirement.
Water Supply	Installation of a full independent water supply system to the satisfaction of Council.	Full contribution offset.
Sewerage Services	Installation of a full independent sewerage system to the satisfaction of Council.	Full contribution offset.

2.4.4 Additional Criteria for Contribution Offsets

To qualify for a contribution offset a development must:

- Provide ongoing monitoring of the development (by consultants acceptable to Council), for a minimum of 2 years after the final dwelling in the development is occupied, to establish that the development has achieved the criteria in tables 1 and 2.
- Provide an unconditional Bank Guarantee to Council for the extent of the S94 Contribution offsets. The Bank guarantee will be returned 2 years after the final dwelling in the development is occupied provided Council is satisfied that the development has achieved the criteria in tables 1 and 2.
- Pay full Developer Charges for Water Supply and Sewerage Services, at the rates applicable at the time, should the development connect to Council operated facilities of these services in the future.
- Pay full S94 Developer Charges, at the rates applicable at the time, should the development be re-subdivided or be subject to a change in the title structure of the development.
- Be subject to a form of title whereby all infrastructure for the development including roads becomes the responsibility of the owners within the development e.g. Community Schemes Legislation.

2.4.5 Calculation of Contribution Offsets

- (1) Where there is no local community facilities contribution Council will allow an offset at the lowest community facilities contribution of other areas.
- (2) Where a development is carried out in stages a prorata reduction in contributions will be given however the development must still meet the criteria in tables 1 and 2 and the provisions of clause 2.4.4 for the particular stage.

2.4 Secondary Dwellings ("Granny Flats")

No Section 947.11, water and sewer contributions apply to development for the purposes of a secondary dwelling ("granny flat") with a floor area up to and including 60m² (within external walls) on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling.

2.5 Indexation and Recalculation of Contributions

- Council will generate a Notice of Payment - Developer Charges (NOP) for all development contribution charges. The charges will be fixed for 90 days from the date of issue.

- An application for a NOP can be made at any time. The NOP will be provided at no charge with the development consent and ~~subsequently for a fee of \$25.00 will be charged as per Council's Fees and Charges for any subsequent NOPs.~~
- The applicant is to pay ~~some or~~ all the charges within the 90-day period. The existing requirement for payment for buildings before issue of a construction certificate and for subdivisions before issue of the subdivision certificate will continue.
- The charge will be determined at the date the development consent is prepared or at the date of issue of a NOP.
- Council will not accept payment of a contribution unless the payment matches a time valid NOP as issued by Council.
- All NOP's whether generated by a development consent or a separate application will be checked by Council's Development Contribution staff.

2.6 Deferral of Payment of Development Contributions

~~Council will allow deferral of the payment of development contributions in relation to residential and rural residential subdivision, building works and other development not involving subdivision for a period of up to two years subject to the following provisions:~~

~~1. Residential and Rural Residential Subdivision:~~

~~Prior to the release of the subdivision certificate contributions must be secured to Council's satisfaction and subject to:~~

- ~~a. The deferral period being for a maximum of 2 years from the release of the subdivision certificate.~~
- ~~b. Contributions being paid prior to the sale of the lot and outstanding contributions being secured to Council's satisfaction by either:

 - ~~• Bank Guarantee,~~
 - ~~• Charge on Land,~~
 - ~~• Caveat on each individual lot, or~~
 - ~~• Voluntary Planning Agreement.~~~~
- ~~c. Where security is by way of a bank guarantee or charge, a 2 year interest amount calculated at the average rate of Council's investments performance over the past 12 months plus 1% is to be added to the amount secured.~~
- ~~d. Contributions to be calculated at the rate applicable at the time of payment.~~
- ~~e. Submission of an application made in writing for consideration of deferral of development contributions.~~
- ~~f. The incorporation of a relevant condition of development consent relating to the deferral of payment of contributions (This may require lodgement of a s.96 application for existing development consents).~~
- ~~g. All costs associated with lodgement of a bank guarantee or preparation/registration of a Deed of Agreement in the form of a caveat to be borne by the landowner/applicant.~~

~~2. Building development or other development not involving subdivision:~~

~~Deferral of payment of development contributions must be secured to Council's satisfaction and subject to:~~

- ~~a. The deferral period being for a maximum of 2 years from the release of the construction or complying development certificate for building works or from the date of occupation/use commencing where no building works are proposed.~~
- ~~b. An application made in writing to defer the payment of contributions.~~

- ~~c. Contributions being secured by an irrevocable, non-time limited Bank Guarantee for the amount of the contributions plus a 2 year interest amount calculated at the average rate of Council's investments performance over the past 12 months plus 1%.~~
- ~~d. Contributions to be calculated at the current rate applicable at the time of payment, including contributions paid by instalment during the approved deferral period.~~
- ~~e. The incorporation of a relevant condition of development consent relating to the deferral of payment of contributions (This may require lodgement of a s.96 application for existing development consents).~~
- ~~f. All costs associated with lodgement of a bank guarantee or preparation/registration of a Deed of Agreement in the form of a caveat to be borne by the landowner/applicant.~~

2.8 Student Accommodation

- ~~a. Payment of contributions can be deferred for a maximum period of 5 years from the issue of a Construction Certificate or until the sale of the land, whichever is the sooner.~~
- ~~b. Payment of contributions being secured by way of a deed of deferral and a registered charge on the land or a bank guarantee.~~
- ~~c. The amount of the charge or bank guarantee is to be calculated based on the amount of the outstanding contributions together with an interest component.~~

2.9 Non Residential Development

1. ~~Payment of development contributions/headworks charges by instalment without security~~

- ~~a. All Non Residential Development being in all land use zones (not being for residential accommodation or tourist and visitor accommodation).~~
- ~~b. It only applying to developments where the total contributions payable do not exceed \$50,000.~~
- ~~c. The total contributions permitted to be paid by instalment without security being limited to \$50,000.~~
- ~~d. The maximum amount of s94/s94A development contributions that can be paid by instalment without security being limited to \$5,000 excluding s94 contributions for up to one (1) car parking contribution.~~
- ~~e. Payment of an interest charge based on the Council's investment portfolio performance plus 1% to be added to the contribution instalments.~~
- ~~f. The contributions and interest to be paid in 24 equal monthly instalments by a direct debit arrangement.~~
- ~~g. Any default in the payment of the contribution instalments will result in the full amount of the contributions becoming due and payable.~~
- ~~h. The interest charge on default payments being in accordance with the interest rate on overdue rates & charges as per the rate determined by the Division of Local Government.~~

2. ~~Exemption from Water and Sewerage headworks charges Not exceeding \$2,000~~

~~Council will allow an exemption from the payment of water and sewerage headworks charges for development involving a change of use or extension of an existing premises, where the combined total of the water and sewerage headworks charges do not exceed \$2,000, in all land use zones, including home businesses in residential zones (not being development for residential accommodation or tourist and visitor accommodation). The \$2,000 exemption amount will be indexed annually in line with the Consumer Price Index (Sydney All Groups).~~

Local infrastructure contributions (either s7.11 or s7.12) relating to development applications and complying development certificates (CDC) must be paid to Council at the time specified in the condition that imposes the contribution or levy.

Council, at its discretion, may accept the deferred payment of development contributions in relation to residential and commercial development, for development consents issued on or after 16 July 2014 for a maximum period of one year. Deferred payments of development contributions will only be considered in certain circumstances in accordance with the criteria below:

1. Deferred payment will only be considered for development applications. Deferred payment of contributions will not be permitted for complying development.
2. An application for deferred payment is to be made in writing to Council.
3. The request must specify the reasons for the need to defer development contributions.
4. The granting of the request will not adversely impact on the administration, operation or cash flows of the plan.
5. The granting of the request will not jeopardise the timely provision of works or land identified within the plan.
6. An applicant must have the intention and ability to pay the development contribution to satisfy the condition imposed on the development consent.

If a deferral is accepted, Council will require a bank guarantee with the following conditions:

1. The bank guarantee must be in Australian dollars from a major Australian trading bank and in the name of Port Macquarie-Hastings Council.
2. Council will not accept a copy of the bank guarantee, the original must be provided to Council.
3. The bank guarantee must have no end date, be unconditional, irrevocable and be in favour of Port Macquarie-Hastings Council.
4. The deferral period being a maximum of 12 months from the release of the subdivision certificate, construction certificate or occupation certificate, with no extension of time to be granted.
5. The total amount of contributions that is proposed to be deferred is no less than \$100,000.00
6. The bank guarantee must be for the amount of the total contribution, or the amount of the outstanding contribution, plus an amount equal to 10 percent of the total value of the contribution to be deferred.
7. An administration fee will apply to cover the cost of processing the bank guarantee, in accordance with Council's fees and charges. The fee will be reviewed annually.
8. Contributions are to be calculated at the rate applicable at the time of payment.
9. The incorporation of a relevant condition of development consent relating to the deferral of payment of contributions.

All costs associated with lodgement of a bank guarantee or preparation / registration of a bank guarantee are to be borne by the landowner / developer.

All requests for a bank guarantee will be assessed based on their merit and the decision will be solely at the discretion of Council.

If the amount of the total development contribution including indexation is not paid within the deferral period, Council may immediately request that the bank must pay the full amount guaranteed by the bank guarantee to the Council without reference to the developer, landowner or other person who lodged the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development to which the bank guarantee relates.

A certifying authority must not issue a Construction Certificate, Subdivision Certificate or Occupation Certificate unless the certifying authority has verified that the obligations of the deferred development contributions has been satisfied.

3. RESPONSIBILITIES AND AUTHORITIES

3.1 Roles and Responsibilities

Assessment of contribution rates will be carried out by the Development Assessment Planner assessing the Development Application and will be checked by Development Contributions Staff prior to issue of the development consent.

Recalculation and new ~~Notices of Payment—Developer Charges~~—NOP will be prepared by Development Contributions Staff.

3.2 Determination of Applications for Exemption

Applications for the exemption of the payment of contributions associated with section 7.11 or 7.12 or the water rates associated with the DSP, are as follows:

- The Director of ~~Corporate and Business Services~~ Community Planning and Environment has delegated authority to determine applications for exemption under this Policy, ~~associated with section 7.11 or 7.12 contributions; and~~
- The Director of Community Utilities has delegated authority to determine application for exemption under this Policy, associated with water and sewer rates under the DSP.

3.3 Support and Advice

Council's Development Contributions Staff will provide support and advice on the implementation of the policy.

3.4 Review

~~The Group Manager, Environmental Services will review this Policy on an as needs basis and as part of Council's routine Policy review process.~~

It is intended that this Policy will be periodically updated. The updates may cover additional matters to those covered in this Policy or provide more detailed information of guidance on specific matters covered in this Policy. Council will undertake a review of this Policy:

- within 12 months of any general election of Council; or
- at the discretion of the Chief Executive Officer; or
- when the Department of Planning, Housing and Infrastructure (or equivalent) initiates any changes to the relevant legislation or guidelines that affect the administration of development contributions to enable incorporation into this Policy.

3.5 Details of Approval and Revision

Approval Date	
Responsible Group	Strategy
Policy Owner	Director Community, Planning and Environment
Superseded Policy Revision	Adopted 31/05/2004
	Adopted 06/03/2006
	Adopted 18/12/2006
	Adopted 06/08/2007
	Adopted 20/04/2011
	Adopted 16/07/2014
	Adopted 19/11/2014

	Adopted 18/03/2015
	Adopted 20/05/2015
	Adopted 19/10/2016
Next Review Date	1 July 2029

4. REFERENCES

This policy clarifies the method of calculation and indexation of contributions to be applied in accordance with Council's ~~Development Contributions Plans-LICPs~~ prepared in accordance with the *Environmental Planning and Assessment Act 1979* and DSPs prepared in accordance with the *Water Management Act 2000*.

5. DEFINITIONS

Bed & Breakfast Establishment - ~~means a building used as a single dwelling and for providing holiday accommodation. Such holiday accommodation is to be limited to four bedrooms and is not to include self-contained accommodation an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where —~~

- ~~(a) meals are provided for guests only, and~~
- ~~(b) cooking facilities for the preparation of meals are not provided within guests' rooms, and~~
- ~~(c) dormitory-style accommodation is not provided.~~

Note — ~~See clause 5.4 for controls relating to the number of bedrooms for bed and breakfast accommodation.~~

Bedroom - means any enclosed habitable room that is capable of being used for sleeping purposes, including but not limited to any study, multi-purpose room or similar utility room. Note: Council may use discretion to determine whether a particular room is to be regarded as bedroom for the purposes of this definition by having regard to the nature of the design and/or layout of the room and its situation in the building.

Commercial, Industrial or Other Development - means any use listed in Schedule 2.

Development — ~~means:~~

- ~~• the erection of a building on that land~~
- ~~• the carrying out of a work in, on, over or under that land~~
- ~~• the use of that land or of a building or work on that land~~
 - ~~• the subdivision of that land.~~

~~has the same meaning as Section 1.5 (1) of the EP&A Act.~~

Equivalent Tenement - ~~means the demand or loading, a development will have on infrastructure as if it were an average residential dwelling or house.~~

Residential Development - means any use listed in Schedule 1, whether or not the use is intended for temporary, short term, long term, permanent, or tourist accommodation.

Student Accommodation - ~~means residential accommodation for students where:~~

- ~~• the development is for a minimum of 20 beds;~~
- ~~• the maximum floor area for each unit is 15m² excluding bathroom facilities;~~
- ~~• arrangements satisfactory to Council are in place to ensure that:~~
 - ~~i) The development is occupied by persons attending or enrolled at a local educational establishment (It is acknowledged that student accommodation would be sometimes used in association with other campus activities such as summer schools, conferences and training);~~
 - ~~ii) If the nature of the occupancy changes to another form of housing, the developer to pay the appropriate contribution rate at that time; and~~
 - ~~iii) Each room is to be single occupancy~~

~~co-living housing in accordance with State Environmental Planning Policy (Housing) 2021, Part 3.~~

~~6. PROCESS OWNER~~

~~Director Community Planning and Environment~~

~~7. AMENDMENTS~~

~~Amendments authorised by Council 31/5/2004, 06/03/2006, 18/12/2006, 06/08/2007, 20/04/2011, 16/07/2014, 19/11/2014, 18/03/2015, 20/05/2015, 19/10/2016~~

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SCHEDULE 1

Description	S947.11	Water	Sewer
A house - single density (one lot with one dwelling entitlement) detached dwelling in Rural RU1 or RU2 zones (eg Managers Residence or Rural Worker's Dwelling), Lots > 450 & < 2000m ²	100	100	100
A house - single density (one lot with one dwelling entitlement) detached dwelling in Rural RU1 or RU2 zones (eg Managers Residence or Rural Worker's Dwelling), Lots > 2000m ²	100	120	100
Flats, units, town houses, villas, dual occupancies, integrated housing designed for lots less than 450m ² etc. and permanent self- contained caravan park accommodation			
one (1) bedroom	50	40	50
two (2) bedrooms	67	60	75
three (3) bedrooms	90	80	100
four (4) or more bedrooms	100	80	100
High density (3 or more storeys)			
one (1) bedroom	50	33	50
two (2) bedroom	67	50	75
three (3) bedroom	90	67	100
four (4) or more bedrooms	100	67	100
Secondary Dwelling ("Granny Flat") - with a floor area up to and including 60m ² (within external walls). Refer to Clause 2.5.	Nil	Nil	Nil
Boarding Houses, Guest Houses, Hostels, B&Bs etc			
not self-contained, shared facilities for cooking, laundry and bathrooms per bedroom not dormitory or bunk rooms	25	25	25
partially self-contained, shared facilities for cooking & laundry but own ensuite per bedroom not dormitory or bunk rooms	35	35	35
not self-contained, shared facilities for cooking, laundry and bathrooms per bed, dormitory or bunk rooms	12.5	12.5	12.5
partially self-contained, shared facilities for cooking & laundry but own ensuite per bed, dormitory or bunk rooms	17.5	17.5	17.5
B&Bs (up to and including four (4) bedrooms) are currently contributions exempt for a trial period	Nil	Nil	Nil
Student Accommodation - Per unit .	17.5	17.5	17.5
Motel unit			
partially self-contained (shared facilities for cooking & laundry but own ensuite)	25	30	45
self-contained (ensuite and kitchen) equates to a 1-bedroom unit. For motel suites in excess of 1 bedroom, apply the percentages for high density units	50	40	50
Aged unit where the development is approved under SEPP (Housing for Seniors or People with a Disability (2004)) or the Applicant demonstrates to Council's satisfaction that the development will be occupied by older persons as defined in the SEPP and the maximum occupancy for any unit is 2 persons			
self-contained (ensuite & kitchen) 1 bedroom	40	33	50
self-contained 2 bedrooms	55	50	75
self-contained 3 or more bedrooms	75	67	100
Nursing Home/Hostels			
High Dependency/Residential Care Facility (per bed)	Nil	50	75
Low Dependency/Hostel (per bed)	35	30	45
Caravan Parks and or Camping Sites (applies only to new caravan parks and/or new sites within existing caravan parks/campgrounds)			
transient, not permanent (not self-contained)	25	25	25
transient, not permanent (partially self-contained)	35	35	35
permanent (not self-contained)	25	25	25
permanent (partially self-contained, ensuite)	35	35	35
permanent (self-contained, ensuite & kitchen)	see flats, units, townhouses etc		
dormitory or bunk rooms - not self-contained, shared facilities for cooking, laundry and bathrooms per bed,	12.5	12.5	12.5
dormitory or bunk rooms partially self-contained, shared facilities for cooking & laundry but own ensuite per bed,	17.5	17.5	17.5

Schedule 2

COMMERCIAL	Unit	Water ET	Sewer ET
Shops - Dry Trade	m2	0.0025	0.0025
Shops - Florists, Garden Supplies, Supermarkets	m2	0.0038	0.0038
Shops - Food & Assoc Hairdressers	m2	0.0050	0.0050
Restaurants, Cafes, Coffee Shops Etc	m2	0.0050	0.0050
Drive In Restaurants, Liquor Stores Etc	m2	0.0038	0.0025
Offices, Banks, Professional Rooms Etc	m2	0.0020	0.0020
Professional Consulting Rooms (Dentists, Doctors Etc)	m2	0.0038	0.0038
Car Sales - Showrooms Etc	m2	0.0025	0.0025
- Open Display Area	m2	0.0003	Nil
Service Stations - Workshop Etc	m2	0.0025	0.0025
- Driveway Etc	m2	0.0003	Nil
Car Wash	m2	0.0375	0.0375
Tyre Sales And Service	m2	0.0025	0.0025
Multi-Purpose Recreational Complex	m2	0.0010	0.0010
Squash Courts	m2	0.0010	0.0010
Ten Pin Bowling Alley (Service Area)	m2	0.0100	0.0100
Marinas, Boating Facility			
Showroom	m2	0.003	0.003
Display & Storage	m2	0.001	Nil
Ramps, Slips, Jetties	m2	0.019	Nil
Brothel	Room	0.425	0.425
Storage Premises - capped at 1 ET for water and 0.2 ET for sewer for premises not exceeding a floor area of 3,000m ² . Storage Premises over 3000m ² assessed on case by case	m2	0.00125	0.0025
INDUSTRIAL	Unit	Water ET	Sewer ET
Low Service Loading - Warehouses, timber mills, hardware supplies, furniture manufacture, transport terminals, joinery, plumbers supply, fuel depots, dry food processing, manufacturing and packaging	m2	0.00125	0.00025
Medium Service Loading - Steel fabrication, panel beaters, motor workshops, frozen foods, oyster processing	m2	0.00250	0.00050
Heavy Service Loading - Ready mixed concrete plant, concrete products, commercial nursery, market garden	m2 Site	0.00250	0.00025
Very Heavy Service Loading - Laundries, dry cleaners, cordial factory, slaughter yards, wet food processing etc	m2	0.00375	0.00250
OTHER	Unit	Water ET	Sewer ET
Licensed Clubs			
- Social (RSL Etc)		As For Hotels	
- Bowling - Clubhouse		As For Hotels	
- Bowling - Greens	Green	2.5000	Nil
- Golf - Clubhouse		As For Hotels	
- Golf - Course	Hole	0.5000	Nil
Churches		No Charge	
Church Halls, Theatres Etc	m2	0.0003	0.0005
Schools, Educational Establishments, Child Care	Pupil	0.0425	0.0425
Funeral Parlour		No Charge	
Hospitals	Bed	0.8500	0.8500
Hotels - Service Area (Including Bar, Lounge, Beer Garden, Toilets Etc)	m2	0.0100	0.0100

Summary of Deferral Deeds with Contributions Outstanding

Today's Date: 21-Feb-24

Parcels Outstanding: 40
Active Deeds: 4

Deferral Payment Methods

Deferral through Deferral Deed with payment within 2 years.

Deferral through Ministerial Direction with occupation anticipated within 2 years.

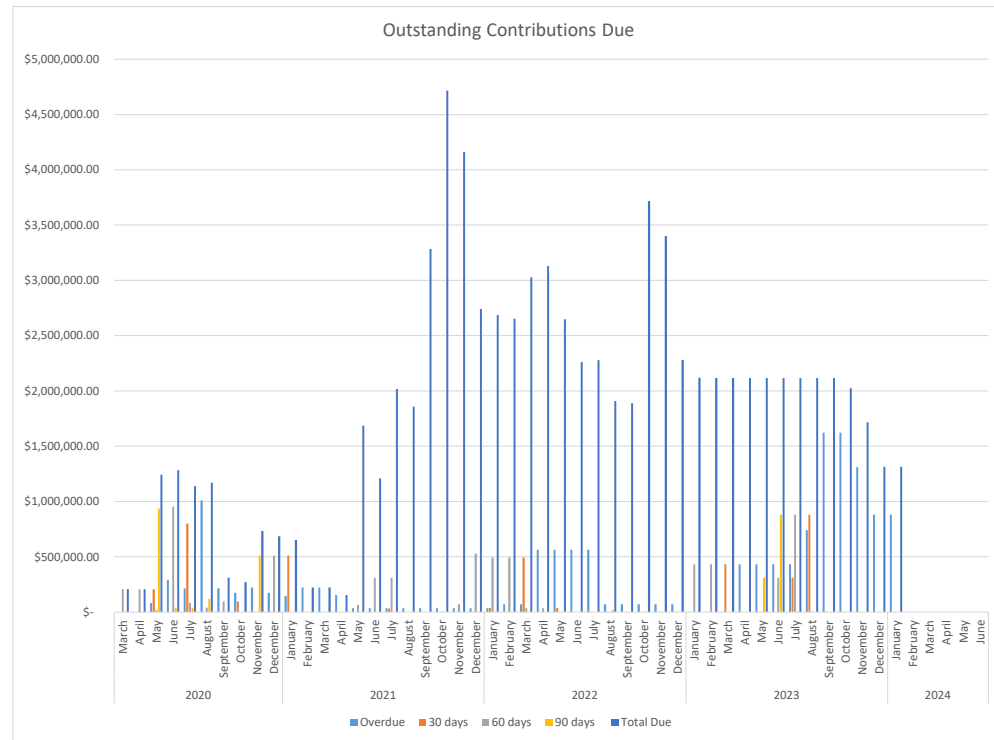
Deferral through Bank Guarantee with payment to be made within 2 years.

Deferral through Direct Debit payment plan over a 2 year period.

Number Parcel	Days Until Due	Days from Subdivision	Contribution Status	Amount	Due By
40			Total Outstanding:	\$ 1,312,653.60	27-Nov-25
28	0	730	Parcels Overdue:	\$ 879,633.20	21-Feb-24
0	30	700	Due in 30 Days:	\$ -	22-Mar-24
0	60	670	Due in 60 Days:	\$ -	21-Apr-24
0	90	640	Due in 90 Days:	\$ -	21-May-24

Record Line	Registry Reference	Parcel (PIN)	Parcel Reference	Deed Reference	Authority Description	External Reference	Deed Date	Subdivision Date	Deferral Method	Deed Amount	Date Due
40	155.2021.00000008.001	70617	LOT: 7 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
39	155.2021.00000008.002	70618	LOT: 8 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
38	155.2021.00000008.003	70619	LOT: 9 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
37	155.2021.00000008.012	70628	LOT: 18 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 34,271.00	16-Sep-23
36	155.2021.00000008.017	70633	LOT: 23 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 34,271.00	16-Sep-23
35	155.2021.00000008.018	70634	LOT: 24 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 34,271.00	16-Sep-23
34	155.2021.00000008.021	70637	LOT: 27 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
33	155.2021.00000008.024	70640	LOT: 30 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 34,271.00	16-Sep-23
32	155.2021.00000008.027	70643	LOT: 33 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 34,271.00	16-Sep-23
31	155.2021.00000008.028	70644	LOT: 34 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
30	155.2021.00000008.029	70645	LOT: 35 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
29	155.2021.00000008.031	70647	LOT: 37 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
28	155.2021.00000008.032	70648	LOT: 38 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
27	155.2021.00000008.033	70649	LOT: 39 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
26	155.2021.00000008.034	70650	LOT: 40 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
25	155.2021.00000008.035	70651	LOT: 41 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
24	155.2021.00000008.036	70652	LOT: 42 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
23	155.2021.00000008.037	70653	LOT: 43 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
22	155.2021.00000008.038	70654	LOT: 44 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
21	155.2021.00000008.039	70655	LOT: 45 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
20	155.2021.00000008.040	70656	LOT: 46 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
19	155.2021.00000008.041	70657	LOT: 47 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
18	155.2021.00000008.042	70658	LOT: 48 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
17	155.2021.00000008.043	70612	LOT: 2 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
16	155.2021.00000008.044	70613	LOT: 3 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
15	155.2021.00000008.047	70614	LOT: 4 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
14	155.2021.00000008.048	70615	LOT: 5 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 32,171.40	16-Sep-23
13	155.2021.00000008.049	70616	LOT: 6 DP: 271354	4	DA 2017/1049 - Transit Hill Estate (Total)	13.2017.1049.01	17-Aug-21	16-Sep-21	Deed of Deferral	\$ 30,192.40	16-Sep-23
12	155.2022.00000002.002	71515	LOT: 29 DP: 1281196	3	DA 2002/169 - Sanctuary Springs Estate 5(1) - 7 Lots	13.2002.0169.21	10-Jun-22	28-Jun-22	Deed of Deferral	\$ 24,405.40	27-Jun-24
11	155.2022.00000002.003	71516	LOT: 30 DP: 1281196	3	DA 2002/169 - Sanctuary Springs Estate 5(1) - 7 Lots	13.2002.0169.21	10-Jun-22	28-Jun-22	Deed of Deferral	\$ 24,405.40	27-Jun-24
10	155.2022.00000002.004	71517	LOT: 31 DP: 1281196	3	DA 2002/169 - Sanctuary Springs Estate 5(1) - 7 Lots	13.2002.0169.21	10-Jun-22	28-Jun-22	Deed of Deferral	\$ 24,405.40	27-Jun-24
9	155.2022.00000004.002	71638	LOT: 2 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 40,536.90	12-Sep-24
8	155.2022.00000004.003	71639	LOT: 3 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 40,536.90	12-Sep-24
7	155.2022.00000004.005	71641	LOT: 5 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 40,536.90	12-Sep-24
6	155.2022.00000004.006	71642	LOT: 6 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 40,536.90	12-Sep-24
5	155.2022.00000004.024	71660	LOT: 24 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 40,536.90	12-Sep-24
4	155.2022.00000004.026	71662	LOT: 26 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 40,536.90	12-Sep-24
3	155.2022.00000004.027	71663	LOT: 27 DP: 1279815	2	DA 2019/474 - Hampton Shores (Stage 1)	13.2019.0474.01	24-Aug-22	13-Sep-22	Deed of Deferral	\$ 43,592.80	12-Sep-24
2	155.2023.00000001.003	72626	LOT: 326 DP: 1299626	1	DA 2018/127 - High Street WAUCHOPE (Stage 4)	13.2018.0127.01	24-Nov-23	28-Nov-23	Deed of Deferral	\$ 36,495.00	27-Nov-25
1	155.2023.00000001.004	72627	LOT: 327 DP: 1299626	1	DA 2018/127 - High Street WAUCHOPE (Stage 4)	13.2018.0127.01	24-Nov-23	28-Nov-23	Deed of Deferral	\$ 36,495.00	27-Nov-25

Outstanding Contributions Due						
Year	Month	Overdue	30 days	60 days	90 days	Total Due
2020	March			\$ 208,287.66		\$ 208,287.66
	April			\$ 208,287.66		\$ 208,287.66
	May	\$ 81,260.20	\$ 208,287.66	\$ 16,948.50	\$ 936,293.54	\$ 1,242,789.90
	June	\$ 289,547.86		\$ 953,242.04	\$ 40,324.40	\$ 1,283,114.30
	July	\$ 215,290.20	\$ 799,407.10	\$ 82,883.94	\$ 40,324.40	\$ 1,137,905.64
	August	\$ 1,009,681.74		\$ 40,324.40	\$ 119,326.50	\$ 1,169,332.64
	September	\$ 215,290.20		\$ 95,461.20		\$ 310,751.40
	October	\$ 174,660.10	\$ 95,461.20			\$ 270,121.30
	November	\$ 222,390.70			\$ 510,540.98	\$ 732,931.68
	December	\$ 174,660.10		\$ 510,540.98		\$ 685,201.08
	January	\$ 142,650.80	\$ 510,540.98			\$ 653,191.78
	February	\$ 221,416.80				\$ 221,416.80
2021	March	\$ 221,416.80				\$ 221,416.80
	April	\$ 153,403.00				\$ 153,403.00
	May	\$ 34,006.90		\$ 66,453.40		\$ 1,685,958.75
	June	\$ 34,006.90		\$ 310,310.30		\$ 1,210,174.93
	July	\$ 34,006.90	\$ 33,226.70	\$ 310,310.30		\$ 2,017,232.06
	August	\$ 34,006.90				\$ 1,858,184.68
	September	\$ 34,006.90				\$ 3,283,646.55
	October	\$ 34,006.90		\$ 3,347.60		\$ 4,716,722.35
	November	\$ 34,006.90		\$ 69,999.40		\$ 4,158,206.97
	December	\$ 34,006.90		\$ 529,659.20		\$ 2,742,266.60
	January	\$ 34,006.90	\$ 36,541.80	\$ 493,117.40		\$ 2,685,987.10
	February	\$ 70,548.70		\$ 493,117.40		\$ 2,651,716.10
2022	March	\$ 70,548.70	\$ 493,117.40	\$ 34,202.00		\$ 3,027,833.40
	April	\$ 563,666.10	\$ 34,202.00			\$ 3,129,708.70
	May	\$ 563,666.10	\$ 34,202.00			\$ 2,647,793.20
	June	\$ 563,666.10				\$ 2,259,932.60
	July	\$ 563,666.10				\$ 2,278,982.17
	August	\$ 70,548.70	\$ -	\$ -	\$ 19,049.57	\$ 1,907,891.77
	September	\$ 70,548.70				\$ 1,888,842.20
	October	\$ 70,548.70	-	\$ 2,847.30	-	\$ 3,716,114.90
	November	\$ 70,548.70	\$ -	\$ 2,847.30	\$ -	\$ 3,398,729.90
	December	\$ 70,548.70	\$ 2,847.30			\$ 2,280,079.00
	January	\$ 2,847.30		\$ 431,667.70		\$ 2,118,422.50
	February	\$ -	\$ -	\$ 431,667.70	-	\$ 2,115,575.20
2023	March		\$ 431,667.70			\$ 2,115,575.20
	April	\$ 431,667.70				\$ 2,115,575.20
	May	\$ 431,667.70			\$ 310,310.30	\$ 2,115,575.20
	June	\$ 431,667.70		\$ 310,310.30	\$ 879,633.20	\$ 2,115,575.20
	July	\$ 431,667.70	\$ 310,310.30	\$ 879,633.20	\$ 5,365.60	\$ 2,115,575.20
	August	\$ 741,978.00	\$ 879,633.20	\$ 5,365.60		\$ 2,115,575.20
	September	\$ 1,621,611.20	\$ 5,365.60			\$ 2,115,575.20
	October	\$ 1,621,611.20				\$ 2,025,234.40
	November	\$ 1,311,300.90				\$ 1,714,924.10
	December	\$ 879,633.20				\$ 1,312,653.60
	January	\$ 879,633.20				\$ 1,312,653.60
	February					
2024	March					
	April					
	May					
	June					





PLANNING AGREEMENTS POLICY

Responsible Officer	Manager, Natural Resources
Contact Officer	Manager, Natural Resources Ph: 6581 8686
Authorisation	Council – 19/06/2006
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Modifications	N/A
Superseded Documents	N/A
Review	As Required
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Associated Documents	N/A

1. INTRODUCTION

This Policy sets out Port Macquarie Hastings Council's policy and procedures relating to planning agreements under s93F of the *Environmental Planning and Assessment Act 1979*.

2. POLICY OBJECTIVE

The purposes of this Policy are:

- (a) to establish a framework governing the use of planning agreements by the Council
- (b) to ensure that the framework so established is efficient, fair, transparent and accountable,
- (c) to enhance planning flexibility in the Council's area through the use of planning agreements,
- (d) to enhance the range and extent of development contributions made by development towards public facilities in the Council's area,
- (e) to set out the Council's specific policies on the use of planning agreements,
- (f) to set out procedures relating to the use of planning agreements within the Council's area)

3. POLICY SCOPE

This policy applies where a developer has sought a change to an environmental planning instrument, or who has made, or proposes to make, a development application.

4. DEFINITIONS

Act means the *Environmental Planning and Assessment Act 1979*,

development application has the same meaning as in the Act,

development contribution means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit,

instrument change means a change to an environmental planning instrument to enable a development application to be made to carry out development the subject of a planning agreement,

planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community,

public facilities means public infrastructure, facilities, amenities and services,

planning obligation means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution,

Practice Note means the *Practice Note on Planning Agreements* published by the Department of Infrastructure Planning and Natural Resources (July 2005),

public includes a section of the public,

public benefit is the benefit enjoyed by the public as a consequence of a development contribution,

Regulation means the *Environmental Planning and Assessment Regulation 2000*,

surplus value means the value of the developer's provision under a planning agreement less the sum of the value of public works required to be carried out by the developer under a condition imposed under s80A(1) of the Act and the value of development contributions that are or could have been required to be made under s94 or s94A of the Act in respect of the development the subject of the agreement.

5. LEGAL & POLICY FRAMEWORK

This Policy is not legally binding. However, it is intended that the Council and all persons dealing with the Council in relation to planning agreements will follow this Policy to the fullest extent possible

6. POLICY STATEMENT

6.1.1 Council's strategic objectives for the use of planning agreements

The Council's strategic objectives with respect to the use of planning agreements include:

- (a) to provide an enhanced and more flexible development contributions system for the Council,

- (b) more particularly, to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development, including bringing forward items in Contributions Plan work schedule,
- (c) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits,
- (d) to allow the community, through the public participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to realise community preferences for the provision of public benefits, and
- (e) to achieve net planning benefits from development wherever possible and appropriate.

6.1.2 Fundamental principles governing the use of planning agreements

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

- (a) planning decisions may not be bought or sold through planning agreements,
- (b) development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms,
- (c) the Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law,
- (d) the Council will not use planning agreements for any purpose other than a proper planning purpose,
- (e) the Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement,
- (f) the Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements,
- (g) where the Council has a commercial stake in development the subject of a agreements, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development.

6.1.3 Circumstances in which Council will consider negotiating a planning agreement

The Council, in its complete discretion, may negotiate a planning agreement with a developer in connection with any application by the developer for an instrument change or for development consent relating to any land in the Council's area.

6.1.4 Specific purposes of planning agreements

The Council may consider negotiating a planning agreement with a developer to:

- (a) compensate for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration,
- (b) meet the demands created by the development for new public infrastructure, amenities and services,

- (c) address a deficiency in the existing provision of public facilities in the Council's area,
- (d) achieve recurrent funding in respect of public facilities,
- (e) prescribe inclusions in the development that meet specific planning objectives of the Council,
- (f) monitor the planning impacts of development,
- (g) secure planning benefits for the wider community,
- (h) Enable items in Council's Contributions Plans works schedules to be brought forward.

6.1.5 Acceptability test to be applied to all planning agreements

The Council will apply the following test in order to assess the desirability of a proposed planning agreement:

- (a) is the proposed planning agreement directed towards a proper or legitimate planning purpose having regard to its statutory planning controls and other adopted planning policies and the circumstances of the case?
- (b) does the proposed planning agreement provide for a reasonable means of achieving the relevant purpose?
- (c) can the proposed planning agreement be taken into consideration in the assessment of the relevant rezoning application or development application?
- (d) will the planning agreement produce outcomes that meet the general values and expectations of the community and protect the overall public interest?
- (e) does the proposed planning agreement promote the Council's strategic objectives in relation to the use of planning agreements?
- (f) does the proposed planning agreement conform to the fundamental principles governing the council's use of planning agreements?
- (g) are there any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement?

6.1.6 Consideration of planning agreements in relation to instrument changes and development applications

When exercising its functions under the Act in relation to an application by a developer for an instrument change or a development consent to which a proposed planning agreement relates, the Council will consider to the fullest extent permitted by law:

- (a) whether the proposed planning agreement is relevant to the application and hence may be considered in connection with the application, and
- (b) if so, the proper planning weight to be given to the proposed planning agreement, taking into account those matters referred to in clause 2.2.

6.1.7 Application of s94 and s94A to development to which a planning agreement relates

The Council has no general policy on whether a planning agreement should exclude the application of s94 or s94A of the Act to development to which the agreement relates. This is a matter for negotiation between the Council and a developer having regard to the particular circumstances of the case.

6.1.8 Application of SEPP 1 to development to which a planning agreement relates

The Council will not agree to a provision in a planning agreement requiring the benefit provided by the developer under the agreement to be used to justify a dispensation with applicable development standards under *State Environmental Planning Policy No.1 – Development Standards* in relation to development unless the Council is of the opinion that the subject matter of the proposed planning agreement addresses the matters required to be addressed under that Policy in relation to the dispensation sought.

6.1.9 Form of development contributions under a planning agreement

The form of a development contribution to be made under a proposed planning agreement will be determined by the particulars of the instrument change or development application to which the proposed planning agreement relates.

6.1.10 Standard charges

Wherever possible, the Council will seek to standardise development contributions sought under planning agreements in order to streamline negotiations and provide fairness, predictability and certainty for developers. This, however, does not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

6.1.11 Recurrent charges

The Council may request developers, through a planning agreement, to make development contributions towards the recurrent costs of public facilities including maintenance and operational costs. Where the public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. However, where the public facility or public benefit is intended to serve the wider community, the planning agreement will only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

6.1.12 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements, subject to the specific requirements of the relevant agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

6.1.13 Methodology for valuing public benefits under a planning agreement

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

Where the benefit under a planning agreement is the carrying out of works for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.

6.1.14 Credits and refunds

The Council will determine on a case by case basis generally whether to agree to a planning agreement providing for the surplus value under a planning agreement being refunded to the developer or offset against development contributions required to be made by the developer in respect of other development in the Council's area.

6.1.15 Time when developer's obligations arise under a planning agreement

The Council will generally require a planning agreement to provide that the developer's obligations under the agreement take effect when the first development consent operates in respect of development that is the subject of the agreement.

6.1.16 Implementation agreements

In appropriate cases, the council may require a planning agreement to provide that before the development the subject of the agreement is commenced, the Parties are to enter into an *implementation agreement* that provides for matters such as:

- (a) the times at which and, if relevant, the period during which, the developer is to make provision under the planning agreement,
- (b) the design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer,
- (c) the manner in which a work is to be handed over to the Council,
- (d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

6.1.17 Monitoring and review of a planning agreement

The Council will continuously monitor the performance of the developer's obligations under a planning agreement.

The Council will require the planning agreement to contain a provision establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance of the agreement.

The Council will require the planning agreement to contain a provision requiring the parties to use their best endeavours to agree on a modification to the agreement having regard to the outcomes of the review.

6.1.18 Modification or discharge of the developer's obligations under a planning agreement

The Council will generally only agree to a provision in a planning agreement permitting the Developer's obligations under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- (a) the developer's obligations have been fully carried in accordance with the agreement,

- (b) the developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the agreement,
- (c) the development consent to which the agreement relates has lapsed,
- (d) the performance of the planning agreement has been frustrated by an event beyond the control of the parties,
- (e) other material changes affecting the operation of the planning agreement have occurred,
- (f) the Council and the developer otherwise agree to the modification or discharge of the agreement.

Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

6.1.19 Assignment and dealings by the developer

The Council will require every planning agreement to provide that the Developer may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- (a) the developer has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement, and
- (b) and the Developer is not in breach of this Agreement.

6.1.20 Provision of security under a planning agreement

The Council may require a planning agreement to make provision for security by the developer of the developer's obligations under the agreement.

The form of security will generally be the unconditional bank guarantee from an Australian Bank (or other institution approved by Council's Finance Manager) in favour of the Council to the full value of the Developer's provision under the Agreement and on terms otherwise acceptable to the Council.

6.1.21 Preparation of the planning agreement

The Council will ordinarily prepare a planning agreement relating to a particular application for an instrument change or development application.

6.1.22 Council's costs of negotiating, entering into, monitoring and enforcing a planning agreement

The Council will generally require a planning agreement to make provision for payment by the developer of the Council's costs of and incidental to:

- (a) negotiating, preparing and entering into the agreement,
- (b) enforcing the agreement.

In particular cases, the Council may require the planning agreement to make provision for a development contribution by the developer towards the on-going administration of the agreement.

6.1.23 Notations on Certificates under s149(5) of the Act

The Council will generally require a planning agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under s149(5) of the Act about a planning Agreement on any certificate issued under s149(2) of the Act relating to the land the subject of the agreement or any other land.

6.1.24 Registration of planning agreements

The Council will generally require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

6.1.25 Dispute resolution

The Council will generally require a planning agreement to provide for mediation of disputes between the parties to the agreement, at their own cost, before the parties may exercise any other legal rights in relation to the dispute.

6.2 Procedures Relating to the Use of Planning Agreements

6.2.1 Council's negotiation system

The Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable.

The system seeks to ensure that the negotiation of planning agreements runs in parallel with applications for instrument changes or development applications.

The system is based on principles of fairness, co-operation, full disclosure, early warning, and agreed working practices and timetables.

6.2.2 When should a planning agreement be negotiated?

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

The planning agreement must therefore be negotiated and documented before it is publicly notified as required by the Act and Regulation.

The Council prefers that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

6.2.3 Who will negotiate a planning agreement on behalf of the Council?

A council officer with appropriate delegated authority will negotiate a planning agreement on behalf of the Council.

The councillors will not be involved in the face to face negotiation of the agreement.

6.2.4 Separation of the Council's planning assessment and negotiation roles

Where the Council has a commercial interest in the subject matter of a planning agreement as a landowner, developer or financier, the Council will ensure that the person assesses the rezoning application or development to which a planning agreement is not the same person or a subordinate of the person who negotiated the planning agreement on behalf of the Council in its capacity as landowner, developer or financier.

6.2.5 Involvement of independent third parties in the negotiation process

The Council will encourage the appointment of an independent person to facilitate or otherwise participate in the negotiations or aspects of it, particularly where:

- (a) an independent assessment of a proposed instrument change or development application is necessary or desirable,
- (b) factual information requires validation in the course of negotiations,
- (c) sensitive financial or other confidential information must be verified or established in the course of negotiations,
- (d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved,
- (e) dispute resolution is required under a planning agreement.

The costs of the independent person will be borne equally between the parties to the planning agreement.

6.2.6 Public notification of planning agreements

A planning agreement must be publicly notified and available for public inspection for a minimum period of 28 days.

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

Where the application to which a planning agreement relates is required by or under the Act or Regulation to be publicly notified and available for public inspection for a period exceeding 28 days, the Council will publicly notify the planning agreement and make it available for public inspection for that longer period.

Where the application to which a planning agreement relates is permitted by or under the Act or Regulation to be publicly notified and available for public inspection for a period of less than 28 days, the Council will publicly notify the application and make it available for public inspection for a minimum period of 28 days.

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

6.2.7 When is a planning agreement required to be entered into?

A planning agreement is entered into when it is signed by all of the parties.

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

The Council will usually require a planning agreement to be entered into as a condition of granting development consent to the development to which the agreement relates.

7. IMPLEMENTATION**7.1 Roles and Responsibilities**

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

- (a) before lodgement of the relevant application by the developer, the parties will decide whether to negotiate a planning agreement
- (b) the parties will then appoint a person to represent them in the negotiations
- (c) the parties will also appoint a third person to attend and take minutes of all negotiations
- (d) the parties will also decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it
- (e) the parties will also agree on a timetable for negotiations and the protocols and work practices governing their negotiations
- (f) the parties will then identify the key issues for negotiation and undertake the negotiations
- (g) if agreement is reached, the Council will prepare the proposed planning agreement and provide a copy of it to the developer
- (h) the parties will undertake further negotiation on the specific terms of the proposed planning agreement
- (i) once agreement is reached on the terms of the proposed planning agreement, the developer will be required to execute the agreement
- (j) the developer may then make the relevant application to the Council accompanied by a copy of the proposed agreement
- (k) the parties may be required to undertake further negotiations and, hence, a number of the above steps as a result of the public notification and inspection of the planning agreement or its formal consideration by the Council in connection with the relevant application

7.2 Support and Advice

Council's Manager Natural Resources will provide support and advice on the implementation of the policy

7.3 Communication

A communication strategy will be determined at the time of any review and will depend on the extent of any changes proposed

7.4 Procedures and Forms

The Council's planning agreements framework consists of the following:

- (a) the provisions of Subdivision 2 of Division 6 of Part 4 of the Act,
- (b) the provisions of Division 1A of Part 4 of the Regulation,
- (c) the Practice Note,
- (d) this Policy

8. REVIEW

It is intended that this Policy will be periodically updated. The up-dates may cover additional matters to those covered in this Policy or provide more detailed information or guidance on specific matters covered in this Policy.



Authorised by: Council
 Authorised date: DD/MM/YYYY
 Effective date: DD/MM/YYYY
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Council Policy

Planning Agreement Policy

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1. INTRODUCTION

This Policy applies to all VPAs proposed or entered into by Council and applies to all the land in the LGA.

A Voluntary Planning Agreement (VPA) is an agreement entered into between a planning authority (Port Macquarie-Hastings Council (Council)) and a developer for the provision of funds or works for infrastructure, services, or other public amenities in connection to a Planning Proposal or Development Application. A VPA can also involve the dedication of land or any other public benefit to be used for a public purpose.

Planning agreements provide an efficient means of increasing and broadening the range of community infrastructure associated with developments in the Port Macquarie-Hastings Local Government Area (LGA).

Council will not accept any component of a public benefit under the terms of a VPA if that component is already required to be provided by virtue of a condition of a development consent with the exception where the VPA proposes any off sets to contributions under Section 7.11 or Section 7.12 of the *Environmental Planning and Assessment Act 1979* (Act). In the instance where infrastructure is identified in a contributions plan, a Works-in-Kind Agreement is the preferred method to address this infrastructure, rather than a VPA.

In determining whether to accept an offer to enter into a VPA, Council is required to take into consideration a number of matters including the nature and value of the public benefit being offered in proportion to the nature and value of the exceedance of the planning controls sought by the developer in the case of a Development Application or any Instrument Change.

2. PURPOSE

This Policy sets out Council's position and procedures relating to voluntary planning agreements under the Act and the *Environmental Planning and Assessment Regulation 2021* (Regulation).

Section 7.4 of the Act enables Councils to enter into planning agreements with developers. Planning agreements are voluntary and the acceptance of an offer to enter into an agreement is at the absolute discretion of Council.

A VPA can be offered in connection with any of the following:

1. a planning proposal to change the planning controls applying to land
2. a development application for consent to carry out development
3. the modification of a development consent

Under a VPA the developer may be required to provide funds or works for infrastructure, services, or other public amenities by:

- a. dedicating land free of cost
- b. paying a monetary contribution
- c. providing any other material public benefit; or
- d. providing any combination of the above to be used or applied for a public purpose.

The Practice Note issued by the NSW Department of Planning, Housing and Industry is the guiding document used in the preparation of this Policy.

This Policy applies to any development application, application to modify a development consent or planning proposal where a VPA is proposed, for land and development within the Port Macquarie-Hastings LGA.

Council's preference is for a VPA to be negotiated between Council and a developer before the development application to which it relates is determined; or the planning proposal is made. This allows the draft VPA to be exhibited alongside the development application or planning proposal.

The purposes of this Policy are:

- a. to establish a fair, transparent, and accountable framework governing the use of planning agreements by Council
- b. to set out the Council's specific requirements on the use of planning agreements,
- c. To establish a consistent and transparent process for Council and developers to enter into VPAs that meet probity standards
- d. To ensure that all developers are treated equitably in the negotiation and execution of VPAs
- e. To provide an efficient and streamlined approach to the negotiation and execution of VPAs
- f. To enable the community to gain an understanding of the public benefits of VPAs
- g. To facilitate innovative and flexible approaches to the provision of infrastructure and other public benefits in a manner that is consistent with Council's strategic and infrastructure plans
- h. To provide certainty for the community, developers, and Council in respect to infrastructure and development outcomes

3. STATUTORY FRAMEWORK

This policy establishes a framework to guide the preparation of VPAs under Part 7 Division 7.1 Subdivision 2 of the Act and Part 4 Division 1A of the Regulation. The Act and Regulation set out clear guidelines that both the planning authority and developer are required to follow when negotiating and entering into a VPA, including public notice and other procedural arrangements and administration.

Section 7.4(1) of the Act sets out the circumstances under which a planning agreement may be entered into. The Act states that a planning agreement may be made between a planning authority (or two or more planning authorities) and a person (the developer):

- a. Who has sought a change to an environmental planning instrument, or
- b. Who has made, or proposes to make, a development application or application for a complying development certificate, or
- c. Who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

Under which the developer may be required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of development contributions, to be used towards a public purpose.

3.1 Statutory Planning Context

Council's Local Strategic Planning Statement (LSPS) is supported by a number of environmental studies and considers planning for growth in the LGA. Council strategies and plans seek to identify the community's needs for infrastructure such as community facilities, transport, open space, public domain, recreation infrastructure, utility services and capital works.

VPAs can play an important role in achieving specific land use planning outcomes with strategic and/or site-specific merit. A VPA should facilitate the provision of public facilities and amenity outcomes that advance the delivery of Council's corporate and strategic planning objectives and deliver important public benefits.

Long-term strategies including 'Shaping our Future 2040' LSPS for Port Macquarie-Hastings and 'Imagine 2050' Port Macquarie-Hastings Community Strategic Plan (CSP) and the delivery program are based on the outcomes of engagement with the community. The implementation of key aspects of some of these goals, the broader strategic directions and the delivery of key infrastructure areas can be directly or indirectly achieved through planning agreements.

The vision and goals established within Council's long-term strategic plans such as the CSP and LSPS flow through to supporting plans that guide Council's medium and short-term priorities:

- a. Long Term Financial Plan (10 years)
- b. Delivery Program (4 years)
- c. Operational Plan (Annual)

Alignment with relevant regional strategic plans including the North Coast Regional Plan should also be considered.

4. OBJECTIVE OF VPAS

The primary objective of a VPA is for developers to provide land dedications, monetary contributions, or other material public benefits, or any combination of them, for public purposes in connection with the development of land.

In considering, negotiating and entering into a VPA, the Council will consider the following broad objectives:

- a. Meeting the current and future demands created by the development for new or improved public infrastructure, amenities or services.
- b. Meeting specific planning objectives of Council by providing public benefits.
- c. Compensating for the loss of or damage to a public amenity, service, resource or asset resulting from a development through replacement, substitution, repair or regeneration of amenities, services or assets.
- d. Rectifying a deficiency in existing public facilities in the LGA.
- e. Providing for future and recurrent funding for public infrastructure, amenities and services with sustainable funding.

Development that is unacceptable on planning grounds will not be given consent merely because the developer offers to enter a VPA.

Council will not consider entering into and/or amending a VPA retrospectively to offset works that are under construction or completed.

5. MANDATORY REQUIREMENTS OF A VPA

Section 7.4(3) of the Act requires VPAs to provide for the following:

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

Clause 205(1) of the Regulation requires that Council, as a planning authority, proposing to enter into a planning agreement, or an agreement that revokes or amends a planning agreement, must prepare a written statement (referred to as an explanatory note):

- a. That summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and

- b. That contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

6. PRINCIPLES / RESPONSIBILITIES

In considering, negotiating and entering a VPA Council will be guided by the following principles:

- Council will assess the public benefit of the Development Contribution when deciding whether to proceed with the Planning Agreement;
- Council will not allow Planning Agreements to improperly restrict the exercise of its functions under the Act, Regulation or any other act of law;
- Council will not use Planning Agreements for any purpose other than a proper planning purpose;
- Development that is unacceptable on planning grounds will not be supported because of planning benefits offered by developers that do not mitigate the impacts of development;
- When considering a Development Application or planning proposal, Council will not give undue weight to a Planning Agreement;
- Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a Planning Agreement;
- Council will not improperly rely on its statutory position, or otherwise act improperly, in order to extract unreasonable public benefits from developers under Planning Agreements, and will ensure that all parties involved in the Planning Agreement process are dealt with fairly;
- Public benefits offered as part of a VPA must be related to the particular planning matter to which the VPA relates. Council will not enter into a VPA where the public benefits offered are wholly unrelated to the planning matter to which the VPA relates; and
- If Council is subject to a financial interest from a development, being the subject of a Planning Agreement, it will take appropriate steps to ensure that it manages any conflict of interest it has between its role as planning authority and its interest in the development.

7. ACCEPTABILITY TEST

In considering, negotiating and entering a VPA, the Council will consider whether the terms of the VPA satisfy the 'acceptability test' as provided by the Practice Note.

Council will consider the following matters to determine if a proposed VPA is acceptable:

- a. Is the proposed Planning Agreement directed towards a proper and legitimate planning purpose having regard to the statutory planning controls and other adopted planning policies and infrastructure strategies and the circumstances of the case?
- b. Does the proposed Planning Agreement provide for a reasonable means of achieving the relevant planning purpose and securing the relevant public benefit?
- c. Will the proposed Planning Agreement produce outcomes that protect the public interest?
- d. Are there any relevant circumstances that may operate to preclude Council from entering into the proposed Planning Agreement?
- e. Will the proposed Planning Agreement provide benefits that bear a relationship to the delivery of services and infrastructures within the LGA?
- f. Is the quantum of the Public Benefit commensurate with the value of the Development Contribution?

7.1 Consideration of Planning Agreements in relation to planning proposals and Development Applications

When exercising its functions under the Act in relation to a Development Application or a proposal for a Planning Proposal to which Planning Agreement relates, Council will consider:

- a. whether the proposed Planning Agreement is relevant to the Development Application or Instrument Change and whether it may be subsequently considered in connection with the Development Application or Instrument Change; and
- b. if so, the proper planning weight to be given to the proposed Planning Agreement.

8. TYPES AND FORMS OF CONTRIBUTIONS

To ensure that Development Contributions provided under Planning Agreements are directed towards appropriate and legitimate planning purposes, Council will consider whether the proposed Development Contributions:

- a. mitigate or compensate for the impact of the relevant development;
- b. meet Council's planning policy objectives including those set out in section 7.11 or section 7.12 contributions plans (as the case may be);
- c. meet the requirements of Council's public infrastructure works program; and
- d. meet the objectives of other relevant draft or adopted Council policies, strategies or plans.

The form of a Development Contribution to be made under a proposed Planning Agreement will be determined by the particulars of the Development Application or planning proposal to which the Planning Agreement relates.

9. STANDARD VPA TEMPLATE

Council has prepared a Standard Planning Agreement Template (Appendix 2). This template is to assist developers in preparing a VPA and contains clauses that Council considers to be standard and mandatory inclusion in all VPAs. Any variation will need to be negotiated and agreed upon by Council.

10. EXPLANATORY NOTES

Council is required under the Regulation to prepare an explanatory note that accompanies the VPA for public exhibition.

The explanatory note must:

- a. Identify how the agreement promotes the public interest.
- b. Identify whether the agreement confirms with the Council's capital works program, if any.
- c. State whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate.

The explanatory note will be written in layman terms for the public to readily understand the nature of the development proposed and the public benefits provided. The explanatory note will indicate timing of delivery and should include maps, diagrams and other material to help explain what is proposed.

The explanatory notes will summarise the objectives, nature and effect of the proposed agreement and contain an assessment of the merits of the proposed agreement, including the impact of public or relevant section of the public.

11. PLANNING AGREEMENT REGISTER

Under the Regulations, Council is required to keep a register of VPAs applying to land within Council's area, whether or not Council is a party to a VPA. Council is also required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendments).

Council will make the following available for public inspection (free of charge) through online publication:

- a. The planning agreement register,
- b. Copies of all VPAs that apply to the area of Port Macquarie-Hastings Council
- c. Copies of the explanatory notes in relation to those agreements and
- d. Annual financial statements for planning agreements with a breakdown of money, land and works received.

12. PROCESS

12.1 Notice of Intention

New VPA

VPAs can be lodged during or after the lodgement of the associated development application or planning proposal. However, it is preferred that all VPAs be negotiated prior to this happening, allowing the development application/planning proposal and planning agreement to be publicly exhibited together where possible.

Below is the procedure to enter a new VPA associated with a development application or planning proposal:

- At the pre-lodgement meeting for a development application or planning proposal, the developer and/or Council will identify that a VPA is required to accompany the application. The minutes of the meeting will articulate the procedure in relation to a letter of offer for a new VPA.
- Prior to submitting a development application or planning proposal, the developer must submit a letter of offer to lodge a VPA with Council. The letter of offer outlines the VPA proposal and must contain all the information in Council's VPA Information Requirements Factsheet.
- Council will review the letter of offer and will either accept or reject the proposal. Failure to provide sufficient information in the letter of offer may delay its review by Council.
- If the proposal is accepted in-principle, Council and the developer will enter into negotiations for a VPA. If the proposal is rejected, the developer may review the offer based on the feedback provided by Council and resubmit a new letter of offer.

Amendment To Existing VPA

Below is the procedure to amend an existing executed VPA:

- Developer / applicant is to request a meeting with Council to discuss their intent to amend the VPA. After a meeting, Council will provide details on the process and request the developer/applicant submit a letter of offer to amend the VPA.
- The letter of offer is to be accompanied by a copy of the previously executed VPA with proposed marked-up changes. The letter of offer outlines all the proposed changes to the VPA with justification, including any changes to the VPA attachments. It must also contain all the information in Council's VPA Information Requirements Factsheet.
- Council will review the letter of offer and will either accept or reject the proposed amendments. Failure to provide sufficient information in the letter of offer may delay its review by Council.
- If the proposal is accepted in-principle, Council and the developer will enter into negotiations for an amended VPA. If the proposal is rejected, the developer may review the offer based on the feedback provided by Council and resubmit a new letter of offer.

12.2 Negotiation and Agreement Templates

New VPA

Below is the procedure for negotiating a new VPA associated with a development application or planning proposal:

- To avoid unnecessary delays, Council's preference is to have the negotiation of VPA completed prior to the lodgement of a development application or planning proposal. VPA negotiations will be coordinated by the Development Contributions team.
- The key terms of the offer will be negotiated between Council and the developer. A draft VPA and explanatory note will then be prepared by Council's lawyers, based on the offer submitted by the developer and negotiated between the parties, and approved by Council.
- A template agreement for the VPA and explanatory note is attached to this policy. This agreement has been endorsed by Council and sets out Council's preferred terms. Council will not negotiate any significant changes to its template agreement.
- An explanatory note must accompany a VPA. The purpose of the explanatory note is to help the public understand what the agreement is proposing, how it delivers a public benefit, and why it is acceptable and in the public interest.

Amendment To Existing VPA

Below is the procedure for negotiating an amendment to an existing VPA:

- Council will review the proposed changes to the executed VPA and any proposed justifications
- The key terms of the offer will be negotiated between Council and the developer. A draft VPA and explanatory note will then be prepared by Council's lawyers, based on the offer submitted by the developer and negotiated between the parties, and approved by Council.
- An explanatory note must accompany a VPA. The purpose of the explanatory note is to help the public understand what the agreement is proposing, how it delivers a public benefit, and why it is acceptable and in the public interest.

12.3 Public Exhibition

The public exhibition process is the same if either a new VPA or an amended VPA. Below is the process for public exhibition:

- Following successful negotiations, a report to Council will be prepared recommending the new or amended VPA be placed on public exhibition for a minimum period of 28 days in accordance with the Act section 7.5(1).
- The public exhibition documentation shall include:
 - A copy of the Council Report and minutes
 - Draft VPA
 - Draft explanatory note
 - If an amended VPA, a copy of the original executed VPA
- Council will consider all public submissions in deciding whether to enter into a VPA with the developer.
- The draft VPA may require further negotiations between the parties to consider any issue arising out of the submissions. This may result in the VPA being amended. Re-notification of the draft VPA will be required if the proposed amendments to the draft VPA would significantly affect:
 - the material public benefit delivered under the agreement; or
 - the timing of the delivery of contributions, provision of security or the scope of works for an item; or
 - changes to the terms of the agreement; or
 - the Council's interests or the public interest.
- The Council will publicly re-notify and make available for public inspection the amended VPA and the application to which it relates. The draft VPA and explanatory note will be reported to Council.
- If Council resolves to enter into the VPA, a condition of consent will be applied requiring the developer to enter into a VPA reflecting the final letter of offer from the developer. Where the application is a planning proposal, the VPA must be executed before the Local Environmental Plan is made or amended.

Upon completion of the public exhibition period a post exhibition report will be reported to Council for either adoption or non-support

12.4 Finalisation

If the VPA is supported and adopted by Council, the following process is to be followed:

- The VPA is to be signed by both parties to enable Council execution. A copy of the signed VPA is to be provided to the developer/applicant.
- As a clause of the VPA, the VPA is to be registered on the title with LRS. Evidence of registration through a title search is to be provided within 28 days of execution.
- Further obligations under the VPA are to commence in accordance with the particular clauses within the VPAs.

The VPA process flowchart is at Appendix 1.

13. CREDITS AND REFUNDS

Council will not consider giving any additional credit, refunds or offset against development contributions required to be made by the developer in respect of other development in the LGA for any contributions considered to have a surplus value under a VPA. Surplus value being when compared to what could have been attained under the conditions of development consent or Council's other development contribution plans.

14. VALUATION METHODOLOGY

Unless otherwise agreed between Council and the developer, where the benefit under a VPA is the provision of land for a public purpose, the value of the development contribution will be the market value of the land (within the meaning of the *Land Acquisition (Just Terms Compensation) Act 1991*).

This will be determined by an independent registered valuer who is adequately experienced in valuing land in New South Wales. The valuer will be appointed with the agreement of all parties, or in the event of disagreement between the parties, acceptable to the Council. All costs of the independent valuer in carrying out such a valuation will be borne by the developer.

Where the benefit under a VPA is the carrying out of works, the value of the benefit will be determined by an independent registered quantity surveyor. The quantity surveyor must be acceptable to both parties, or in the event of disagreement between the parties, acceptable to the Council. All costs of the independent registered quantity surveyor in carrying out the work will be borne by the developer.

Where the benefit under a VPA is the provision of some other type of public benefit, Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement. If there is no agreement, the Council will determine the manner the benefit is to be valued.

The Council may require the value of benefits to be made to be indexed, using the same indexation methodology in Council's contributions plans.

15. RECURRENT CHARGES

A VPA may require a developer to make development contributions towards the recurrent costs of public facilities. Where the public facility mainly serves the development to which the VPA relates, or a neighbouring development, the arrangement for recurrent development contributions may be in perpetuity.

Where the public facility is intended to serve the wider community, the VPA may only require the developer to make development contributions towards the recurrent costs of the public facility until a public revenue stream is established to fund the ongoing costs of the public facility.

Proposed recurrent charges contributions must be detailed in the letter of offer for consideration in VPA negotiations, and should include a reasonable contribution toward the ongoing maintenance, or the offer to maintain infrastructure for a certain period of time.

16. APPLICATION OF SECTION 7.11 AND 7.12 OF THE EP&A ACT

A VPA must specify whether local infrastructure contributions under section 7.11 or section 7.12 of the Act will apply to the development the subject of the VPA, in addition to any development contributions to be provided by the developer and included in the VPA.

The Council will only agree to wholly or partially exclude the application of section 7.11 or section 7.12 in exceptional circumstances. This is a matter to be negotiated between Council and a developer. Otherwise, developers should assume that section 7.11 and section 7.12 will apply to the development.

17. IMPLEMENTATION REQUIREMENTS

Council requires that a VPA includes a plan setting out:

- a. the timetable for the fulfilment of obligations under the VPA;
- b. the design, technical specification and standard of any work required by the VPA to be undertaken;
- c. the manner in which ownership of land or other property to be transferred to Council;
- d. the manner in which a material public benefit is to be made available for its public purpose; and
- e. a warranty period for work, materials, buildings and any other property provided. These warranties must be for a minimum of 12 months for materials and services such as electrical works, and 15 years for structural items.

18. PROBITY

To ensure that the negotiation and consideration of a planning agreement by Council is fair, transparent and uphold public confidence Council will:

1. Comply with the requirements of the Act, Regulation and this Policy in respect of planning agreements;
2. Only enter into planning agreements that achieve material public benefits;
3. Ensure planning agreements are voluntary;
4. Inform developers about the Council's Statement of Business Ethics Policy;
5. Ensure any conflicts of interest involving the Council are identified and appropriately managed (for example, it may be appropriate to have assessments undertaken by independent third parties where Council has an interest in the VPA);
6. Ensure appropriate delegations and separation of roles and responsibilities within Council, including, but not limited to, the following:
 - a. Councillors must not be involved in the preparation or negotiation of any VPA, but will be responsible for resolving whether or not to enter into one;
 - b. Only Council officers with delegated authority will be involved in the preparation or negotiation of a VPA on behalf of Council;
 - c. Council staff with key responsibilities in assessing or providing advice on development applications (or ensuring compliance), will not have a role in the negotiation of a VPA or its conditions, except where advice is required on matters relating to the conditions of consent for a particular proposal;
 - d. Council will ensure that all discussions with a developer and their consultants are:
 - i. sufficiently documented;
 - ii. held at Council offices;
 - iii. properly minuted; and
 - iv. stored in Council's records management system;
 - e. Where Council has a commercial stake in development the subject of a VPA, take appropriate steps to ensure conflicts of interest are avoided or managed appropriately.

19. COUNCIL'S COSTS

The developer is responsible for all costs related to the negotiation and execution of the VPA. These costs include:

- a. negotiating, preparing, advertising and entering into the VPA (including but not limited to legal fees, consultants, valuers, quantity surveyors fees and Council staff costs);
- b. registration of the VPA on the title of any relevant land; and
- c. enforcement of the VPA.

Prior to Council engaging its lawyers or other consultants, Council will require the developer to pay a cash bond to cover these expenses.

Council's fees and charges set out the minimum fees payable by the developer, however additional costs may be incurred by Council during the negotiation and advertising process. The developer will be advised of any additional costs beforehand. The developer will be required to pay any additional on demand from Council.

In addition, Council may require the developer to provide a security in the form of cash or a bond, which will be negotiated and detailed in the VPA.

20. OPERATION AND MONITORING VPAs

Under all VPAs, an annual monitoring report will be required to be submitted to Council by the developer to ensure compliance with the provisions of the VPA and monitor the progress of the VPA.

Council will routinely monitor the performance of the developer's obligations under a VPA and report them in accordance with the Act. The developer is required to, at its own cost, report periodically to Council on its compliance with obligations under the VPA.

21. MODIFICATION AND DISCHARGE OF OBLIGATIONS

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

- a. the developer's obligations have been fully carried out in accordance with the VPA, or
- b. the development consent to which the VPA relates has lapsed, or
- c. the development consent to which the VPA relates has been modified to such an extent that the obligations may not be appropriate, or
- d. the performance of the VPA has been frustrated by an event or events beyond the reasonable control of the parties, or
- e. other material changes affecting the operation of the VPA have occurred, or
- f. Council and the developer otherwise agree to the modification or discharge of the VPA.
- g. such a provision will require the modification or revocation of the VPA in accordance with the Act and Regulation.

22. ASSIGNMENT AND DEALINGS BY THE DEVELOPER

Council will not permit the assignment of any or all of the developer's rights or obligations under the VPA, or the novation of the VPA to a third party, or any dealing in relation to any part or the whole of the land the subject of the VPA unless:

- a. the developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council, by which that person agrees to be bound by the VPA as if they were a party to the original VPA;
- b. if the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, Council is satisfied that there remains sufficient unencumbered value in the land to enable Council to realise the value in the land under a charge to Council in the event of a breach. Other parties' interest must not rank above Council's interest in the land;

- c. the developer provides Council with evidence that the proposed assignee, novatee or transferee is reasonably capable of performing the obligation of the VPA;
- d. the party is not in breach of the VPA.

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

23. PROVISION OF SECURITY UNDER A VPA

Council will require a VPA to make provision for security to cover the developer's obligations under the VPA. The security amount must be adequate to allow Council to ensure that the relevant material public benefit is made available to meet the need generated by the development. Security requirements and enforcement procedures are set out in the VPA template.

The security requirements are:

1. Monetary contributions - to be paid prior to the issuing of any Part 6 Certificate under the Act, usually a subdivision certificate or construction certificate.
2. Works contributions - the developer will be required to provide an unconditional bank guarantee in favour of Council or bond that is 130% of the agreed value of each of the works in the VPA. The security must be lodged with Council before a construction certificate is issued for each work. Upon completion of each work, to Council's satisfaction, part of the security equivalent to 100% of the value of the work will be returned to the developer. The remaining 25% of the value of the work will be retained by Council as a security bond. The security bond will be returned after the defects liability period and maintenance periods have expired, and relevant Council staff have certified in writing that all obligations and works have been undertaken and completed to the standard set out in the VPA and any relevant approval.
3. Land dedication - Council will require a provision in the VPA allowing Council to compulsorily acquire the land to be dedicated, or transferred for a nominal sum, if the landowner defaults.

24. REGISTRATION OF VPAS

All VPAs will be required to be registered on the title of the land to which they relate within 28 days of execution by all parties. Upon the commencement of the VPA, the developer is to provide Council with the following documents to enable registration of the VPA on the land title:

- an instrument requesting registration of the VPA on the title to the Land in registrable form duly executed by the Landowner, and
- the written irrevocable consent of each person referred to in section 7.6(1) of the Act to that registration.

The Landowner is responsible for registering the agreement on the land title with the Land Registry Service (LRS) and is to provide Council with evidence of lodgement and registration.

25. DISPUTE RESOLUTION

The VPA template provides the preferred mechanism for the resolution of disputes and the means for the enforcement of the VPA.

26. DISCLAIMER

Any advice given by Council at any stage when negotiating or submitting a VPA is considered to be provided without prejudice. Council accepts no responsibility for the misinterpretation or inaccuracy of any advice given. It is the applicant's sole responsibility to seek clarification.

This Policy is not legally binding. However, it is intended that the Council and all persons dealing with the Council, in relation to VPAs, will follow this Policy to the fullest extent possible.

Section 7.4(9) of the Act states that a VPA cannot impose an obligation on Council as a planning authority:

- a. to grant development consent, or
- b. to exercise any function under this Act in relation to a change to an environmental planning instrument.

27. PERIODICAL UPDATES

It is intended that this Policy will be periodically updated. The updates may cover additional matters to those covered in this Policy or provide more detailed information of guidance on specific matters covered in this Policy. Council will undertake a review of this Policy:

- a. within 12 months of any general election of Council; or
- b. at the discretion of the Chief Executive Officer; or
- c. when the Department of Planning, Housing and Infrastructure (or equivalent) initiates any changes to the relevant legislation or guidelines that affect VPAs to enable incorporation into this Policy.

28. IMPLEMENTATION

28.1 Details of Approval and Revision

Approval Date	Date endorsed by Council
Responsible Group	Strategy
Policy Owner	Director Community, Planning and Environment
Superseded policies	Planning Agreements Policy 2005, adopted 19/06/2006
Next Review Date	1 July 2029

29. REFERENCES

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- Planning agreements – Practice note – February 2021 published by Department of Planning, Industry and Environment
- Draft for Exhibition – Local Planning Agreements Practice Note

30. DEFINITIONS

Act means the *Environmental Planning and Assessment Act 1979*.

Application means a development application or application to modify a development consent or planning proposal.

Council means Port Macquarie-Hastings Council.

Developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument, or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person.

Development application has the same meaning as in the Act.

Development contribution means the kind of provision made by a developer under a VPA, being a monetary contribution, the dedication of land free of cost, the provision of a material public benefit or a combination of these.

Explanatory note means a written statement that summarises the objectives, the nature and effect of the proposed VPA, amendment or revocation, and contains an assessment of the merits of the proposed VPA, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

Material Public Benefit means the benefit enjoyed by the public as a consequence of a development contribution.

Planning Authority means Port Macquarie-Hastings Council.

Planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

Planning obligation means an obligation imposed by a VPA on a developer requiring the developer to make a development contribution.

Planning proposal has the same meaning as defined in the Act.

Practice Note means the document titled 'Planning agreements – Practice note – February 2021' on Planning Agreements published by the NSW Department of Planning, Industry and Environment. Public include a section of public.

Public facilities means public infrastructure, facilities, amenities and services.

Public purpose is defined in section 7.4(2) of the Act to include the provision of, or the recoupment of the cost of providing public amenities and public services, affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things as the monitoring of the planning impacts of development and the conservation or enhancement of the natural environment.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

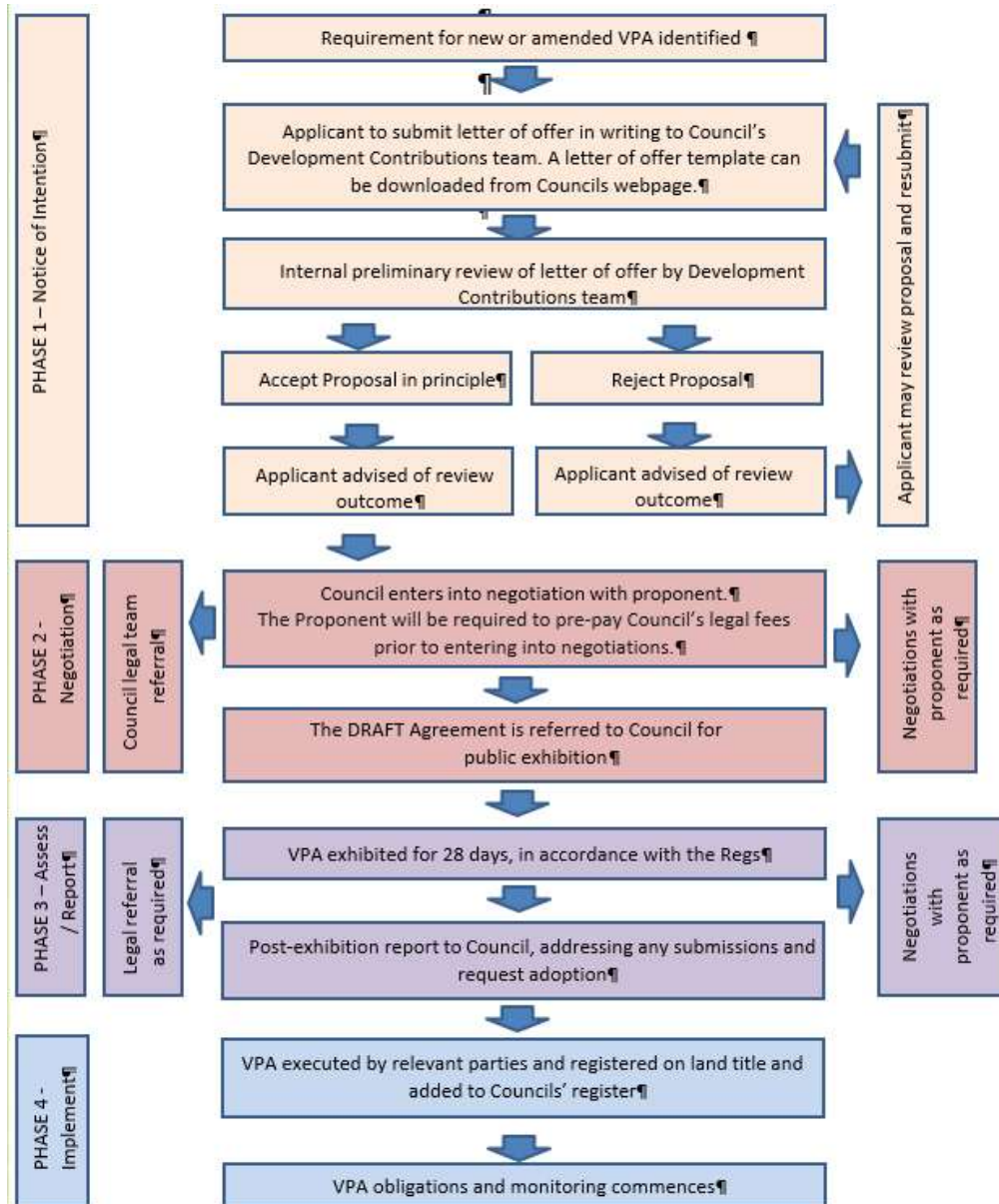
Surplus Value means the value of the developer's provision under a Planning Agreement less the sum of the value of public works required to be carried out by the developer under a condition imposed under section 4.17 of the Act and the value of Development Contributions that are or could have been required to be made under section 7.11 or section 7.12 of the Act in respect of the development the subject of the Planning Agreement.

Voluntary Planning Agreement (VPA) has the same meaning as planning agreements defined in the Act.

APPENDICES

APPENDIX 1

Planning Agreement Process Flow-Chart



APPENDIX 2

Planning Agreement Template

Refer to Attachment 3 within the Council Report.

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APPEMDIX 3

Potential Material Public Benefits

The following table lists examples of public benefits that VPAs may seek to achieve. The list is not exhaustive, and developers are encouraged to discuss other public benefits with the Council:

Infrastructure	<ul style="list-style-type: none"> • Accessibility improvements – accessible parking, kerb ramps, modifications to public buildings or areas • Roads – design and construction • Open Space – parks, public places, open space, embellishment • Drainage and stormwater controls • Traffic measures • Transport outcomes • Pedestrian and cycleway linkages and footpaths • Telecommunication networks • Power, water, gas • Communications and information technology, i.e. Wi-Fi in public space • Bridges (pedestrian or vehicular) • Flood management/mitigation works
Facilities	<ul style="list-style-type: none"> • Community buildings – i.e. libraries, halls, community centres • Accessible, key worker and affordable housing • Childcare centres • Public toilets • Youth spaces • Public leisure facilities • Performance spaces • Civic spaces • Public car parking areas and commuter parking • Bus shelters • Family care facilities sport, recreation and activity centres • Business, research and creative industries incubator space and ancillary uses
Public domain improvements	<ul style="list-style-type: none"> • Paving – paths, streets and open space areas • Plantings – streets and open space areas • Furniture – seats, bins • Banners • Public art in streets, open space and other public domain space • Kerb and gutters • Treatment and/or features in public places • Facilities such as kiosk in parks and open spaces • Turf • Public leisure, sport and recreation facilities • Environmental management improvements such as water and energy minimising devices • Water bubblers, lockers and other amenities • Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and users of other vehicles • Restoration and management of natural areas including beaches, bushland, creeks and lagoons
Other	<ul style="list-style-type: none"> • Cash contributions • Land, such as dedications for use as parks, facilities, pedestrian connectivity and new roads

	<ul style="list-style-type: none">• Contributions for development of community facilities plans and cultural facilities plans• Aboriginal site protection• Other benefits in line with Council plans and strategies – including plans of management, flood plan management plans, traffic and transport plans, masterplans, development control plans, local environmental plans and the management plan• Other public benefits that provide a positive planning outcome for the people of Port Macquarie and meet the objectives of the Act.
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DRAFT

(Title)

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Port Macquarie Hastings Council

(Name of Party/s)

Dated:

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)****(Title) Agreement****Table of Contents**

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Port Macquarie-Hastings Council

(Name of Party/s)

(Title)

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*.

Parties to this Deed

Port Macquarie Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales 2444 (**Council**)
and

(Details of party/s) ABN (ABN number) of (Address of party/s) (**Developer / Landowner**)

Background

[DEVELOPMENT APPLICATION-related agreements: INCLUDE THE FOLLOWING FOR VPAs RELATING TO DEVELOPMENT APPLICATIONS]

- A The [DEVELOPER/LANDOWNER] owns the Land.
- B On, [INSERT DATE], the Developer made a Development Application [INSERT DEVELOPMENT APPLICATION NUMBER] to the Council for Development Consent to carry out the Development on the Land.
- C That Development Application was accompanied by an offer by the Developer to enter into this Deed to make Development Contributions towards the Public Facilities if development consent to that Development Application is granted.

[PLANNING PROPOSAL-related agreements: INCLUDE THE FOLLOWING FOR VPAs RELATING TO CHANGES TO ENVIRONMENTAL PLANNING INSTRUMENTS]

- D On, [INSERT DATE] the Developer submitted the Planning Proposal to Council seeking the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- E The Planning Proposal was accompanied by an offer by the Developer to enter into this Deed to make Development Contributions if the Instrument Change is made, and Development Consent is granted to development facilitated by the Instrument Change.
- F The Instrument Change was published in NSW Government Gazette No. [INSERT NUMBER] on [INSERT DATE] and took effect on [INSERT DATE] – [DELETE IF NOT RELEVANT]

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G On, **[INSERT DATE]**, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land. **[DELETE IF NOT RELEVANT]**

Operative provisions**Part 1 - Preliminary****1 Definitions & Interpretation**

1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

Administration Building Contribution means **[Insert details]**.

Administration Levy Contribution means a Development Contribution calculated as follows:

$$\text{ALC} = \text{CR} \times \text{SC}$$

Where:

ALC is the Administration Levy Contribution,

CR is the contribution rate applicable from time to time under the *Hastings s94 Administration Levy Contributions Plan 2005* or any Contributions Plan that replaces that document, and

SC is the sum of the amounts of the Community, Cultural and Emergency Services Contribution ET, the Open Space Contribution ET and the Roads Contribution ET, not discounted in accordance with clause 8.

Approval includes an approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the LG Act, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation;
- (g) ING Bank (Australia) Limited; or
- (h) any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer,

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to pay an amount or amounts of money to the Council on demand and containing terms and conditions satisfactory to the Council.

Charge Land means **[INSERT LAND DESCRIPTION]**.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)*.

CLM Act means the *Contaminated Land Management Act 1997*.

Complete or Completed means delivered or concluded in accordance with the requirements of the Works Provisions.

Compliance Certificate has the same meaning as in the Act.

Concept Design, in relation to a building or Work required to be erected or carried out by the Developer by or under this Deed, means the information set out on or in relation to the Sheet of the Map that relates to the building or Work.

Confidential information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may be reasonably considered to be of a confidential nature.

Construction Contract means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning as in the CLM Act.

Contractor means the contractor under a Construction Contract.

Contributions Plan has the same meaning as in the Act.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CPI means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Deed includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

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Defects Liability Period, in relation to a Work, means the period commencing on the date on which the Work is taken to have been completed under this Deed and ending 12 months after that date.

Detailed Management Plan means a plan relating to the establishment and maintenance of the Environmental Management Land in accordance with the provisions of the document of the Council titled '*Port Macquarie-Hastings Development Control Plan 2013*' or any development control plan that replaces or supplements that document that contains provisions relating to the establishment and maintenance of the Environmental Management Land.

Developer – see **clauses 1.2.1 and 1.2.2.**

Development means **[INSERT DESCRIPTION OF THE DEVELOPMENT AND THE DEVELOPMENT APPLICATION NO. (IF APPLICABLE)]**

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a Public Purpose.

Development Servicing Plan - Sewerage Services means the document of the Council titled *Port Macquarie-Hastings Council Development Servicing Plans for Water Supply and Sewerage 2014*, a copy of which is available from the Council, or any document that replaces that document.

Development Servicing Plan – Water Supply means the document of the Council titled *Port Macquarie-Hastings Council Development Servicing Plans for Water Supply and Sewerage 2014*, a copy of which is available from the Council, or any document that replaces that document.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules.

EML Security means Security to secure the performance by the Landowner of the Establishment Obligation and the Management Obligation.

Environmental Management Land means:

- (a) any part of the Land that is situated within Zone C2 Environmental Conservation or Zone C3 Environmental Management under the LEP, or any other part of the Land agreed between the Parties to be Environmental Management Land for the purposes of this Deed before such land is required to be dedicated to the Council under this Deed.
- (b) the land identified within the approved Vegetation Management Plan (VMP) associated with the original and existing Development Applications.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Equivalent Tenements (ET) has the same meaning as in:

- Port Macquarie Hastings Council's Development Contribution Assessment Policy 2016 (or equivalent document);

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-
- Development Servicing Plans for Water Supply and Sewerage 2014 (or equivalent document), as amended, substituted or replaced from time to time.

Establishment Obligation means the establishment of Environmental Management Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) any Detailed Management Plan approved by the Council, and
 - (ii) otherwise, to the satisfaction of the Council.

Establishment Period means the period commencing when the Development is commenced (within the meaning of the Act), or such other period or periods commencing at such other time or times as the Parties agree, and ending when the Establishment Obligation is completed to the satisfaction of the Council.

Final Lot means a lot to be created in the Development for separate occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the parties, not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council, or
- (b) a lot created by a subdivision of the Land which may be further subdivided.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means the amendment of **[INSERT PLANNING INSTRUMENT BEING AMENDED]** as a consequence of the Planning Proposal which is given effect by the publication of the amending instrument on the NSW legislation website.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means **[INSERT REAL PROPERTY DESCRIPTION AND STREET ADDRESS]** including any lots created as a result of the subdivision or consolidation of that land.

LEP means the *Port Macquarie-Hastings Local Environmental Plan 2011* as amended, substituted or replaced from time to time.

LG Act means the *Local Government Act 1993*.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Maintenance Period in relation to a Work means the period of **[INSERT PERIOD]** commencing on the date of Completion of the Work.

Management Contribution means a monetary contribution of **[\$####]** indexed quarterly after 1 January 2024 in accordance with the Consumer Price Index (All Groups- Sydney) published by the Australian Bureau of Statistics.

Management Obligation means the management of Environmental Management Land in accordance with:

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- (a) the relevant requirements of any Development Consent relating to the Development, and
- (a) to the extent not inconsistent with such a Development Consent:
 - (i) any Detailed Management Plan approved by the Council, and
 - (ii) otherwise, to the satisfaction of the Council.

Management Period means the period of three years commencing immediately at the end of the Establishment Period, or such other period or periods commencing at such other time or times as the Parties agree.

Management Work means Work forming part of the Establishment Obligation or the Management Obligation.

New Development Consent means any Development Consent or Development Consents relating to the Land granted after this Agreement commences.

Net Developable Area means the area of the Land remaining after excluding any part of the Land:

- (a) on which residential, business or industrial development is not permissible under the LEP,
- (b) that is, or will be, required to be dedicated to the Council for the purposes of a local park,
- (c) that comprises a lot specified in paragraph (b) of the definition of *Final Lot*,
- (d) that the Council agrees to exclude at the request of the Developer,
- (e) that is or will be required for arterial road purposes (within the meaning of the document of the Council titled '*Port Macquarie-Hastings Development Control Plan 2013*'), and
- (f) any part of the Land on which development is restricted under a Development Consent to the protection of hollow-bearing trees.

Occupation Certificate has the same meaning as in the Act.

Open Space Contribution means a monetary Development Contribution towards the cost of open space:

- (a) in relation to Development the subject of Original Development Consent – an amount of \$#### per ET in that Development indexed quarterly after 1 January 2024 in accordance with the CPI, and
- (b) in relation to the part of the Development the subject of Existing Development Consents, the open space contribution per ET determined through those development consents.

Open Space Contribution ET means:

- (a) a monetary Development Contribution of \$#### per ET, or
- (b) a Development Contribution per ET authorised by the document of the Council entitled *Port Macquarie-Hastings Open Space Contributions Plan 2018* or any Contributions Plan that replaces that document relating to Works specified in that Plan,

whichever is greater, indexed quarterly from 1 January 2024 in accordance with upwards movements in the *Consumer Price Index (All Groups- Sydney)* published by the Australian Bureau of Statistics consistent with the *Port Macquarie-Hastings Open Space Contributions Plan 2004* or any Contributions Plan that replaces that document

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and to be applied for the provision of open space for the benefit of development that is carried out under a Development Consent granted under the Area 13 LEP or the LEP.

Open Space Contributions Reduction means the sum of all Contribution Offset Values relating to Items in the Open Space Contributions Category.

Owner – see clauses 1.2.1, 1.2.2 and 1.2.3.

Part 6 Certificate means a certificate under Part 6 of the Act.

Participation Rules means the participation rules as determined by the Electronic Conveyancing National Law as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

Party means a party to this Deed, including their successors and assigns.

Permitted Encumbrances means:

- (a) easements for utilities which benefit Authorities,
- (b) the TransGrid Easement as approved in a Development Consent,
- (c) any other easements which are required by a Development Consent to be or to remain registered on title, and
- (d) any other encumbrances or affectations which are otherwise agreed to by the Council in writing.

PEXA means Property Exchange Australia Ltd.

Planning Proposal means [INSERT PLANNING PROPOSAL NUMBER OR DESCRIPTION IF NUMBER NOT KNOWN].

Planning Application means a Development Application, an application to modify a Development Consent, an application for a complying development certificate (within the meaning of the Act) or an application for a Part 6 Certificate.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s7.4(2) of the Act.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Residue Lot means a lot to be created in the Development that is not a Final Lot.

Roads Contribution means a monetary Development Contribution towards the cost of roads: that the Council determines is the greater of:

- (a) in relation to the part of the Development the subject of Original Development Consent, the amount that the Council determines is the greater of:

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- (i) \$#### per ET in the Development indexed quarterly after 1 January 2024 in accordance with the CPI, or
- (ii) the amount of any roads monetary Development Contribution applying to the Development authorised by the first relevant amendment to or substitution of the document of the Council titled *Port Macquarie-Hastings Major Roads Contributions Plan 2004* indexed in accordance with the amended or substituted plan.

Roads Contribution ET means:

- (a) a monetary Development Contribution of \$#### per ET, or
- (b) a Development Contribution per ET authorised by the document of the Council entitled *Port Macquarie-Hastings Major Roads Contributions Plan 2004* or any Contributions Plan that replaces that document relating to Works specified in that Plan,

whichever is greater, indexed from 1 January 2024 in accordance with upwards movements in the *Consumer Price Index (All Groups- Sydney)* published by the Australian Bureau of Statistics consistent with the *Port Macquarie-Hastings Major Roads Contributions Plan 2004* or any Contributions Plan that replaces that document and to be applied for the provision of roads for the benefit of development that is carried out under a Development Consent granted under the Area 13 LEP or the LEP.

Security means a Bank Guarantee unless the Council, in its absolute discretion, agrees to another kind of security as a suitable means of enforcing the Landowner's obligations under this Deed.

Sewerage Services Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Sewerage Services.

Sewerage Services Local Contribution means a monetary Development Contribution per ET created in the Development, being:

- (a) if payment is made before the completion of the Sewerage Pump Station Upgrade - \$####,
- (b) if payment is made after the completion of the Sewerage Pump Station Upgrade - an amount calculated by dividing the cost of the Sewerage Pump Station Upgrade (as determined by the Council) by 406, or
- (c) such other amount as is agreed between the parties based on the cost of the Sewerage Pump Station Upgrade and the number of ETs to be served,

indexed in accordance with the Development Servicing Plan - Sewerage Services.

Sewerage Works Plan means the plan in Appendix ##

Sheet means a sheet of the Map.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Stage means a stage of the Development provided for in a Development Consent or any part of the Development that the Parties agree is a stage for the purposes of this Deed.

Subdivision has the same meaning as in the Act.

Subdivision Certificate has the same meaning as in the Act.

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Vegetation Management Plan means the documents and associated plans contained in the approved Vegetation Management Plan (VMP) associated with the original and existing Development Applications.

Water Supply Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Water Supply.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Deed.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Except as provided by clause 1.2.2, a reference to the Developer is taken to include a reference to the Owner and applies to the Developer and Owner jointly and severally unless the context or subject matter otherwise indicates or requires.
 - 1.2.2 A reference to the Developer is taken to be a reference to the Owner to the exclusion of the Developer if the reference could only apply to the Owner having regard to the context or subject matter.
 - 1.2.3 A reference to the Owner is taken to be a reference to a particular person comprising the Owner to the exclusion of all other persons comprising the Owner if the reference could only apply to the particular persons having regard to the context or subject matter.
 - 1.2.4 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.5 A reference in this Deed to a business day means a day other than a Saturday, Sunday or public holiday, being days on which banks are open for business generally in Sydney.
 - 1.2.6 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.7 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.8 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.9 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.10 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.11 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.12 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

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-
- 1.2.13 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.14 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.15 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.16 A reference to a Party includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- 1.2.17 Any schedules, appendices and attachments form part of this Deed.

2 Status, application & effect of this Deed

- 2.1 This Deed is a planning agreement for the purposes of s7.4 of the Act.
- 2.2 This Deed applies to the Land and the Development.
- 2.3 This Deed revokes the Previous Agreements with effect on the date this Deed commences.
- 2.4 The revocation of the Previous Agreements does not affect:
- 2.4.1 the previous operation of the Previous Agreements or anything duly suffered, done or commenced under the Previous Agreements, or
- 2.4.2 any right, privilege, obligation or liability acquired, accrued or incurred under the Previous Agreements, or
- 2.4.3 any right, liability or obligation incurred in respect of any breach of the Previous Agreements, or
- 2.4.4 any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or breach,
- and any such breach may be enforced, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the Previous Agreements had not been revoked.

3 Commencement of this Deed

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

- 4.1 This Deed applies to the Land and the Development and the Instrument Change
DELETE INSTRUMENT CHANGE IF NOT RELEVANT

5 Further Agreements Relating to this Deed

- 5.1 The Developer is to enter into such further agreements with the Council as are expressly required to be entered by this Deed.

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- 5.2 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.
- 5.3 Any such agreement is not to be inconsistent with this Deed.

6 Surrender of right of appeal etc

- 6.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or a condition in an Approval relating to the Development requiring entry into or compliance with this Deed.

7 Application of s7.11, s7.12 and s7.24 of the Act to the development

- 7.1 This Deed does not exclude the application of s7.12 or s7.24 of the Act to the Development.
- 7.2 This Deed excludes the application of s7.11 of the Act to the Development but only in relation to the purposes for which the Developer is required to make contributions in respect of the Development under this Deed.
- 7.3 Notwithstanding **clause 7.2**, the Developer is to pay to the Council:
- 7.3.1 subject to **clause 8**, the Community, Cultural and Emergency Services Contribution ET, Open Space Contribution ET and Roads Contribution ET, and
- 7.3.2 the Administration Levy Contribution,
- at the same time that each Development Contribution would have been required to be paid under a condition imposed on the Development under s7.11 of the Act (if such a condition could have been imposed in the absence of this Deed).
- 7.4 Despite any other provision of this Deed, monetary Development Contributions referred to in **clause 7.3** are to be paid in an amount that is not less than an amount based on the creation of 1800 ET **within Area 13**.
- 7.5 The Council is to hold and apply a monetary Development Contribution referred to in **clause 7.3** for the same Public Purpose for which the Development Contribution would have been held and applied if the money had been required to be paid under a condition imposed on the Development under s7.11 of the Act (if such a condition could have been imposed in the absence of this Deed).

Part 2 – Monetary Development Contributions**8 Monetary Development Contributions**

- 8.1 Subject to this Deed, the Landowner is to pay:
- 8.1.1 Administration Building Contribution
- 8.1.2 the Administration Levy Contribution,
- 8.1.3 Community Facilities Contribution,
- 8.1.4 the Open Space Contribution,
- 8.1.5 the Roads Contribution,

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8.1.6 the Sewerage Services Contribution,
8.1.7 the Sewerage Services Local Contribution, and
8.1.8 the Water Supply Contribution,
in respect of each dwelling in the part of the Development the subject of Original Development Consent.

- 8.2 The Landowner is to pay the monetary Development Contributions referred to in **clause 8.1** before the issuing of an Occupation Certificate for, or the occupation of, the relevant dwelling in the Development, whichever occurs first.

9 Offset against Roads Contribution

- 9.1 The Landowner is not required to incur the cost of the Roads Contribution to the extent that it is equal to or less than the amount of the Roads Contribution Reduction.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 The Landowner is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 10.3 The Landowner is not required to pay a monetary Development Contribution under this Deed unless the Council, after having received the Landowner's notice under **clause 10.2**, has given to the Landowner a tax invoice for the amount of the Development Contribution.
- 10.4 The Landowner is not in breach of this Deed if it fails to pay a monetary Development Contribution at the time required by this Deed by reason only of the Council's failure to give to the Landowner a tax invoice in relation to the amount proposed to be paid by it.

11 Offsets against monetary Development Contributions

- 11.1 In consideration of the benefits provided by the Developer under this Deed:
- 11.1.1 subject to **clause 11.6**, the Council is to accept payment of any Community, Cultural and Emergency Services Contributions ET required under **clause 7.3**, discounted by 100% provided the sum of all such discount does not exceed the amount of the Community, Cultural and Emergency Services Contributions Reduction,
- 11.1.2 subject to **clause 11.6**, the Council is to accept payment of any Open Space Contributions ET required under **clause 7.3**, discounted by 100% provided the sum of all such discount does not exceed the amount of the Open Space Contributions Reduction, and
- 11.1.3 subject to **clauses 11.2 and 11.6**, the Council is to accept payment of any Roads Contributions ET required under **clause 7.3**, discounted by 100% provided the sum of all such discount does not exceed the sum of the Roads Contributions Reduction.

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- 11.2 On and from the date the Roads Contributions Reduction has been utilised to discount the payment of the Roads Contributions ET, the Council and the Developer agree that the Roads Contributions ET is to be discounted or reimbursed as follows:
- 11.2.1 Each time a Roads Contributions ET is required to be paid under **clause 7.3**, the Developer is to request the Council provide a notice as to whether:
- (a) the Roads Contributions ET is to be paid in accordance with **clause 7.3**,
 - (b) the Roads Contributions ET will be discounted by 100% by the Community, Cultural and Emergency Services Contributions Reduction, or
 - (c) the Roads Contributions ET will be discounted by 100% by the Open Space Contributions Reduction.
- 11.2.2 If the Council notifies the Developer that the Roads Contributions ET is to be paid in accordance with **clause 7.3**, then:
- (a) the Developer is to pay the relevant amount of the Roads Contributions ET to the Council in accordance with **clause 7.3**, and
 - (b) at any time following such payment, the Developer may, but not more than once a year, make a claim for payment in accordance with **clause 8.3**.
- 11.3 The Developer may, but not more than once per year, make a written claim to the Council **with** such claim to set out:
- 11.3.1 the amount of s7.11 contributions received by the Council under the *Port Macquarie-Hastings Community Cultural and Emergency Services Contributions Plan 2006* and the *Port Macquarie-Hastings Open Space Contributions Plan 2018*, **a contributions plan that supersedes either plan**, based on the information set out in the Council's annual financial statement for that year,
- 11.3.2 the estimated cost of current or imminent projects to be delivered under those contributions plans in that year based on the information set out in the Council's operational plan for that year,
- 11.3.3 the amount of surplus funds available under each of those contributions plans **referred to in clause 8.3.1**, having regard to the amounts referred to in clauses **11.3.1 and 11.3.2 (Surplus Funds Amounts)**.
- 11.3.4 the amount claimed by the Developer, being not more than the Surplus Funds Amounts, and
- 11.3.5 any other details as either party may require.
- 11.4 Within 20 Business Days of receipt of a written claim made by the Developer under **clause 11.3**, Council must determine whether, acting reasonably having regard to the matters specified in the notice provided by the Developer in accordance with **clause 11.3**, Council will reimburse the Developer for the amount specified in the written claim or an alternative amount, with any such alternative amount not to be less than 10% of the total quantum of the Surplus Funds Amounts.
- 11.5 Council must advise the Developer of its decision under **clause 11.4** and ensure prompt payment to the Developer of the monies specified in the Council's decision, such payment to reduce the Community, Cultural and Emergency Services Contributions Reduction or Open Space Contribution Reduction as relevant in the circumstances.

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- 11.6 For the avoidance of doubt, the sum of all discounts in payments to Council of the Community, Cultural and Emergency Services Contributions ETs, Open Space Contributions ETs and Roads Contribution ETs under clause 11.1 and 11.2.1 and the sum of all amounts paid to the Developer under clause 11.5 are not to exceed the sum of the Community, Cultural and Emergency Services Contributions Reduction, Open Space Contribution Reduction and Roads Contributions Reduction.
- 11.7 Clauses 11.2.2, 11.3 and 11.6 survive completion of the Developer's obligations under this Deed.

12 Provision of Development Contributions Required

- 12.1 Subject to this Deed, the Developer is to make a Development Contribution towards each Item and as otherwise required by this Deed.
- 12.2 For the avoidance of doubt, and except as otherwise expressly provided by this Deed, the Contribution Offset Value corresponding to an Item does not limit the extent of the Developer's obligations under this Deed relating to the provision of the Item.
- 12.3 A Development Contribution referred to in clause 9.1 is to be made:
- 12.3.1 in the manner and for the Public Purpose referred to in Column 3 of Schedule 2 corresponding to the relevant Item, and
- 12.3.2 at the time specified in Column 5 of Schedule 2 corresponding to the relevant Item,
- or as otherwise required by this Deed.

13 Determination of Value

- 13.1 Subject to this Deed, if, for any reason, it is necessary or desirable to determine the value of a Development Contribution under this Deed, that value is to be determined as follows:
- 13.1.1 where the Development Contribution is in the form of a monetary Development Contribution, the value is the dollar value of the monetary Development Contribution,
- 13.1.2 where the Development Contribution is in the form of the dedication of land, the value is the estimated amount of compensation to which the Developer would be entitled under the Just Terms Act upon the compulsory acquisition of the land,
- 13.1.3 where the Development Contribution is in the form of Works, the value is the cost the Council reasonably considers it would have incurred in completing the Works, including the costs of design, project management, consultants and any fees and charges, if it had carried out the Works,
- 13.1.4 where the Development Contribution is not one to which clauses 10.1.1 - 10.1.3 apply, the value is the dollar amount as agreed between the Parties.
- 13.2 If an Item is varied pursuant to clause 34 the Parties may agree in writing to vary the Contribution Offset Value of the Item.

14 Application of Development Contributions by the Council

- 14.1 Subject to this Deed:

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- 14.1.1 the Council is to apply a Development Contribution made by the Developer under this Deed towards the Public Facility, or for the Public Purpose, for which it is made and at the locations, in the manner or to the standards (if any) required by or under this Deed, and
- 14.1.2 the Council is to make each Public Facility available for the Public Purpose for which the Public Facility is to be made available under this Deed and in the manner that best meets the demand for the Public Facility created by the Development.
- 14.2 The Council may apply a Development Contribution made under this Deed towards a Public Facility or Public Purpose that is not provided for in this Deed if the Council considers that the public interest would be better served by applying the Development Contribution towards the different Public Facility or Public Purpose.

Part 3 - Construction of Works**15 Performance of Works by Council by arrangement with Landowner**

- 15.1 If the Landowner arranges with the Council for the Council to carry out any Work the subject of this Deed on its behalf:
 - 15.1.1 the Council is to carry out the Work in accordance with any approved Construction Certificate drawings,
 - 15.1.2 the Landowner is to pay the agreed cost for the carrying out of the Work to the Council as follows:
 - (a) 50% of the agreed cost upon the issuing of any materials, plant or equipment for the Work, and
 - (b) the balance of the agreed cost before the commencement of the Work, or as otherwise agreed between the Parties,
 - 15.1.3 **clauses 12, 17 and 18** do not apply in relation to the Work carried out by the Council.

16 Carrying out of Work

- 16.1 Except as otherwise specifically provided by this Deed, any Work that is required to be carried out by the Landowner under this Deed is to be carried out in accordance with:
 - 16.1.1 any relevant Development Consent and any other relevant Approval,
 - 16.1.2 any relevant policies and specifications of the Council existing at the time such a consent is granted,
 - 16.1.3 in respect of the Sewerage Services Private Infrastructure, the *Gravity Sewerage Code of Australia (WSA 02-2011)* and the *Port Macquarie-Hastings Council Supplement*,
 - 16.1.4 any other applicable law, and
 - 16.1.5 otherwise to the reasonable satisfaction of the Council.
- 16.2 Without limiting any other clause of this Deed, the Landowner is not to commence any part of the Sewerage Services Private Infrastructure that is located within the road

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reserve of South Atlantic Drive unless the Work is carried out using bore methodology by a contractor approved in writing by the Council.

- 16.3 The Landowner is to comply with any direction given to it by the Council, acting reasonably, to prepare or modify a design or specification relating to a Work that the Landowner is required to carry out under this Deed.

17 Access to the Land

- 17.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Landowner relating to the carrying out of a Work.
- 17.2 Subject to the Landowner obtaining all necessary Approvals to the carrying out of Work, the Council is to permit the Landowner to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Landowner to carry out any Work under this Deed that is required to be carried out on such land or to perform any other obligation imposed on the Landowner by or under this Deed.

18 Protection of people and property

- 18.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
- 18.1.1 all necessary measures are taken to protect people and property, and
- 18.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 18.1.3 nuisances and unreasonable noise and disturbances are prevented.

19 Damage and repairs to Work (Repair of Damage)

- 19.1 The Landowner, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work from any cause whatsoever that occurs before the date on which the Work is completed.

20 Variation of Work

- 20.1 A Work is not to be varied by the Landowner, unless:
- 20.1.1 the Parties agree in writing to the variation, and
- 20.1.2 any consent or approval required under the Act or any other law to the variation is first obtained.
- 20.2 For the purposes of **clause 20.1** a variation may relate to any matter in relation to the Works that is dealt with by this Deed.

21 Rectification of defects

- 21.1 During the Defects Liability Period, the Council may give the Landowner a Rectification Notice.

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- 21.2 Subject to the resolution of a dispute in accordance with this Deed, the Landowner is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

Part 4 – Provisions relating to Environmental Management Land (or Dedication, Establishment & Management of Environmental Management Land)**22 Approval of Detailed Management Plan**

- 22.1 The Developer is not to establish or maintain the Environmental Management Land except in accordance with:
- 22.1.1 a Detailed Management Plan that has been approved by the Council, and
- 22.1.2 the terms of any Approval granted by the Council as modified from time to time).
- 22.2 The Developer is to ensure that any Development Application that seeks Development Consent for the establishment and maintenance of the Environmental Management Land is accompanied by a Detailed Management Plan.

23 Approval of Vegetation Management Plan

- 23.1 The Landowner is to submit a Vegetation Management Plan to the Council for approval before any application being made for a Construction Certificate for the establishment and maintenance of the Environmental Management Land.
- 23.2 The Landowner is not to establish or maintain the Environmental Management Land except in accordance with:
- 23.2.1 the Vegetation Management Plan, and
- 23.2.2 the terms of any Approval granted by the Council as modified from time to time.

24 Establishment and Management of Environmental Management Land by the Developer

- 24.1 The Developer, at its own cost, is to perform:
- 24.1.1 the Establishment Obligation during the Establishment Period, and
- 24.1.2 the Management Obligation during the Management Period.
- 24.2 The Developer is to perform its obligations under **clause 24.1** in accordance with:
- 24.2.1 this Deed,
- 24.2.2 any further agreement that is entered into by the Parties under **clause 5**, and
- 24.2.3 any requirements and directions notified in writing by the Council to the Developer at any time before the Management Work is taken to have been completed in accordance with **clause 24.7** that are not inconsistent with:
- (a) this Deed,
- (b) any agreement referred to in **clause 24.2.2**, or

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- (c) any Development Consent relating to the Development.
- 24.3 Despite any other provision of this Deed, the Establishment Obligation and the Management Obligation are not to be varied by the Developer, unless:
- 24.3.1 the Parties agree in writing to the variation, and
- 24.3.2 any consent or Approval required under the Act or any other law to the variation is first obtained.
- 24.4 Despite any other provision of this Deed, the Developer, by written notices, is to inform the Council when it considers it has completed the Establishment Obligation and, again, when it considers it has completed the Management Obligation.
- 24.5 Not later than 14 days after receipt of a notice under **clause 24.4**, the Council may, by written notice, direct the Developer to do the things specified in the notice in order to complete the Establishment Obligation or the Management Obligation to its satisfaction.
- 24.6 The Developer, at its own cost, is to comply with a direction referred to in **clause 24.5** according to its terms.
- 24.7 For the purposes of this Deed, the Establishment Obligation and the Management Obligation are taken to have been completed:
- 24.7.1 if the Developer was not given a notice under **clause 24.5** – at the end of the period specified in that clause, or
- 24.7.2 if the Developer was given a notice under **clause 24.5** – when the Council, by written notice, informs the Developer that the Developer has complied with that notice to the satisfaction of the Council.

25 Failure to Perform Establishment Obligation or Management Obligation

- 25.1 **Clause 43**, with any necessary modifications, applies to a breach of the Establishment Obligation or the Management Obligation by the Landowner in the same way as it applies to a breach of an obligation to carry out Work by the Landowner.

26 Inspection of the Environmental Management Land

- 26.1 Before the Environmental Management Land is dedicated to the Council in accordance with this Deed, the Landowner is to permit the Council, its officers, employees, agents and contractors to enter that land at any time for the purposes of establishing compliance with the Vegetation Management Plan upon giving reasonable prior notice.
- 26.2 After the Environmental Management Land is dedicated to the Council in accordance with this Deed, the Landowner is to permit the Council, its officers, employees, agents and contractors to reasonably pass through land owned, occupied or otherwise controlled by the Landowner to enable the Council to obtain reasonable access to the Environmental Management Land.
- 26.3 This clause does not derogate from any other rights the Council has under this Deed to enter the Environmental Management Land.

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27 Access to Environmental Management Land

- 27.1 Before the Environmental Management Land is dedicated to the Council in accordance with this Deed, the Developer is to permit the Council, its officers, employees, agents and contractors to enter that land at any time, upon giving reasonable prior notice, to inspect, examine or test that land.
- 27.2 After the Environmental Management Land is dedicated to the Council in accordance with this Deed:
- 27.2.1 the Developer is to permit the Council, its officers, employees, agents and contractors to pass through land owned, occupied or otherwise controlled by the Developer to enable the Council to obtain access to the Environmental Management Land,
- 27.2.2 subject to complying with the provisions in the LG Act, the Developer and its employees, agents, and contractors are to be appointed as the Council's agents on terms agreed with the Council, for the purpose of passing through private land in order to access the Environmental Management Land and carry out its Management Obligation, and
- 27.2.3 the Developer and its employees, agents and contractors are authorised to access the Environmental Management Land without payment of any access fee in order to carry out its Management Obligation, subject to the Developer:
- (a) providing no less than 14 days' notice to the Council, and
- (b) complying with the Council's reasonable requirements for access, except that no access fee will be payable by the Developer.
- 27.3 The Developer jointly and severally indemnifies the Council in respect of any negligent act or omission of the Developer, its employees, agents or contractors in accessing the Environmental Management Land under **clause 19.2.2 and 19.2.3**.

28 Damage and Repairs to Management Work

- 28.1 Subject to **clause 28.2**, the Developer, at its own cost, is to repair and make good, to the satisfaction of the Council having regard to the standard specified in **clause 28.3**, any loss or damage to any Management Work, from any cause whatsoever, occurring prior to the commencement of the Management Period.
- 28.2 Despite **clause 28.1**, the Developer is not required to repair or make good any loss or damage to any Management Work to the extent that it is:
- 28.2.1 caused or contributed to by the Council or the Council's invitees, agents, employees or contractors, or
- 28.2.2 outside of the Developer's control, following dedication of the Environmental Management Land to the Council.
- 28.3 If the Developer is required under **clause 28.1** to repair and make good any loss or damage to any Management Work, the Developer is to repair and make good such loss or damage to the standard required under the applicable Approval and Detailed Management Plan for the relevant Management Work.

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29 Dedication of Environmental Management Land to the Council

- 29.1 The Developer is to dedicate the Environmental Management Land as a public reserve free of cost to the Council in accordance with the Detailed Management Plan as approved by the Council.
- 29.2 The Environmental Management Land is to be held by the Council for the purpose of the conservation and enhancement of the natural environment.

30 Management Contribution

- 30.1 Subject to **clause 22.2**, the Developer is to pay to the Council the Management Contribution relating to each part of the Development to which a Development Consent relates based on the Net Developable Area of the Land the subject of the relevant Development Consent and at the following times:
- 30.1.1 if the Development involves Subdivision that will create a Final Lot - before a Subdivision Certificate is issued in relation to the Development or at such other time as the Parties agree, or
- 30.1.2 if the Development does not involve Subdivision that will create a Final Lot - before the first Part 6 Certificate is issued in respect of the Development or at such other time as the Parties agree.
- 30.2 Nothing in this Deed requires the Developer to pay to the Council the Management Contribution in respect of the creation of a Residue Lot unless the Council is of the opinion that the lot will not be further subdivided.
- 30.3 The Council is to deposit the Management Contribution paid by the Developer into the consolidated fund referred to in s409(3)(b) of the LG Act.
- 30.4 The Management Contribution and any interest earned on its investment is to be held and applied by the Council for a period of 17 years on and from the expiration of the Management Period towards the ongoing environmental management of the Environmental Management Land but only where that land has been dedicated to the Council.
- 30.5 The Management Contribution payable by the Developer may be reduced by agreement in writing between the Developer and the Council but only if the agreement also provides for a Management Period that exceeds three years.

31 EML Security

- 31.1 The Landowner is to provide the EML Security to the Council before the Environmental Management Land is dedicated to the Council.
- 31.2 The amount of the EML Security is **\$20,000.00** indexed annually from the commencement of this Deed in accordance with the.
- 31.3 From time to time, Council may:
- 31.3.1 review the amount of the EML Security having regard to the cost to the Landowner of performing the Management Obligation in accordance with this Deed, and
- 31.3.2 notify the Landowner in writing of the revised amount of the EML Security, and the revised amount notified to the Landowner replaces the amount of EML Security specified in **clause 31.2**.

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- 31.4 The Council is not to call upon the EML Security unless the Council considers that the Landowner has failed to comply with a notice referred to in **clause 43**, relating to a breach of the Management Obligation.
- 31.5 The Council may apply the EML Security in satisfaction of:
- 31.5.1 the Landowner's obligations under this Deed to carry out the Management Obligation, and
- 31.5.2 any liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Landowner to carry out the Management Obligation.
- 31.6 The Council is to release and return the EML Security or any remaining part of it to the Landowner within 14 days of the date on which the Management Obligation is completed to the satisfaction of the Council but only if the Landowner is not in breach of this Deed at that time.
- 31.7 If the Council calls on the EML Security in accordance with this Deed, the Council may, by notice in writing to the Landowner, require the Landowner to provide a further EML Security in an amount which, together with any unused portion of any existing EML Security, does not exceed the amount specified in **clause 31.2**.
- 31.8 Any difference between the amount of the EML Security called upon by the Council and the costs incurred by the Council in completing the Management Obligation or both may be recovered by the Council from the Landowner as a debt due in a court of competent jurisdiction.

Part 5 – Dedication of Land**32 Procedures relating to the dedication of land**

- 32.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 32.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the LG Act, or
- 32.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land to the Council when registered, free from all encumbrances (other than Permitted Encumbrances), and
- (b) the written consent to the registration of the transfer of any person whose consent is required to that registration.
- 32.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 32.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances (other than Permitted Encumbrances) and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

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- 32.4 If, having used all reasonable endeavors, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations (other than Permitted Encumbrances), the Developer may:
- 32.4.1 request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion, or
 - 32.4.2 agree to allowing the Council to compulsorily acquire the relevant land, in which case the provisions of **clause 48** will apply.
- 32.5 Subject to any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with **clause 32.1.1** or **clause 32.1.2** as the case may be not later than 30 days after the Work is completed for the purposes of this Deed.

Part 6 – Carrying out & hand-over of Works**33 Procedures relating to the carrying out of Works**

- 33.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with:
- 33.1.1 a design or specification approved in writing by the Council,
 - 33.1.2 the **Auspec Engineering Development** Specifications and Construction Standards published on the Council's website from time to time,
 - 33.1.3 so far as the Work concerns roads, the specifications contained in a relevant development control plan,
 - 33.1.4 an estimate of the cost of carrying out the Work approved in writing by the Council, which the Council acknowledges may be varied in accordance with **clauses 34 and 13.2**, and
 - 33.1.5 any relevant Development Consent for the Work, any other relevant Approval and any other applicable law.
- 33.2 The conditions of any relevant Development Consent for the Work will prevail to the extent that there is any inconsistency with any of the other matters specified in **clauses 33.1.1 to 33.1.5**.
- 33.3 A Development Application made by the Developer to the Council for consent under the Act to erect a building or carry out a Work required to be erected or carried out by or under this Deed is to be consistent with the Concept Design for the building or Work.
- 33.4 Subject to **clause 34**, if Development Consent has been granted by the Council to the erection of a building or the carrying out of a Work required to be erected or carried out by or under this Deed, the Developer is not to make, or procure the making on its behalf, of an application to the Council under s4.55 of the Act to modify the Development Consent in a manner that would affect Development Contribution items required to be provided to the Council under this Deed, unless it has first obtained the Council's approval, which must not be delayed or unreasonably withheld.

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34 Variation to Work

- 34.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 34.2 Without limiting **clause 34.1**, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 34.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under **clause 34.2**.
- 34.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 34.5 Subject to **clause 34.6**, the Developer is to comply promptly with a direction referred to in **clause 34.4** at its own cost.
- 34.6 The Developer is not required to comply with any direction issued by the Council requiring the Developer to vary:
- 34.6.1 the design of any Work, or
- 34.6.2 the specification of any Work,
- which would result in an increase in the estimated cost of the Work referred to in **clause 28.1.4** by 5% or more, unless the Contribution Offset Value for the Work is increased to an amount that is proportional to the increase in the estimated costs of Work resulting from the variation.
- 34.7 **Clause 29.6** does not apply unless the Developer provides written evidence establishing, to the satisfaction of the Council, the increase in the estimated cost of the Work.

35 Access to land by Developer

- 35.1 The Developer and its employees, agents and contractors are authorised to access Council owned or controlled land without payment of any access fee in order to enable the Developer to properly perform its obligations, including carrying out of work, under this Deed, subject to the Developer:
- 35.1.1 providing no less than 14 days' notice to the Council, and
- 35.1.2 complying with the Council's reasonable requirements for access, except that no access fee will be payable by the Developer.
- 35.2 Subject to complying with the provisions of the LG Act, the Developer and its employees, agents, and contractors are to be appointed as the Council's agents on terms agreed with the Council, for the purpose of passing through private land in order to enable the Developer to properly perform its obligations, including carrying out of work, under this Deed.
- 35.3 The Developer jointly and severally indemnifies the Council in respect of any negligent act or omission of the Developer, its employees, agents or contractors in accessing any land under **clauses 35.1 and 30.2**, except to the extent the Council's loss is caused or contributed to by the Council.

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- 35.4 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in **clause 30.1**.

36 Access to land by Council

- 36.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work, subject to **clause 36.2**.
- 36.2** The Council may only enter land to remedy a breach by the Developer if the Developer has failed to comply with a notice under **clause 49.1**.
- 36.3 **Clause 31.2** does not apply where Council considers that it is necessary to enter land in the event of an emergency or where there is an immediate threat to the safety of persons or property.
- 36.4 The Council is to give the Developer prior reasonable notice before it enters land under **clause 36.1**.

37 Protection of people, property & utilities

- 37.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 37.1.1 all necessary measures are taken to protect people and property,
- 37.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 37.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 37.2 Without limiting **clause 37.1**, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

38 Repair of damage

- 38.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 38.2 The Developer is to carry out its obligation under **clause 38.1** at its own cost and to the satisfaction of the Council.

39 Completion of Work

- 39.1** A Development Contribution comprising the carrying out of a Work is made for the purposes of this Deed when the Council accepts the hand-over of the Work in accordance with this **clause 39**.
- 39.2 Subject to this Deed, when the Developer considers that a Work relating to a Public Facility specified in **Column 1 of the Table to Schedule 2** or otherwise required under this Deed is complete, the Developer is to give to the Council a notice in writing to that effect.

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- 39.3 The Council is taken to have accepted the hand-over by the Developer of a Work that is the subject of a notice referred to in **clause 39.2**:
- 39.3.1 where the Council has not given the Developer a Rectification Notice under **clause 40.1** – at the expiration of the Defects Liability Period, or
- 39.3.2 where the Council has given the Developer a Rectification Notice under **clause 40.1** – on the date on which the Council gives a notice in writing to the Developer stating that the defect the subject of the Rectification Notice has been rectified to the Council's satisfaction.
- 39.4 On hand-over of the Work, the Council accepts ownership, possession and control of the Work and releases the Developer from all Claims relating to the relevant Work, other than Claims:
- 39.4.1 arising out of matters which occurred before hand-over of the Work whether or not the Claims are made after that time, and
- 39.4.2 resulting from damage occurring on land as a result of the negligent act or omission of the Developer.

40 Procedures relating to the rectification of defects

- 40.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 40.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 40.3 If the Developer breaches **clause 40.2**, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

41 Works-As-Executed-Plan

- 41.1 No later than 60 days after a Work is taken to have been completed in accordance with this Deed, the Landowner is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 41.2 The Landowner, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 41.3 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

42 Removal of Equipment

- 42.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 42.1.1 remove any Equipment from that land and make good any damage or disturbance to the land as a result of that removal, and
- 42.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

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- 43.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed relating to a Work, including compliance with a Rectification Notice, the Council may give the Landowner a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 43.2 The dispute resolution provisions of this Deed do not apply to the giving of a notice under **clause 43.1**.
- 43.3 A notice given under **clause 43.1** is to allow the Landowner a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.
- 43.4 The Council may carry out and complete the Work the subject of a notice under **clause 43.1** if the Landowner fails to comply with the notice to the Council's reasonable satisfaction.
- 43.5 The Landowner is to do all things reasonably necessary to enable the Council to exercise its rights under **clause 43.4**.
- 43.6 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Landowner with this Deed that is not met by calling-up the Security, the Council may recover the cost from the Landowner in a court of competent jurisdiction.
- 43.7 For the purpose of **clause 43.6**, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
- 43.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 43.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 43.7.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's failure to comply with this Deed.

44 Security relating to the carrying out of Work

- 44.1 **This clause applies to the construction of the Sewerage services Private Infrastructure.**
- 44.2 The Landowner is not to carry out any Work unless, before the commencement of the Work, the Landowner provides the Council with Security to secure the performance of the Landowner's obligations relating to the Work in accordance with an agreement between the Council and the Landowner relating to the provision of Security or, failing such agreement, on such terms and conditions required by the Council acting reasonably.
- 44.3 For the purposes of **clause 44.2**, the Parties are to have regard to any policy or practice of the Council, current at the time the Security is provided, relating to the provision of security to the Council for the construction of public infrastructure by Landowners.
- 44.4 The Council is to release and return the Security or any unused part of it to the Landowner within 14 days of compliance by the Landowner with its Development Contribution obligations under this Deed to the reasonable satisfaction of the Council.
- 44.5 The Landowner may at any time provide the Council with a replacement Security.

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- 44.6 On receipt of a replacement Security, the Council is to release and return to the Landowner, as directed, the Security it holds that has been replaced.
- 44.7 The Council may call-up the Security if it considers, acting reasonably, that the Landowner has not complied with its Development Contributions obligations under this Deed.
- 44.8 However, the Council is not to call-up the Security unless it has given the Landowner not less than 30 days' notice of its intention to do so and the Landowner has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 44.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 44.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 44.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 44.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 44.10 If the Council calls-up the Security, it may, by notice in writing to the Landowner, require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 44.11 The dispute resolution provisions of this Deed do not apply to a matter the subject of this clause.

Part 7 – Other Provisions**45 Security for legal costs**

- 45.1 The Parties acknowledge and agree that as at the date of this Deed, the Developer has provided to the Council and the Council holds a Bank Guarantee of \$50,000 in respect of the Council's costs of enforcement of any breach of the terms of this Deed by the Developer.
- 45.2 If the Council calls on a Bank Guarantee given pursuant to this clause, it may use the amount so paid to it in satisfaction of the Developer's obligations under this Deed so breached and additionally for any liability, loss, cost, charge or expense incurred by the Council because of the failure by the Developer to comply with this Deed.
- 45.3 The Council is to release and return the Bank Guarantee upon the completion by the Developer of all of its obligations under this Deed.
- 45.4 At any time following the provision of a Bank Guarantee, the Developer may provide the Council with a replacement Bank Guarantee totaling the amount of the Bank Guarantee required to be provided under clause 45.1.
- 45.5 On receipt of a replacement Bank Guarantee, the Council is to release and return to the Developer as directed, the Bank Guarantee it holds which has been replaced.

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46 Grant of Charge

- 46.1 The Developer acknowledges that any breach of this Deed by it may result in the Council incurring damages.
- 46.2 Subject to this **clause 44**, the Developer charges its right, title and interest in the Charge Land in favour of the Council to secure:
- 46.2.1 the proper and timely performance of its obligations under this Deed, and
- 46.2.2 any damages that may be payable to the Council in the event of a breach of this Deed by the Developer.
- 46.3 The Parties acknowledge that the charge referred to in **clause 46.2** has been registered on the title to the **Charge Land with reference number AJ765286**.
- 46.4 The Council is to provide its consent to registration of mortgages which the Developer wishes to grant over the land to which the charge referred to in **clause 46.2** relates and which do not prejudice the Council's rights under this Deed.
- 46.5 The Council is not to unreasonably withhold its consent to the registration of plans and dealings submitted by the Developer at NSW Land Registry Services which:
- 46.5.1 do not prejudice or otherwise materially affect the rights of the Council under this Deed,
- 46.5.2 have received all necessary consents from relevant public authorities, and
- 46.5.3 have been prepared, where applicable, in accordance with the terms of this Deed.
- 46.6 The Council is to release the charge referred to in **clause 46.2** upon the completion by the Developer of all of its obligations under this Deed.
- 46.7 The Council is to agree on condition that there is no cost to the Council, on request by the Developer, to amend the charge referred to in **clause 46.2** and otherwise release the charge in so far as it applies to any Land that is not part of the Charge Land.
- 46.8 Upon the release of the charge referred to in **clause 46.2**, the Council is to provide the Developer with a discharge of charge, which is executed by the Council and in registrable form.

47 Priority

- 47.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the charge created under this Deed without the prior written approval of the Council.
- 47.2 The Parties acknowledge that the charge referred to in **clause 46.3** has first priority over other security interests registered on the title to the Charge Land.

48 Change in Charge Land

- 48.1 The Developer may:
- 48.1.1 replace the Charge Land with other land if:
- (a) the alternative land comprises a whole lot or lots in a deposited plan (**Alternative Land**), and

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- (b) the Council notifies the Developer in writing that it is satisfied the Alternative Land is of equivalent or greater value than the original Charge Land or is of a value that is proportionate to the likely remaining cost of the Developer's obligations under this Deed, and
 - (c) the Developer bears all costs associated with the replacement of the Charge Land, or
- 48.1.2 replace the Charge Land with a Bank Guarantee if the Council notifies the Developer in writing that it is satisfied the guarantee amount is of a value that is proportionate to the likely remaining cost of the Developer's obligations under the Deed.
- 48.2 The Developer may also replace the Charge Land by providing a combination of:
 - 48.2.1 Alternative Land, and
 - 48.2.2 a Bank Guarantee,
 if:
 - 48.2.3 the Council notifies the Developer in writing that it is satisfied that the combined value of the Alternative Land and the amount of the Bank Guarantee is proportionate to the likely remaining cost of the Developer's obligations under the Deed, and
 - 48.2.4 the Developer bears all costs associated with the replacement of the Charge Land.
- 48.3 The Council is to do all things reasonably necessary to enable the replacement of the Charge Land under **clauses 48.1 and 48.2**, including the removal of the charge referred to in **clause 46.3** from the Charge Land that has been replaced, if the matters in those clauses are satisfied.

49 Reduction in Security

- 49.1 In this clause, Security means the Charge Land referred to in **clause 46**, or the Alternative Land or a Bank Guarantee referred to in **clause 48**, or any combination of them, provided to the Council for the purposes of securing the matters referred to in **clause 46.2**.
- 49.2 The value of the Security at any time is not required to exceed:
 - 49.2.1 the sum of all Contribution Offset Values relating to Items in respect of which the Developer has not at the time completed its obligations in accordance with this Deed,
less
 - 49.2.2 the monetary Development Contribution offsets provided for in **clause 0** that have not been realised by the Developer at that time.

50 Acquisition of land required to be dedicated

- 50.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

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- 50.2 The Council is to only acquire land pursuant to **clause 50.1** if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 50.3 **Clause 50.1** constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 50.4 If, as a result of the acquisition referred to in **clause 50.1**, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- 50.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 50.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this **clause 48**, including without limitation:
 - 50.6.1 signing any documents or forms,
 - 50.6.2 giving landowner's consent for lodgement of any Development Application, and
 - 50.6.3 paying the Council's costs arising under this **clause 48**.

51 Breach of obligations

- 51.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 51.1.1 specifying the nature and extent of the breach,
 - 51.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 51.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 51.2 If the Developer fails to fully comply with a notice referred to in **clause 51.1**, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 51.3 If the Developer fails to comply with a notice given under **clause 51.1** relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 51.4 Any costs incurred by the Council in remedying a breach in accordance with **clause 51.2 or clause 51.3** may be recovered by the Council by either or a combination of the following means:
 - 51.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 51.4.2 as a debt due in a court of competent jurisdiction.

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- 51.5 For the purpose of **clause 51.4**, the Council's costs of remedying a breach the subject of a notice given under **clause 51.1** include, but are not limited to:
- 51.5.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 51.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 51.5.3 all reasonable legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 51.6 Nothing in this **clause 51** prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

52 Enforcement

- 52.1 Without limiting any other remedies available to the Parties, this Deed may be enforced by the Parties in any court of competent jurisdiction.
- 52.2 For the avoidance of doubt, nothing in this Deed prevents:
- 52.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 52.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

53 Registration of this Deed

- 53.1 The Parties agree to register this Deed under s7.6 of the Act.
- 53.2 The Developer agrees that it will use all reasonable endeavours to procure the registration of this Deed on the title to the Land in accordance with s7.6 of the Act and the terms of this Deed within 60 days of receiving a copy of this Deed executed by the Council, including by procuring:
- 53.2.1 execution by the Developer, and all other persons required by the Registrar-General, of an instrument requesting registration of this Deed on the title to the Land, and
- 53.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 53.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 53.4 The Developer is not to apply for, or procure, cause, suffer or permit another person to apply for, a Subdivision Certificate relating to any part of the Development unless it has complied with its obligations under **clauses 53.2 and 53.3**.
- 53.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to any part of the Land:
- 53.5.1 in so far as the part of the Land concerned is a Final Lot, and
- 53.5.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council, or this Deed is terminated or otherwise comes to an end for any other reason.

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- 53.6 For the purposes of **clause 53.5**, the Developer is to provide to the Council in registrable form (except for Council's execution) an instrument requesting the removal of notation of this Deed from the title to the Land, or any part of it, duly executed by the Developer.
- 53.7 If the Council is satisfied that the instrument provided to it under **clause 53.6** relates to Land described in **clause 53.5.1 or 51.5.2**, the Council is to execute the instrument within 14 days and return it to the Developer for lodgment at NSW Land Registry Services.

54 Assignment, Sale of Land, etc

- 54.1 Unless the matters specified in **clause 54.2** are satisfied, the Developer is not:
- 54.1.1 to transfer to any person (other than the Council in accordance with this Deed):
- (a) any part of the Land which is required by this Deed to be dedicated to the Council, or
 - (b) any part of the Land on which Works are required by this Deed to be carried out by the Developer (being land that is not required to be dedicated or otherwise made available to the Council for a public purpose) if the Works have not been completed to the satisfaction of the Council at the time of the proposed transfer, or
- 54.1.2 to assign the Developer's interest under this Deed.
- 54.2 The matters required to be satisfied for the purposes of **clause 54.1** are as follows:
- 54.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the relevant land is to be transferred, or the person to whom their interest is to be assigned, of an agreement in favour of the Council on terms satisfactory to the Council, and
- 54.2.2 the Council, by notice in writing to the Developer has stated that evidence satisfactory to the Council has been produced to show that the transferee of the Land or part, or the assignee, is reasonably capable of performing its obligations under the agreement referred to in this clause, and
- 54.2.3 the Developer is not in breach of this Deed.
- 54.3 The Council acknowledges that:
- 54.3.1 the Developer may seek to transfer one or more master lots (being a lot comprising part of the Land which has been created via subdivision for the purpose of being transferred to a third-party developer for further subdivision to create Final Lots) to a third-party developer, and
- 54.3.2 in such circumstances, the agreement referred to in **clause 52.2.1** may make provision for:
- (a) the division of responsibilities for delivery of Development Contributions, and
 - (b) allocation of entitlements to the Community, Cultural and Emergency Services Contributions Reduction, the Roads Contributions Reduction and the Open Space Contributions Reduction under this Deed,
- as agreed between the Developer and the incoming third-party developer.

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55 Risk

- 55.1 The Developer performs this Deed at its own risk and its own cost.

56 Release

- 56.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

57 Indemnity

- 57.1 Subject to **clauses 57.2 and 57.3**, the Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 57.2 The indemnity in **clause 55.1** applies to any Claim in respect of the Developer's performance of its obligations in respect of a Work that had been carried out before (but not after) the hand-over of the Work in accordance with **clause 34**, whether or not the Claim is made after the hand-over.
- 57.3 The Council releases the Developer from any Claim it may have against the Developer arising from or in connection with any damage caused to land which has been dedicated to the Council under this Deed (including land which continues to be managed or maintained by the Developer following dedication), except:
- 57.3.1 if, and to the extent that, the Claim arises as a result of the Developer's negligent act or omission, and
- 57.3.2 in relation to land which continues to be managed by the Developer, to the extent that the damage arises from an act or omission within the scope of the Developer's management and maintenance responsibilities under this Deed.

58 Insurance

- 58.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 58.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 58.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 58.1.3 workers compensation insurance as required by law, and
- 58.1.4 any other insurance required by law.

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- 58.2 If the Developer fails to comply with **clause 58.1**, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 58.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
- 58.2.2 recovery as a debt due in a court of competent jurisdiction.
- 58.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in **clause 58.1**.

59 Dispute Resolution – expert determination

- 59.1 This clause applies to a dispute under this Deed which relates to a matter that can be determined by an appropriately qualified expert.
- 59.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 59.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 59.4 If a notice is given under **clause 59.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 59.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 59.6 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 59.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

60 Dispute Resolution - mediation

- 60.1 This clause applies to any dispute under this Deed other than a dispute to which **clause 59** applies.
- 60.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 60.3 If a notice is given under **clause 58.2**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 60.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 60.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

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61 Annual report by Developer

- 61.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 61.2 The report referred to is to be in such a form and to address such matters as required by the Council from time to time.
- 61.3 Within 28 days of receipt of the report referred to in **clause 61.1**, the Council is to provide a letter acknowledging what Work, or part of a Work, has been handed over to the Council by the Developer pursuant to **clause 34**, and what land has been dedicated by the Developer to the Council.

62 Review of Deed

- 62.1 The Parties are to review this Deed if any Party is of the reasonable opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 62.2 For the purposes of **clause 40.1**, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 62.3 The Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed arising from a review of this Deed.
- 62.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 62.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in **clause 62.1 (but not 62.4)** is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

63 Notices

- 63.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 63.1.1 delivered or posted to that Party at its address set out in **Schedule 3**,
 - 63.1.2 faxed to that Party at its fax number set out in **Schedule 3**, or
 - 63.1.3 emailed to that Party at its email address set out in **Schedule 3**.
- 63.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 63.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 63.3.1 delivered, when it is left at the relevant address,
 - 63.3.2 sent by post, 2 business days after it is posted,

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- 63.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
- 63.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 63.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

64 Approvals and Consent

- 64.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 64.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

65 Costs

- 65.1 Within 28 days of the date on which the Council provides to the Developer the information required by **clause 65.2**, the Developer is to pay to the Council its costs of preparing, negotiating and executing this Deed up to a maximum of \$65,000 +GST).
- 65.2 The Developer is not obliged to contribute towards Council's costs unless the Council has first provided to the Developer:
- 65.2.1 copies of relevant invoices, and
- 65.2.2 evidence that the relevant invoices have been paid by the Council.
- 65.3 The Developer is not to question any aspect of the invoices.
- 65.4 The Council may make an allowance for any unpaid amount that is required to be paid under **clause 65.1** when determining an amount to be paid under **clause 0**.

66 Entire Agreement

- 66.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 66.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

67 Further Acts

- 67.1 Each Party must promptly execute all documents and do all things that another Party from time-to-time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

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68 Governing Law and Jurisdiction

- 68.1 This Deed is governed by the law of New South Wales.
- 68.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 68.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

69 Joint and Individual Liability and Benefits

- 69.1 Except as otherwise set out in this Deed:
 - 69.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 69.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

70 No Fetter

- 70.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

71 Representations and Warranties

- 71.1 The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

72 Severability

- 72.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 72.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

73 Modification (Amendment)

- 73.1 No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

74 Waiver

- 74.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 74.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

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- 74.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

75 GST

- 75.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 75.2 Subject to **clause 75.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 75.3 **Clause 75.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 75.4 No additional amount shall be payable by the Council under **clause 75.2** unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 75.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 75.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies, and
- 75.5.2 that any amounts payable by the Parties in accordance with **clause 75.2 (as limited by clause 75.4)** to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 75.6 No payment of any amount pursuant to this **clause 75**, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 75.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 75.8 This clause continues to apply after expiration or termination of this Deed.

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)****76 Explanatory Note Relating to this Deed**

- 76.1 **Appendix 2** contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 76.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note in **Appendix 2** is not to be used to assist in construing this Deed.

77 Limitation of liability

- 77.1 In this **clause 77**, Trustee means the Developer.
- 77.2 The Trustee enters into this Deed only in its capacity as trustee of the Lewis Developments Trust ("Trust") constituted under the Trust Deed **dated 13 November 2015** ("**Trust Deed**") and in no other capacity. A liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. Subject to **clause 77.3**, this limitation of the Trustee liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- 77.3 No party to this Deed may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- 77.4 The provisions of this **clause 77** shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under this Deed or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of the Trustee's failure to properly perform its duties as Trustee of the Trust.
- 77.5 The Trustee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless its liability is limited in the same manner as set out in **clauses 77.1 to 77.3**.
- 77.6 Subject to **clauses 77.1 to 77.4**, the Trustee has authority under the Trust Deed to enter into this Deed.

78 Trustee Warranties

- 78.1 In this **clause 78**, Trustee means the Developer.
- 78.2 The Trustee warrants that, as at the date of this Deed:
- 78.2.1 the Trustee is the trustee of the **(name of company)** Trust ("**Trust**") constituted under the Trust Deed dated **(date)** ("**Trust Deed**"),
- 78.2.2 it has not been removed as the trustee under the Trust Deed,
- 78.2.3 no release or revocation of the Trustee's powers under the Trust Deed has occurred,
- 78.2.4 it is the sole trustee of the Trust,
- 78.2.5 it is not in breach of the Trust Deed, and

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)**

- 78.2.6 it has the power under the Trust Deed to execute and perform its obligations under this Deed and all necessary action has been taken under the Trust Deed to authorize the execution and performance of this Deed.
- 78.3 If the Trustee's position in respect of the matters specified in **clause 76.2** changes, the parties are to negotiate, in good faith and without delay, any necessary changes to this Deed to secure the provision of the Development Contributions.
- 78.4 If the Trustee is to be replaced as trustee under the Trust Deed, then the Trustee will procure entry by the replacement trustee into a deed with the Council on terms satisfactory to the Council under which the replacement trustee agrees to:
- 78.4.1 be bound by the provisions of this Deed, and
- 78.4.2 pay the Council's costs in relation to the replacement of the trustee and the costs of registering any new planning agreement on title, if required.
- 78.5 Immediately upon the Trustee becoming aware of a proposed termination of the Trust, the Trustee is to notify the Council, and the Parties are to negotiate, in good faith and without delay, any necessary changes to this Deed, or other arrangements arising from the proposed termination of the Trust, to secure the provision of Development Contributions.

(Title) Planning Agreement

Port Macquarie-Hastings Council

(Name of Party/s)

Schedule #

(Clause #. #)

(Title) Planning Agreement

Port Macquarie-Hastings Council

(Name of Party/s)

Execution

EXECUTED AS A DEED

Dated:

Signed on behalf of the Council:

Signed on behalf of the Developer:

Executed by Lewis Developments Pty Ltd in accordance with s127 of the *Corporations Act 2001* (Cth):

Director

Name of officer:

Company Secretary

Name of officer

Signed on behalf of the Owner:

Executed by PM Land Pty Limited in accordance with s127 of the *Corporations Act 2001* (Cth):

Director

Name of Officer:

Company Secretary

Name of Officer:

(Title) Planning Agreement

Port Macquarie-Hastings Council

(Name of Party/s)

Appendix #

(Clause 1.1)

Map

The Map is on the next and following pages

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)****Appendix #**

(Clause 74)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note**Draft Planning Agreement**Under s7.4 of the *Environmental Planning and Assessment Act 1979***Parties****Port Macquarie Hastings Council ABN 11 236 901 601** of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales 2444 (**Council**)**(Details of party/s)** ABN **(ABN number)** of **(Address of party/s)** (**Developer / Landowner**)**1 Description of the Land to which the Draft Planning Agreement Applies****(Details of land)****2 Description of Proposed Development**

The development of the Land for urban purposes permissible on the Land from time to time.

3 Summary of Objectives, Nature and Effect of the Draft Planning AgreementObjectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide suitable funding for the provision of infrastructure, facilities and services to meet urban development that is permissible on the Land.

Nature of Draft Planning AgreementThe Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council, the Developer and the Owner, being the owner of the land to which the agreement applies. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)**

Agreement) are made by the Developer or the Owners or both for various public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of any development on the Land to which it applies that is permissible on the Land,
- partly excludes the application of s7.11 of the Act to the Development (as defined in clause 1.1 of the Draft Planning Agreement),
- does not exclude the application of s7.12 or s7.24 of the Act to the Development,
- requires monetary Development Contributions of a specified minimum amount to be made towards community, cultural and emergency services, open space and roads and administration,
- requires the carrying out of specified Works by the Developer for the purposes of providing community and cultural facilities and services, open space, roads and other public purposes,
- requires the dedication of specified land to the Council by the Owner on which some Works will be situated,
- allows offsets against specified monetary Development Contributions, in consideration of the benefits provided to the Council by the Developer and the Owner under the agreement,
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works,
- requires the Developer and Owner to provide the Council with security for legal costs in the event that the Council is required to enforce the terms of the agreement,

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)**

- requires the Developer and Owner to grant the Council a charge over specified land as security for the performance of the agreement,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

4 Assessment of the Merits of the Draft Planning Agreement**4.1 The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

4.2 How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(c), (g) and (j) of the Act.

4.3 For Planning Authorities:**4.3.1 Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities**

N/A

4.3.2 Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

(Title) Planning Agreement**Port Macquarie-Hastings Council****(Name of Party/s)**

N/A

4.3.3 *Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter*

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that public facilities provided by the Developer and Owner under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

4.3.4 *All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program*

The Draft Planning Agreement requires that specified Works to be carried out by the Developer for the purposes of providing community and cultural facilities and services, open space, roads and other public purposes.

These works are not included in the Council's relevant current capital Works program. However, the Council's Management Plan identifies these types of works in the relevant capital Works program.

Accordingly, the provision of these Works under the agreement is consistent and conforms with the capital Works envisioned by the Council's Management Plan.

4.3.5 *All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued*

(Title) Planning Agreement

Port Macquarie-Hastings Council

(Name of Party/s)

Yes. The Draft Planning Agreement specifies requirements that are to be complied with before certain occupation certificates and subdivision certificates are issued.



Authorised by: <authority>
Authorised date: DD/MM/YYYY
Effective date: DD/MM/YYYY
Next review date: DD/MM/YYYY
File Number: #####

1. INTRODUCTION

An existing policy is in place detailing contributions from the public for the initial provision of path and/or kerb and guttering infrastructure adjacent to their property.

2. POLICY STATEMENT AND SCOPE

To detail the means through which Council can charge the owner of a property a contribution for the initial provision of kerb and gutter and/or concrete footpath adjacent to their property. This contribution can be up to half of the actual costs of construction in accordance with Section 217 of The Roads Act 1993.

This Policy applies to all owners adjacent to Council's works providing initial footpath/kerb & gutter.

Kerb and Gutter

Council has the ability under Section 217 of the Roads Act 1993 to charge the owner a contribution for the initial provision of kerb and gutter adjacent to their property including part of the roadway within 450 millimetres of the kerb. This contribution can be up to half of the actual cost of construction.

Port Macquarie - Hastings Council has previously resolved to charge half the cost of actual construction up to a maximum capped rate, which is determined annually by Council via the Schedule of Fees and Charges. Utilising this method, Council can pass savings in construction of specific projects onto the property owners but, also caps the maximum contribution for property owners on projects where difficulties are encountered and the costs exceed the rate adopted by Council.

Each year a maximum rate is determined per lineal metre of frontage and half of this rate is applied for side and/or rear frontage. These rates are determined in line with Council's assessment criteria and can be accessed in the Schedule of Fees and Charges at the following location www.pmhc.nsw.gov.au.

This does not affect construction of kerb and gutter related to conditions of development.

Footpaths and Shared Paths

Council has the ability under Section 217 of The Roads Act 1993 to charge the owner a contribution for the initial provision of concrete footpath adjacent to their property. This contribution can be up to half of the actual cost of construction.

Port Macquarie - Hastings Council has previously resolved to charge half the actual construction costs up to a maximum capped rate, determined annually. However, it is considered the benefit from the provision of a footpath is primarily to the wider community and not the adjoining landowners. As such, Council does not charge adjoining landowners for contributions to Council for footpath provision. This does not affect construction of paths related to conditions of development.

Determination of Locations

The locations of kerb, gutter and path constructions are determined based on risk and priority by Council as the Local Roads Authority (LRA) as part of its strategic and annual operational planning processes. Requests for infrastructure construction by the community would be gathered via customer requests or during times where input is sought on relevant strategies and action plans. Council is not obliged to install kerb and gutter at the request of a landowner if the area has not been determined as a priority area for Council.

Council does not consider applications for full contributions for kerb, gutter or path infrastructure from landowners. Individual projects are administratively burdensome and divert project management and administration resources away from current priorities and core activities. Infrastructure constructed by property owners as a condition related to development are managed separately via established development application and certification processes to ensure adequate monitoring and quality control.

Grants

Council occasionally receives grant funding for paths, kerb and gutter infrastructure from the State and Federal governments. When Council is successful for grant funding adjoining landowners will be charged a contribution towards the works where applicable under this Policy.

Subsidy

In accordance with Section 217 of the Roads Act, Council determines the charges for infrastructure contributions. The charges are calculated based on half the average current rate Council pays to construct kerb and gutter following review of recent contract rates. These charges may not always reflect full cost of works as the costs are determined based only on the construction components related to the specific infrastructure and not the whole works. The costs are determined only for the component relating to the adjoining landowners and savings are achieved through efficiencies as projects are generally larger than the property frontages.

Financial Hardship

In accordance with the Rates and Charges Hardship Assistance Policy, Council may consider assistance to ratepayers experiencing genuine hardship with the payment of their rates and charges. The policy details the types of assistance that may be available to eligible residents and ratepayers.

3. RESPONSIBILITIES AND AUTHORITIES

Council's Community Infrastructure Planning and Design group have the primary responsibility to administer the levying of these contributions.

As part of the delivery of footpath and kerb and gutter projects affected landowners will be issued a notice by the Council staff prior to commencement of works identifying Councils' adopted rates. On completion of works landowners will be issued with separate advice on the contribution to be paid.

Council is the Roads Authority for all roads and associated road reserves vested in fee simple to Council (meaning that it has absolute ownership of the land) as described within the NSW Roads Act 1993.

Council as the governing body is responsible and accountable for:

- Adopting the Path and Kerb and Gutter Contribution Policy
- Oversight of the implementation
- Determining strategic priorities for Community Infrastructure

The Chief Executive Officer and Directors are responsible and accountable for:

- Communicating this Policy
- Ensuring compliance of this Policy
- Ensuring this Policy is reviewed and updated to meet current legislative requirements
- Ensuring appropriate delegations are in place with regard to exercising Road Authority functions

The Group Manager, Community Infrastructure Planning and Design is responsible and accountable for:

- Implementing this Policy
- Monitoring compliance of this Policy
- Reviewing and updating this Policy to meet current legislative requirements
- Ensuring appropriate procedures are developed, implemented and monitored to meet the principles of this Policy

Community Infrastructure Planning and Design Engineers, Development Engineers, and Operations Engineers are responsible and accountable for:

- Implementing and communicating this Policy and any associated procedures to internal and external stakeholders
- Monitoring compliance of this policy and any associated procedures

All Council Officers are responsible and accountable for following this Policy and any associated procedures.

4. REFERENCES

These contributions are determined under S217 of the Roads Act 1993

5. DEFINITIONS

- Paths are defined as the work constructed for the specific purpose of conveying active transport users and pedestrians (walkers, prams, cyclists, wheelchair users, mobility scooters etc.)
- Kerb and gutter is defined as the civil works necessary to convey rainwater runoff from neighbouring land to natural water courses and contain and remove rainwater runoff to the roadway.
- A gutter includes, in the case of a roadway that is laid to the kerb in a permanent manner, a reference to such part of the roadway as is within 450 millimetres of the kerb.
- Contribution is defined as the amount determined by Council to charge to adjoining landowners for the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.
- Council refers to Port Macquarie-Hastings Council.

6. PROCESS OWNER

Council's Community Infrastructure Planning and Design group have the primary responsibility to administer these contributions.

The following staff are available to provide advice on this Policy

Manager Planning and Design, Community Infrastructure
Group Manager, Community Infrastructure Planning and Design
Director, Community Infrastructure

7. AMENDMENTS

The below summarises the amendments that have been made to the previous revisions of this Policy:

- Updated title to reflect broader paving (paths)
- Updated definition of kerb and gutter
- Removal of contributions for path infrastructure
- Clarification of where and when works are considered
- Clarification of subsidies for works
- Clarification of contributions when works are funded by grants
- Clarification of how locations for works are determined and how applications by landowners are considered
- Reference to the Rates and Charges Hardship Assistance Policy
- Responsible Officers updated and clarification of responsibilities



CONTRIBUTIONS FOR FOOTPATH / KERB & GUTTER CONSTRUCTION POLICY

Responsible Officer	Manager, Infrastructure Operations
Contact Officer	Works Engineer, Infrastructure Operations
Authorisation	Director Infrastructure Services
Effective Date	09/04/1984
Modifications	ORD 01/05/89, Review & new format 06/10/10, ORD 14/12/11
Superseded Documents	
Review	Manager, Infrastructure Operations, August 2013
File Number	All documents relating to the policy development, communication, implementation and review must be held on a PMHC registered file. Contact the Records Section.
Associated Documents	Roads Act 1993 Council Fees & Charges

1. INTRODUCTION

An existing policy is in place detailing contributions from the public for the initial provision of footpath and/or kerb and guttering adjacent to their property.

2. POLICY OBJECTIVE

To detail the means through which Council can charge the owner of a property a contribution for the initial provision of kerb and gutter and/or concrete footpath adjacent to their property. This contribution can be up to half of the actual costs of construction in accordance with Section 217 of The Roads Act 1993.

3. POLICY SCOPE

This Policy applies to all owners adjacent to Council's works providing initial footpath/kerb & gutter.

4. DEFINITIONS

Footpaths are defined as the work constructed for the specific purpose of conveying pedestrian traffic. Kerb and gutter is defined as the civil works necessary to contain rainwater runoff to the roadway

5. LEGAL & POLICY FRAMEWORK

These contributions are determined under S217 of the Roads Act 1993

6. POLICY STATEMENT

Kerb and Gutter

Council has the ability under S217 of the Roads Act 1993 to charge the owner a contribution for the initial provision of kerb and gutter adjacent to their property. This contribution can be up to half of the actual cost of construction.

Port Macquarie - Hastings Council has previously resolved to charge half cost of actual construction up to a maximum capped rate, which is determined annually by Council. Utilising this method, Council can pass savings in construction of specific projects onto the property owners but, also caps the maximum contribution for property owners on projects where difficulties are encountered and the costs exceed the rate adopted by Council.

Each year a maximum rate is determined per lineal metre of frontage and half of this rate is applied for side and/or rear frontage. In 2011/2012 these rates were capped at \$75 per lineal metre per lineal of frontage and \$37 per lineal metre for side and/or rear frontage. Both rates include GST.

Footpaths

Council has the ability under Section 217 of The Roads Act 1993 to charge the owner a contribution for the initial provision of concrete footpath adjacent to their property. This contribution can be up to half of the actual cost of construction.

Port Macquarie – Hastings Council has previously resolved to charge half the actual construction costs up to a maximum capped rate, determined annually. Port Macquarie-Hastings Council acknowledges that the provision of footpath adjacent to a property benefits not only the property owner/residence but also and to a larger extent those pedestrians who utilise the footpath.

Each year the footpath contribution rate is determined per lineal metre for side and/or rear frontage and half the rate of side/rear frontage. In 2011/12 these rates are \$11 per lineal metre of frontage and \$5.50 per lineal metre of rear/side frontage including GST. The contribution rate is less than the cost of construction and represents approximately 10% of the actual average cost of footpath provision.

7. IMPLEMENTATION

This Policy supersedes existing Policy.

7.1 Roles and Responsibilities

Council's Infrastructure Operations Staff have the primary responsibility to administer the levying of these contributions.

7.2 Support and Advice

The following staff are available to provide advice on this Policy

Manager, Infrastructure Operations
Works Engineer, Infrastructure Operations
Director, Infrastructure Services

7.3 Communication

The community and Council staff will be informed of this Policy revision through Council's external and internal websites.

7.4 Procedures and Forms

As part of the delivery of footpath and kerb and gutter projects affected landowners will be issued a notice by the Infrastructure Operations staff prior to commencement of works identifying Councils' adopted rates. On completion of works landowners will be issued with separate advice on the contribution to be paid.

8. REVIEW

This Policy is to be amended as required on an ongoing basis. A review of the Policy will be undertaken at least every two years to ensure currency. As detailed the contribution rates will be reviewed annually

KING + CAMPBELL

AJT/DM_6689

Please quote our ref: 6689_101_WIKALetter.docx

2 February 2024

The Chief Executive Officer
Port Macquarie-Hastings Council (PMHC)
PO Box 243
PORT MACQUARIE NSW 2444

Attention: Mr Alex Adkins, Land Use Planning Manager

Dear Alex,

RE: Letter of Offer to enter into a Works-In-Kind Agreement in respect to DA2014/114.1 (as amended) and DA2022/822.1 (pending) at 344 John Oxley Drive, Thrumster (Lot 1 DP 1245588) also known as The Sanctuary Residential Estate

Reference is made to our meeting held at Council's offices on 17 January 2024 with PMHC staff and representatives of The Sanctuary Residential estate.

At that meeting in-principle agreement was reached that a Works in Kind Agreement based on a Contribution Offset against the applicable S.7.11 Roads Contributions was a suitable means of recognising the Intersection and Pedestrian/Fauna Underpasses Works in Kind contribution by the Developer

Attendees at the meeting were:

- Alex Adkins – Land Use Planning Manager (PMHC)
- Tracy Sharp – Strategic Planning Coordinator (PMHC)
- Gessika Tame-Crowe Strategic Planner/Development Contributions Planner (PMHC)
- Andrew Conochie – Bird in the Hand No. 2 Pty Ltd (Developer)
- Anthony Thorne – King and Campbell
- Michael Ward – King and Campbell
- David Matthews – King and Campbell

This letter constitutes the offer discussed at our meeting to enter into a Work-In-Kind Agreement (**WIK**) pursuant to Port Macquarie-Hastings Council (**Council**) **Works-In-Kind Policy (Policy)** and the relevant parts of the following Section 7.11 Contributions Plans (**s7.11 Plans**) as adopted by Council:

- Part 2.5 – “Works in Kind” of the *Hastings Section 94 Major Roads Contributions Plan (Version.2.2)* dated April 2006; and
- Part 2.7 – “Material Public Benefits/Works-in-Kind” of the *Section 94 Local Roads Contributions Plan – Areas 13, 14 & 15 (Version 1.2)* dated June 2014.

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David Tooby
B L Arch, AAILA
Registered Landscape Architect

Scott Marchant
B Surv (Hons)
Registered Surveyor

Nigel Swift
B Arch, BA Arch, AIA
Nominated Architect
NSW Architects Registration Board No 7025
QLD Architects Registration Board No 3957

Craig Campbell
B Eng (Civil) MBA MIEAust CPEng NER
Chartered Civil Engineer

Scott Kahler
B SST Surv & B Nat Res (Hons)

Terrance Stafford
BSc, GDURP, GradCertBfireProt
Town Planner

Kim Wall
B Des Interior
Interior Designer

Trent Walsh
B Des (Arch), M Arch (Hons)
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2 February 2024

The terms of the offer are outlined in this letter and confirms that the offer meets the requirements of the Policy and the Roads s7.11 Contribution Plans.

This letter of offer is supported by the following information:

- **Attachment 1** - Draft Works in Kind Agreement prepared in accordance with Council's Works in Kind Agreement Template.
- **Attachment 2** – Summary of Costs prepared by King & Campbell based on review of processed Progress Claims and tax invoices from KAZAC Civil and Power Kinnect Electrical Works quotation dated 17 May 2023 (roundabout works only) and final tax invoice and the quotation from BNJ Landscaping for the intersection landscaping works.
- **Attachment 3** – Biodiversity Offset Costs for the Intersection Works
- **Attachment 4** – History of the communication between PMHC and the Developer with respect to the subject Works In Kind Agreement request.
- **Attachment 5** – Current Masterplan for The Sanctuary Residential Estate including proposed residential lots pursuant to DA 2022/822 (pending)

The Works-In-Kind Offer

The Developer

This offer is made on behalf of Bird in the Hand No. 2 Pty Ltd (ABN: 15 639 066 083) being the developer of The Sanctuary Residential Estate pursuant to development consent DA 2014/114 and DA 2022/822 (pending).

Works In Kind (WIK)

Bird in the Hand No. 2 Pty Ltd seeks to offset the s7.11 Roads Contributions liable under DA2014/114.1 (as amended) and DA2022/822.1 (pending) for the following Works in Kind:

1. Construction of Item 3 in Appendix 1 of the *Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15*, being described as:
Intersection (No. 4) with Partridge Creek Access – Large rural roundabout (MR765A&B)(valued at \$2.5M at the time of adoption of the Contribution Plan in June 2014)
 and
2. Construction of one (1) part of Item 9 in Appendix 1 *Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15*, being described as:
Koala & Pedestrian Underpasses x 2 (map 4.13 Area 13 DCP) (MR859A&B) (valued at \$1.69M at the time of adoption of the Contribution Plan in June 2014)

The CPI adjusted value contained in the Local Roads Contribution of the above Works in Kind in November 2023 is:

<i>Intersection (No. 4):</i>	\$3,214,962.12
<i>One (1) Koala & Pedestrian Underpass</i>	\$1,086,657.20
Total	\$4,301,619.32

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2 February 2024

The value of the constructed works is as follows:

Combined Items 1 and 2 (the Works) (Attachment 2):	\$3,786,931.01
Consultants - survey, design contract administration	
project management costs @ 8% of the Works Costs:	\$ 313,556.74
Biodiversity Offsets (Attachment 3):	\$ 132,528.19

TOTAL Value of Works In Kind = \$4,233,015.94

The construction value of the Works undertaken is \$68,603.38 less than the current value of those Works In Kind as allocated in the Local Roads Contribution Plan 2014 (adjusted by CPI to November 2023).

Proposed Contribution Offset

The Works-In-Kind Offer proposes to offset the s7.11 Roads Contributions applicable to the development consents for DA2014/114.1 (as amended) and DA2022/822.1 (pending) against the value of the Works in Kind undertaken (\$4,233,015.94) as follows:

DA2014/114.1 Current S7.11 Contributions (as published) for 235 lots:

DA2014/114.1 Current S7.11 Contributions (as published) for 235 lots.

Contribution Residential Lots	Rate per Lot	No. of Lots	Amount Payable
S94 Roads (Thrumster-Area 13)	\$16,140.00	235	\$3,792,900.00
HS94Admin Building	\$1,066.00		\$250,510.00
S94Admin Levy	\$697.00		\$163,795.00
S94 Open Space (Thrumster-Area 13)	\$7,807.00		\$1,834,645.00
Community Services 3 (Sancrox Thrumster)	\$6,112.00		\$1,436,320.00
TOTAL			\$7,478,170.00

S7.11 Contributions following Contribution Offset:

S94 Contributions following Contribution Order:			
Contribution Residential Lots	Rate per Lot	No. of Lots	Amount Payable
S94 Roads (Thrumster-Area 13)	\$16,140.00	235	\$0.00
S94 Admin Building	\$1,066.00		\$250,510.00
S94 Admin Levy	\$697.00		\$163,795.00
S94 Open Space (Thrumster-Area 13)	\$7,807.00		\$1,834,645.00
Community Services (Sancrox Thrumster)	\$6,112.00		\$1,436,320.00
TOTAL			\$3,685,270.00

As the value of the Works in Kind is greater than the 'S94 Road (Thrumster-Area 13)' total contribution amount, the draft Works In Kind Agreement proposes to also provide for a Roads Contribution Offset to DA2022/822.1 (should it be approved) as follows:

DA2022/822.1 (pending)Current S7.11 Contributions (as published) by 10 lots:

2022-2027 (pending current CIP Contributions (as passed) by 10 lot.			
Contribution Residential Lots	Rate per Lot	No. of Lot	Amount Payable
S94 Roads (Thrumster-Area 13)	\$16,140.00	10	\$161,400.00
S94 Admin Building	\$1,066.00		\$10,660.00
S94 Admin Levy	\$697.00		\$6,970.00
S94 Open Space (Thrumster-Area 13)	\$7,807.00		\$78,070.00
Community Services (Sancrox Thrumster)	\$6,112.00		\$61,120.00
TOTAL			\$318,220.00

S7.11 Contributions following Contribution Offset:

Contribution Residential Lots	Rate per Lot	No. of Lots	Amount Payable
S94 Roads (Thrumster-Area 13)	\$16,140.00	10	\$0.00
S94 Admin Building	\$1,066.00		\$10,660.00
S94 Admin Levy	\$697.00		\$6,970.00
S94 Open Space (Thrumster-Area 13)	\$7,807.00		\$78,070.00
Community Services (Sancrox Thrumster)	\$6,112.00		\$61,120.00
TOTAL			\$156,820.00

The total proposed Contribution Offset against the S7.11 Roads Contributions applicable to DA 2014_114 and 2022_822 (pending approval) is:

\$3,792,900.00 (DA 2014/114)+\$161,400.00 (DA 2022/822 consent pending)=**\$3,954,300.00**

As outlined above the Construction Value of the Works In Kind is \$4,233,015.94, which is \$278,715.94 more than the Contribution Offset sought against the applicable S7.11 Roads Contributions.

The difference between the Construction Value of the Works in Kind and the Contribution Offset is to be borne by the Developer. This offer confirms a Works in Kind with a value of \$278,715.94 over and above the applicable s7.11 liability for the Roads Contributions.

Justification of the Offer**DA2014/114.1 (as amended)**

Condition A20 of DA2014/114.1 (as amended) contemplates two (2) types of intersections that could service the development being either, in summary:

A20(a) A 'T' intersection with dedicated turn lanes (CHR and AUL) being constructed prior to any subdivision certificate releasing any residential lots; or

A20(b) A Two-lane roundabout if John Oxley Drive is a four-lane road (two-lanes in each direction); or

A one-lane roundabout subject to a Traffic Impact Assessment, prior to any industrial lots being released.

Condition A20(b) also made the following statement:

"Road and intersection works shall be constructed as warranted by the development. Cost associated with intersection and road work upgrades may be subject to offset against road contributions if works are deemed to be associated with the ultimate roundabout design and appropriate offset agreements in place with Council"

The S138 Application No. 2014-114.1 for the 2-lane roundabout design was approved by Council on 27 February 2023.

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The Developer has proceeded to construct the 2-lane roundabout and koala and pedestrian underpasses in accordance with the approved plans and it is now close to completion and handover to Council.

The Developer had originally sought a Contribution Offset against the value of the Works in Kind via an offer to negotiate a Works in Kind Agreement with Council in February 2022 prior to commencing construction of the 2-lane roundabout and underpasses.

Attachment 4 contains a summary of the correspondence between Council and the Developer and their representatives between July 2021 and November 2023 regarding the proposed Works in Kind Agreement offer with respect to the roundabout and underpasses and the Planning Agreement offer with respect to the roundabout, underpasses and sewerage infrastructure.

The Developer is therefore considered to be compliant with Condition A20 of DA2014/114.1 (as amended) in terms of constructing the *ultimate roundabout design* and seeking an *appropriate offset agreement* notwithstanding a formal Works in Kind Agreement has yet to be completed between the Developer and Council.

Council's Works-In-Kind Policy

Council's WIK Policy provides six (6) criteria for consideration when assessing a WIK offer and are addressed as follows:

- **Works to be Undertaken:** *WIK Contracts will normally only be negotiated on those works detailed in the relevant contributions plan. Application for consideration of Material Public Benefit will require approval by a Council Meeting.*

Comment: As discussed previously in the body of this letter, the Works, the subject of this offer to enter into a Works in Kind Agreement are Items 3 and 9 as listed in Appendix 1 of the *Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15* and so meet the *Works To Be Undertaken* criterion.

- **Timing of works:** *No WIK Contracts will be negotiated retrospectively, i.e. after works commence.*

Comment:

As outlined in **Attachment 4**, the initial WIK Application was lodged in February 2022 and the works were commenced following the issue of the Section 138 Approval in February 2023.

During the intervening period, an offer was made on 23 August 2022 and again on 3 August 2023 to negotiate a planning agreement with Council in relation to the contribution offsets applicable to the Works in Kind. The planning agreement offer was ultimately not accepted by Council in correspondence dated 9 November 2023.

The WIK Application does not now meet the Timing of Works criterion of the WIK Policy. However there are relevant extenuating circumstances that exist in this particular case including:

- The original WIK Application was made over 12 months prior to commencement of the relevant Intersection Works and as outlined in this correspondence meets the remaining criteria in the WIK Policy that Council uses to assess WIK applications.

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- The ongoing correspondence and consultation to and from PMHC (refer **Attachment 4**) regarding the WIK Agreement or a Planning Agreement to deal with the Contribution Offsets applicable to the construction of the Intersection & Pedestrian/Fauna Underpass Works detailed in the Local Roads CP is relevant.

This correspondence was ongoing prior to the time of the original application in February 2022 and then in the intervening period prior to the ultimate commencement of the construction of the Works.

Correspondence dated 6 October 2022 from Council (refer **Attachment 4**) includes conditional confirmation that Council contributions staff had:

"...an initial discussion with Council transport & stormwater regarding the roundabout and pedestrian/fauna underpass. I believe this can proceed; however, I need to obtain formal agreement from their section and provide to Duncan to confirm with and obtain director approval to negotiate."

This initial conditional confirmation was received 5 months prior to the Section 138 Approval for the Intersection & Pedestrian/Fauna Underpass Works and at that time (in October 2022) confirmed Council's in principle conditional support for a planning agreement to be negotiated to deal with the Contribution Offsets applicable to the Intersection & Pedestrian/Fauna Underpass Works.

Despite the initial conditional confirmation in October 2022 to negotiate a planning agreement, the Planning Agreement Offer submitted by the Developer in August 2023 was ultimately not supported by Council in correspondence dated 9 November 2023.

Council's non-acceptance of the planning agreement offer dated August 2023, does not change the fact that the current construction of Item 3 – *Thrumster Intersection No. 4* and one of the *Koala & Pedestrian Underpasses referenced in Item 9* are Works to be Undertaken as detailed in the Local Roads CP.

In principle agreement was reached with Council staff at the meeting on 17 January 2024 that a Contribution Offset could apply against the S.7.11 Roads Contributions applicable to The Sanctuary Residential Estate subject to this formal Works in Kind Agreement offer being made and ultimately accepted by the Council.

This correspondence seeks to formalise Works in Kind Agreement Offer with Council and as part of completing the Agreement with Council, also seeks to vary the Timing of Works criterion of the WIK Policy in recognition of the circumstances of the case.

- **Circumstances of the case:** *payment of cash contribution, in accordance with the provision of the Plan is unnecessary in the circumstances of the case.*

Comment: The payment of the applicable cash Roads Contributions (in accordance with the provisions of the *Hastings Section 94 Major Roads Contributions Plan (Version.2.2)* dated April 2006; and *Section 94 Local Roads Contributions Plan – Areas 13, 14 & 15 (Version 1.2)* dated May 2014) is considered unnecessary in the circumstances of this case.

The Works are Items 3 and 9 in the Local Roads Contributions Plan. As outlined above, the construction value of the completed works is similar to the current value of those items as listed in the Contribution Plan.

The total cash contribution required to be paid in accordance with the Section 7.11 Roads Contribution Plans is proposed to be offset by the value of the Works to be Undertaken as defined in the Works in Kind Policy. This Works in Kind Agreement Offer meets the Circumstances of the Case Criterion

- **Community Benefit:** *it can be demonstrated that approval of the application will be a significant benefit to the community.*

Comment: Community or Public Benefit, as defined in the *Draft for Exhibition – Local Planning agreements Practice Note – Dec 2023*, as published by the Department Planning Housing and Infrastructure (DHPI) is:

“...a benefit enjoyed by the public as a consequence of an infrastructure contribution”

The Works the subject of this offer is an infrastructure contribution as listed in Council's *Local Roads Contributions Plan* and are therefore by nature a 'Public Benefit'.

The significance that the Works perform in terms of public benefit cannot be understated in respect to the current and future traffic volumes expected to utilise the roundabout, pedestrian underpass and the koala underpass.

The Works were identified by Council in 2014 with the adoption of the *Local Roads Contributions Plan* to serve the growing population from the West Lindfield neighbourhood generally and providing direct access to The Sanctuary Residential Estate and Thrumster Business Park to the north and Timberline Residential estate to the south.

The Works in Kind also provide a public benefit through the construction of a safer intersection for vehicle movements along John Oxley Drive and a safer means of crossing John Oxley Drive for future residents and existing fauna via the pedestrian and koala underpasses.

The provision of the koala underpass of John Oxley Drive is an important milestone in the implementation of the Area 13 UIA Koala Plan of Management and is a further benefit to the community.

The Area 13 UIA KPOM has identified the need for two habitat linkages across John Oxley Drive and so this underpass is an important linkage between areas of core koala habitat on the north side of John Oxley Drive and Lake Innes Nature Reserve on the south side of John Oxley Drive.

The ultimate outcome is a public benefit over and above the 'T' type intersection that was contemplated in Condition A20(a) of the development consent for DA2014/114.1 (as amended) for the Sanctuary Residential Estate.

The value of the works exceeds the Roads Contributions payable by the Developer, providing a further public benefit value of \$278,715.94 over and above the s7.11 Roads Contribution liability of \$3,954,300.00.

This Works in Kind Agreement Offer meets Community Benefit Criterion

- **Prejudicial Impact:** *the Application must not prejudice the timing or the manner of the provision of the infrastructure for which the contribution was required.*

Prejudicial impact will have regard of all items in the Plan's Work Schedule, not only the item(s) in the Application, and will consider any impacts, both negative and positive, upon service levels.

Comment: The offset to the S7.11 Roads Contributions sought by this Offer does not prejudice the timing and manner of the provision of infrastructure in respect of Council's Roads Contributions Plans.

The contributions proposed to be offset would have otherwise been pooled and put towards Items listed in the *Local Roads Contributions Plan* including the subject Items 3 and 9 which have been constructed by the Developer.

The value of the Works exceeds the value of the Roads Contributions payable by the Developer pursuant to DA 2014/114 and DA 2022/822 (pending approval). The subject Works in Kind therefore represent a positive financial contribution to the overall financial health of the Roads Contribution Plans and the delivery of other Items in the Plan's Work Schedule.

It is noted that there are several other works on John Oxley Drive listed in Appendix 1 of the *Local Roads Contributions Plan*. Roads Contributions can be allocated to those other works, as Item 3 and half of Item 9 have now been provided by the Developer.

Items 3 and 9 are part of the essential infrastructure firstly identified in PMHC's strategic planning framework for the Area 13 Thrumster URA 15-20 years ago (Structure Plan, Development Control Plan and Area 13 Koala Plan of Management) before being included in the Local Roads CP approved by PMHC in 2014.

Accordingly, the timing of the provision of the subject Works in Kind does not prejudice the timing or the manner of the provision of the infrastructure for which the monetary Roads Contribution was required.

This Works in Kind Offer meets *Prejudicial Impact Criterion*

- **Financial Impact:** *the Application must be of reasonable cost when compared to the cost of Council's day labour (or regular contractors) to complete the work and the cost (if any) listed in the Plan's Work Schedule. Attention will also be paid to the financial health of the Plan, both with and without the approval of the Application.*

Comment:

This Works in Kind Agreement Offer confirms that the WIK associated with Intersection Item 3 and one of the Pedestrian/Fauna Underpasses in Item 9 of the Local Roads CP satisfies the *Financial Impact Criterion* as follows:

- Items 3 and 9 are both 100% development contribution funded. The Local Roads Contribution Plan's Works Schedule confirms that the planned cost to complete the Works was \$3,345,000 at the time the Plan was adopted in June 2014.

As outlined above the CPI adjusted cost to complete the Works is \$4,301,619.32.

- As also outlined above and in Attachment 1 the construction value of the Works in Kind undertaken is \$4,233,015.94 and so is consistent with the cost listed in the Plan's Work Schedule

In conclusion, the subject Works in Kind Agreement is consistent with five (5) of the six(6) criteria of the Council's Works in Kind Policy. This Offer seeks Council's agreement to enter into a Works in Kind Agreement with Bird in the Hand No. 2 Pty Ltd while varying the Timing of Works criterion of the policy considering the particular circumstances of this case.

The Contributions Plans

As previously discussed in the body of this letter, this Offer to enter into a Works in Kind Agreement seeks to offset s7.11 Roads Contributions under the following contributions plans:

- *Hastings Section 94 Major Roads Contributions Plan (Version.2.2)* dated April 2006; and
- *Section 94 Local Roads Contributions Plan – Areas 13, 14 & 15 (Version 1.2)* dated May 2014.

Each contribution plan references Council's ability to consider Works-In-Kind and Material Public Benefits in lieu of the payment of monetary contributions.

Part 2.5 of the *Major Roads Plan* refers to Council's WIK Policy as the assessment criteria for consideration of a WIK offer, which has been addressed in the paragraphs above. The Local Roads Plan, whilst also referring to the WIK Policy, contains the following criteria:

- a. *The value of the works to be undertaken is at least equal to the value of the contribution that would otherwise be required under this plan; and*
- b. *The standard of the works is to council's full satisfaction; and*
- c. *The provision of the material public benefit will not prejudice the timing of the manner of the provision of public facilities included in the works program; and*
- d. *Other as appropriate in the circumstances.*

Criteria's 'a.' and 'c.' above are similar to criteria addressed under the WIK Policy and do not need to be readdressed.

In terms of criteria 'b.' the Works are being undertaken in accordance with Council approved S138 Approval, the plans of which is included in Schedule 1 of the *Draft WIK Agreement* provided as **Attachment 1**.

The works are nearing completion and final inspections required to be carried out by Council are underway.

Regarding criteria 'd.', the 'other' circumstance is that Condition A20(b) of development consent DA2014/114.1, contemplates that a WIKA would be a reasonable outcome to offset the cost of the Works should the 'ultimate roundabout' be constructed by the Developer, which has previously been discussed in the body of this letter.

Case Law

As discussed at our meeting on 17 January 2024, Council is referred to the following Land and Environment Court case, which contains similar circumstances to those discussed in the body of this letter, where the Court found that the public benefits provided by the developer constituted a reasonable circumstance in which offsets to the monetary contributions could be accepted:

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Beaini Projects Pty Ltd v Cumberland Council [2019] NSWLEC 1547
(https://www.lindsaytaylorlawyers.com.au/in_focus/court-reduces-monetary-contribution-for-material-public-benefit-required-by-works-condition-of-consent/)

Conclusion

This offer provides Council with reasonable circumstances under which a Works in Kind Agreement as provided in draft as **Attachment 1**, can be entered into with Bird in the Hand No. 2 Pty Ltd. The offer demonstrates that the applicable s7.11 Roads Contribution offsets can be provided in lieu of the provision of the following Works in Kind:

- a. Construction of Item 3 in Appendix 1 of the *Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15*, being described as:

Intersection (No. 4) with Partridge Creek Access – Large rural roundabout (MR765A&B)

And

- b. Construction of one (1) part of Item 9 in Appendix 1 *Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15*, being described as:

Koala & Pedestrian Underpasses x 2 (map 4.13 Area 13 DCP) (MR859A&B)

The value of the Works in Kind is \$278,715.94 over and above the s7.11 Roads Contribution offset sought in the amount of \$3,954,300.00 against the Roads Contributions required to be paid pursuant to development consent DA 2014/114 and 2022/822 (approval pending).

Should you require any additional information in relation to this Offer, please do not hesitate to contact either David Matthews or the undersigned on Phone (02) 6586 2555.

Yours sincerely

King & Campbell Pty Ltd



Anthony Thorne

cc Client
encl. As listed.

The Sanctuary Residential Estate

Works-in-Kind Agreement

Port Macquarie Hastings Council

Bird in the Hand No. 2 Pty Ltd

Developer

PN: [related parcel number]

Related Reference: [DA2014/114.1 & DA2022/822.1](#)

Date: [Draft XX January 2024](#)

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

The Sanctuary Residential Estate
Works-in-Kind Agreement
Summary Sheet

Council:

Name: Port Macquarie-Hastings Council, ABN 11 236 901 601.
Address: Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444
Telephone: (02) 6581 8111
Facsimile: (02) 6581 8123
Representative: [document officer given name] [document officer surname]
Email: council@pmhc.nsw.gov.au

Developer:

Name: Bird in the Hand No. 2 Pty Ltd (ABN: 15 639 066 083)
Address: C/- King and Campbell, PO Box 243, Port Macquarie NSW 2444
Telephone: 02 6586 2555
Representative: Andrew Conochie
Email: info@kingcampbell.com.au

Development Consents:

Development Consent for DA 2014/114.1 determined by the Council on 29 October 2015 under s4.16 of the Act to the Development and as subsequently modified; and DA2022/822.1 as lodged with - Council on 14 September 2022 in accordance with Clause 24 of the Regulation:-

Commented [DM1]: DA2022/822.1 is not yet determined. This statement can be amended if the consent issued prior to the WIK Agreement being Executed

Works:

Construction of Item 3 in Appendix 1 of the Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15, being described as:
Intersection (No. 4) with Partridge Creek Access – Large rural roundabout (MR765A&B)
And
Construction of 1 part of Item 9 in Appendix 1 Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15, being described as:
Koala & Pedestrian Underpasses x 2 (map 4.13 Area 13 DCP) (MR859A&B)
[full proposal]

Land:

[doc_pre] – 19 January 2024
[document description] - [mdu_fmt]

The Sanctuary Works-in-Kind Agreement**Port Macquarie-Hastings Council****Bird in the Hand No. 2 Pty Ltd**344 John Oxley Drive, Thrumster NSW 2444, legally described as Lot 1 DP 1245588**Security:**

See clause 14

Commented [DM2]: Not required under this agreement as provided in accordance with Condition A10 & A19 of DA2014/114.1 (as amended)

The Sanctuary Works-in-Kind Agreement**Port Macquarie-Hastings Council**Bird in the Hand No. 2 Pty LtdThe Sanctuary Residential Estate**Works-in-Kind Agreement****Parties**

Port Macquarie Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets,
Port Macquarie, New South Wales, 2444 (**Council**)

and

Bird in the Hand No. 2 Pty Ltd ABN: 15 639 066 083 care of King and Campbell, PO Box 243,
Port Macquarie NSW 2444. (**Developer**)

Background

A The Developer is entitled to act upon the Development Consent.

B The Development Consent requires the Developer to make the Monetary Contributions for s7.11 Major Roads and Local Roads in accordance with the relevant contributions plans as listed in Condition 20 of DA2014/114.1 (as amended) and the attached Notice of Payment, as updated from time to time.

BC The Developer has lodged DA2022/822.1 with Council on 14 September 2022 and seeks development consent for an additional 10 (ten) residential lots. Should consent be issued by Council for this DA the Council will impose conditions for the Developer to make Monetary Contributions for s7.11 Major Roads and Local Roads in accordance with the relevant s7.11 contributions plans similarly to DA2014/114.1 (as amended).

CD The Council and the Developer wish to enter into this Agreement to make provision for the Works by the Developer in satisfaction of the Developer's obligation to pay the s7.11 Major Roads and Local Roads Monetary Contributions for DA2014/114.1 (as amended) and DA2022/822.1.

E The Works comprise the

i. Construction of Item 3 in Appendix 1 of the Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15, being described as:

Intersection (No. 4) with Partridge Creek Access – Large rural roundabout (MR765A&B)

AND

ii. Construction of 1 part of Item 9 in Appendix 1 Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15, being described as:

Koala & Pedestrian Underpasses x 2 (map 4.13 Area 13 DCP) (MR859A&B).

DF The Act authorises the Council and the Developer to enter into this Agreement to make provision for the carrying out of the Works by the Developer in satisfaction of the Monetary Contributions.

Operative provisions

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement includes any schedules, annexures and appendices to this Agreement.

Construction Certificate has the same meaning as in the Act.

Contribution Offsets means the reduction in the Developer's obligation to pay the Monetary Contributions determined in accordance with clause 4.

Defects Liability Period means the period commencing on the date of Hand-Over of the Works to Council and ending 12 months after that date.

Defects Liability Bond means an unconditional bond or bank guarantee in a form, and on terms otherwise acceptable, to the Council in the amount of 10% of the total cost of the Works.

Development means development the subject of Development Application DA2014/114.1 (as amended) and DA2022/822.1 (as amended).

Development Consent means the Development Consent determined by the Council under s4.16 of the Act to the Development on 29 October 2015 and as subsequently modified, and any future Development Consents issued in respect of DA2022/822.1 under s4.16 of the Act and as subsequently modified.

Development Contribution means a monetary contribution or the dedication of land free of cost.

Equivalent Tenement (ET) has the same meaning as in *Port Macquarie Hastings Council's Development Contribution Assessment Policy 2007*, a copy of which is available from the Council, or any document that relevantly replaces that document.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Hand-Over means the hand-over to the Council of Works –in accordance with this agreement.

Indexation means indexed quarterly after the date of this Agreement in accordance with, upward movements only, of the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics.

Item of Works means an item of the Works.

Land means Lot 1 DP 1245588 [related property title] situated at 344 John Oxley Drive, Thrumster NSW 2444 [related property address].

Monetary Contributions means the monetary Development Contributions required to be paid to the Council under Condition E20<<Contribution Condition Reference>> of the Development Consent DA 2014/114 and Development Consent DA 2022/822 if it is approved by the Council.

Party means a Party to this agreement, including their successors and assigns.

~~**Rectification Certificate** means a compliance certificate within the meaning of s6.4(e)(i) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.~~

~~**Rectification Notice** means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.~~

Commented [DM3]: Although this DA is not yet approved, this wording allows the WIK to apply to any amendment to this consent in the future.

Commented [DM4]: Neither required under this agreement

The Sanctuary Works-in-Kind Agreement

Port Macquarie-Hastings Council

Bird in the Hand No. 2 Pty Ltd

Regulation means the *Environmental Planning and Assessment Regulation 2021* 00.

Security means an unconditional bond or bank guarantee in a form, and on terms otherwise acceptable, to the Council.

Subdivision Works Certificate has the same meaning as in the Act.

Works means construction of a two lane large rural roundabout that includes a koala underpass and a pedestrian underpass –using stamped and approved Section 138 Application No. 2014-114.1 dated 27 February 2023 by Port Macquarie-Hastings Council –construction plans as shown at Schedule 1 to be constructed and as referred to in Condition A20 of the Development Consent (DA2014/114.1).

Works Schedule means the schedule at Schedule 2.

Works-As-Executed-Plan means detailed plans and specifications of the completed Works.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.6 A reference to an applicable law includes a reference to anything required to be done by or under the law in relation to the Works, including anything required to be done by reason of a requirement lawfully imposed by a person or body exercising functions under the law.
 - 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.

Commented [DM5]: Not required under this agreement as provided in accordance with Condition A10 & A19 of DA2014/114.1 (as amended)

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Obligation to Carry Out Works

- 2.1 The Developer is to carry out and complete the Works to the reasonable satisfaction of Council.
- 2.2 The Developer's obligation under clause 2.1 exists irrespective of whether the Developer:
 - 2.2.1 carries out the Works itself, or
 - 2.2.2 enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.
- 2.3 The Developer is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, in accordance with:
 - 2.3.1 the Development Consent, and
 - 2.3.2 all applicable laws, including those relating to occupational health and safety, and
 - 2.3.3 this Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law.
- 2.4 In the event of an inconsistency between this Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.
- 2.5 It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this Agreement is supplied or made available.
- 2.6 The Works are to be Handed-Over to the Council in accordance with the Development Consent Agreement.

3 Ownership of Works, etc

- 3.1 Nothing in, or done under, this Agreement gives the Developer any right, title or interest in the Works whether at law or in equity after the Works are complete and Handed-Over to Council in accordance with this Agreement.

4 Effect of Developer's Compliance with this Agreement

- 4.1 The entering into of this Agreement by the Developer, satisfies the Developer's obligation to pay the Monetary Contributions to the following extent:
 - 4.1.1 \$3,792,900.06 (as at 1 November 2023 and subject to Indexation CPI increases), pursuant to Condition E20 of the Development Consent (DA2014/114.1) in respect of the:
 - (a) Hastings S94 Major Roads Contributions Plan; and
 - (b) S94 Local Roads Contributions Plan -Areas 13, 14 and 15; and

Commented [DM6]: Definition has been added to Clause 1.1

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

4.1.2 \$161,400 (as at 1 November 2023 and subject to Indexation CPI increases). Any carryover amount of the \$4,182,060.06 not used in Subclause 4.1.1 pursuant to a future condition to any Development Consent issued for DA2022/822.1 in respect of the:

- (a) Hastings S94 Major Roads Contributions Plan; and
(a)(b) S94 Local Roads Contributions Plan-Areas 13, 14 and 15

4.1.24.1.3 or the amount of the Cost of the Works determined by Council in accordance with Clause 5.

4.2 Clause 4.1 only takes effect when the Security has been provided to Council in accordance with clause 14 or the Works have been Handed-Over.

Commented [DM7]: Not Required as works have already commenced and securities are provided in accordance with Condition A10 & A19 of DA2014/114.1 (as amended)

5 Determination of Works Value

- 5.1 Council will consider and may approve a variation in the cost of an Item of Works if requested by the Developer following execution of this Deed.
- 5.2 The Parties acknowledge and agree that the Costs of the Works shall be determined by the Council acting reasonably having regard to the detail in the Works Schedule.
- 5.3 For the purposes of clause 5.2, the Developer must provide to the Council copies of all documents reasonably required by Council (including invoices and evidence of payment).

Commented [DM8]: Because the value of the works in 4.1.1 is to be agreed before this Deed is executed. Any variation to this amount is to be instigated by the Developer only.

6 Access to the Land

6.1 Subject to any applicable law, the Developer is to obtain the approval of the owner of the Land to enter the Land for the purposes of this Agreement.

Commented [DM9]: Clauses 6 to 14 of Template not required as works are already approved and this WIK only performs purpose of enabling the s7.11 Offset. These procedures are already part of the Development Consent, s138 Approval, and the Works are underway and almost complete. There is no need to add an additional layer of conditions via this agreement and/or potentially create any discrepancy with the DA Conditions

7 Protection of People and Property

- 7.1 The Developer is to ensure in relation to the carrying-out of the Works that:
- 7.1.1 all necessary measures are taken to protect people and property, and
- 7.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 7.1.3 nuisances and unreasonable noise and disturbances are prevented.

8 Damage and Repairs to the Works

8.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Works from any cause whatsoever which occurs prior to the date on which the Works are Handed-Over to the Council.

Commented [DM10]: Condition 7 of the s138 Approval (710.2014.0114.01) for the Roundabout Works covers rectification of defects and damage by the Applicant.

9 Hand-Over of Works

- 9.1 The Developer is to give the Council not less than 20 calendar days written notice of the date on which it proposes to Hand-Over the Works to the Council.
- 9.2 The Council may, at any time before the date specified in the notice referred to in clause 9.1, direct the Developer in writing:
- 9.2.1 to carry out work specified in the notice to complete the Works in accordance with clause 2.3 before Hand-Over to the Council, and

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
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- 9.2.2 ~~to Hand-Over the Works to the Council by a specified date completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the proposed Hand-Over pursuant to the notice under clause 9.1;~~
- 9.3 ~~The Developer is to comply with a direction referred to in clause 9.2 according to its terms and at the Developer's own cost;~~
- 9.4 ~~Before the Hand-Over of Works are handed over to the Council, the Developer is to:~~
- 9.4.1 ~~remove:~~
- (a) ~~any rubbish or surplus material, and~~
- (b) ~~any temporary works, and~~
- (c) ~~any construction plant and equipment, relating to the carrying out of the Works as the case requires.~~
- 9.4.2 ~~Provide the Defects Liability Bond to Council.~~
- 9.5 ~~The Works are taken to be Handed-Over to the Council when the Council gives the Developer written notice to that effect;~~

10 Works As Executed Plan

- 10.1 ~~No later than 60 calendar days after a notice is given under clause 9.5, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Works the subject of the notice;~~

11 Rectification of Defects

- 11.1 ~~During the Defects Liability Period the Council may give to the Developer a Rectification Notice in relation to the Works specifying:~~
- 11.1.1 ~~the Works requiring rectification;~~
- 11.1.2 ~~the action required to be undertaken by the Developer to rectify those Works, and~~
- 11.1.3 ~~the date on which those Works are to be rectified;~~
- 11.2 ~~The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice;~~
- 11.3 ~~When the Developer considers that rectification is complete, the Developer may give to request the Council to provide a Rectification Certificate relating to the Works that are the subject of the relevant Rectification Notice;~~
- 11.4 ~~A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice;~~
- 11.5 ~~If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:~~
- 11.5.1 ~~call upon the Defects Liability Bond to meet its costs in rectifying the defect, and~~
- 11.5.2 ~~recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Defects Liability Bond and the costs incurred by the Council in rectifying the defect;~~

Commented [DM11]: This is covered by both the DA Consent and the s138 approval.
DA consent - Generally via number of Conditions under Part E
- Prior to issue of Subdivision Certificate
S138 Approval - Condition 19

Commented [DM12]: Condition E16 of DA Consent 2014/114.1

Commented [DM13]: Condition 7 of the s138 Approval (710.2014.0114.01) for the Roundabout Works covers rectification of defects and damage by the Applicant.

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

12 Cost of Works carried out by Council

- 12.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Developer in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 12.2.1-12.2.3;
- 12.2 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Agreement include, but are not limited to:
- 12.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
- 12.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed or rectified, and
- 12.2.3 without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement;

Commented [DM14]: Condition 7 of the s138 Approval (710.2014.0114.01) for the Roundabout Works covers rectification of defects and damage by the Applicant.

13 Indemnity and Insurance

- 13.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Developer in carrying out any Work and the performance of any other obligation under this Agreement.
- 13.2 The Developer is to take out and keep current, or is to ensure that its contractors take out and keep current, to the reasonable satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is Handed Over to the Council in accordance with this Agreement:
- 13.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
- 13.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
- 13.2.3 workers compensation insurance as required by law, and
- 13.2.4 any other insurance required by law;
- 13.3 If the Developer fails to comply with clause 13.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 13.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
- 13.3.2 recovery as a debt due in a court of competent jurisdiction;
- 13.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 13.2;

Commented [DM15]: This is already provided in accordance with Condition 3 of the s138 Approval (710.2014.0114.01) for the Roundabout Works.

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

14 Provision of Security

- 14.1 The Developer is not entitled to Contribution Offsets to which this Agreement applies unless the requirements of this clause have been complied with.
- 14.2 Unless the Works are completed, the Developer is to provide the Council with Security in a form, on terms and for an amount agreed between the Parties.
- 14.3 For the purposes of clause 14.2, the Parties are to have regard to any policy or practice of the Council, current at the time, relating to the provision of the Security to the Council for the construction of public infrastructure by developers.
- 14.4 The Council may call upon the Security if the Council considers that the Developer has failed to comply with a notice referred to in clause 19.1 or the Council gives the Developer a termination notice under clause 19.3.
- 14.5 If the Council calls on the Security under clause 14.4, the Council may, by notice in writing to the Developer, require the Developer to provide a further Security in an amount which, together with any unused portion of any existing Security, does not exceed the amount specified in clause 14.2.
- 14.6 The Council may apply the Security in satisfaction of:
 - 14.6.1 the carrying out of the Works, and
 - 14.6.2 any liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- 14.7 The Council is to release and return the Security to the Developer, less any amount of the Security called upon by the Council in accordance with clause 19.4 within 14 days of the date the works are Handed-Over to the Council by the Developer in accordance with this Agreement.
- 14.8 The Council is not required to return any part of the Security to the Developer if the Council has given the Developer a termination notice under clause 19.3.
- 14.9 ~~Clause 16 does not apply to a dispute arising under or in relation to this clause.~~

Commented [DM16]: Not Required as works have already commenced and securities are provided in accordance with Condition A10 & A19 of DA2014/114.1 (as amended)

156 Dispute Resolution – expert determination

- ~~15.16.1~~ This clause applies to a dispute under this Agreement, which relates to a matter that can be determined by an appropriately qualified expert unless expressly provided to the contrary by this Agreement.
- ~~15.26.2~~ Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- ~~15.36.3~~ Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- ~~15.46.4~~ If a notice is given under clause ~~6~~15.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- ~~15.56.5~~ If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- ~~15.66.6~~ The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- ~~15.76.7~~ Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

167 Dispute Resolution - mediation

- ~~46.17.1~~ This clause applies to any dispute under this Agreement other than a dispute to which clause 28 applies.
- ~~46.27.2~~ Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- ~~46.37.3~~ If a notice is given under clause ~~7.2~~~~46.2~~, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- ~~46.47.4~~ If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- ~~46.57.5~~ If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

178 Arbitration Excluded

- ~~47.18.1~~ The arbitration of any dispute between the Parties arising under or in connection with Agreement is expressly excluded.

18 Failure to Carry out Works

- ~~18.1~~ Subject to clause 19, if the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council may but is not obliged to give the Developer a notice requiring:
- ~~18.1.1~~ the breach to be rectified to the Council's satisfaction; or
- ~~18.1.2~~ the carrying out of the Works to immediately cease and the breach to be rectified to the Council's satisfaction.
- ~~18.2~~ A notice given under clause 18.1 is to allow the Developer a period of not less than 28 days to rectify the breach.
- ~~18.3~~ A notice under clause 18.1.2 does not prevent the Developer from rectifying the breach the subject of the notice to the Council's satisfaction.
- ~~18.4~~ Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice given under clause 18.1:
- ~~18.4.1~~ call upon the Security in accordance with clause 14, and
- ~~18.4.2~~ carry out and complete the Works.
- ~~18.5~~ For the purposes of clause 18.4, any difference between the amount of the Security called upon by the Council and the costs incurred by the Council in completing the Works may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.
- ~~18.6~~ Clauses 15 and 16 do not prevent a notice being given under clause 18.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 15 or clause 16 ceases to apply when such a notice is given.

Commented [DM17]: Not required. The Works are almost complete and their completion is covered by various conditions of the DA Consent - Part E, which if there is any issue with the works would hold back the issue of the Subdivision Certificate. Further, as this Agreement only deals with monetary 'Roads' contributions offsets, it would be difficult for the developer to breach an obligation under this Agreement as it is Council's obligation to provide the appropriate offset when issuing a Notice of Payment for the s7.11 Contributions otherwise payable.

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

199 Termination

- ~~49.19.1~~ If the Developer commits a breach of this Agreement, the Council may, despite any other provision of this Agreement, give the Developer a written notice requiring the Developer to show cause why the Council should not terminate this Agreement.
- ~~49.29.2~~ A notice under clause 49.1 is to:
- ~~49.2.49.2.1~~ state that the notice is given under this Agreement, and
 - ~~49.2.29.2.2~~ particularise the nature of the breach by the Developer, and
 - ~~49.2.39.2.3~~ require the Developer to show cause by notice to the Council why the Council should not terminate this Agreement, and
 - ~~49.2.49.2.4~~ specify a date by which the Developer is to show cause as provided for in clause 49.2.3
- ~~49.39.3~~ If the Developer fails to show cause to the reasonable satisfaction of the Council why the Council should not terminate this Agreement in relation to the Developer's breach, the Council may terminate this Agreement by written notice to the Developer.
- ~~49.49.4~~ If the Council terminates this Agreement under clause 49.3, the rights and liabilities of the Parties are the same as they would have been at common law had the Developer repudiated this Agreement and the Council elected to treat this Agreement as at an end and recover damages.
- ~~49.5~~ ~~Clauses 15 and 16 do not prevent a notice being given under clause 19.1 or 19.3 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 15 or clause 16 ceases to apply when such a notice is given.~~

Commented [DM18]: Clauses 15 and 16 deleted

2010 Governing Law & Enforcement

- ~~20.410.1~~ This Agreement is governed by the law of New South Wales.
- ~~20.210.2~~ This Agreement may be enforced by either Party in any court of competent jurisdiction.
- ~~20.3~~ ~~Clauses 15 and 16 do not prevent the enforcement of this Agreement in any court of competent jurisdiction and any procedure commenced under clause 15 or 16 ceases to apply when such proceedings are commenced in such a court.~~
- ~~20.410.3~~ The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- ~~20.510.4~~ The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Commented [DM19]: As comment above

2111 Notices

- ~~21.411.1~~ Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- ~~21.4.411.1.1~~ delivered or posted to that Party at its address set out in the Summary Sheet.
 - ~~21.4.2~~ ~~faxed to that Party at its fax number set out in the Summary Sheet.~~
 - ~~21.4.311.1.2~~ emailed to that Party at its email address set out in the Summary Sheet.
- ~~21.211.2~~ If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or

The Sanctuary Works-in-Kind Agreement**Port Macquarie-Hastings Council****Bird in the Hand No. 2 Pty Ltd**

made by that other Party if it is delivered, posted or faxed-~~emailed~~ to the latest address or email~~fax~~ number.

21.311.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

21.3.411.3.1 delivered, when it is left at the relevant address.

21.3.211.3.2 sent by post, 2 business days after it is posted.

21.3.311.3.3 sent by email~~fax~~, as soon as the sender receives from the sender's fax email machine a read receipt~~port of an error-free transmission to the correct fax number~~.

21.411.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

22.12 Entire Agreement

22.412.1 Subject to anything expressly provided for to the contrary in this Agreement:

22.4.412.1.1 this Agreement contains everything to which the Parties have agreed in relation to the matters it deals with, and

22.4.212.1.2 no Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

23.13 Further Acts

23.413.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

24.14 Joint and Individual Liability and Benefits

24.414.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

25.15 No Fetter

25.415.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

26.16 Representations and Warranties

26.416.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

2717 Severability

- 27-117.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 27-217.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

2818 Modification

- 28-118.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

2919 Waiver

- 29-119.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 29-219.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 29-319.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

3020 Costs

- 20.1 The Developer is to pay to the Council its reasonable costs of preparing, negotiating and executing this Agreement of <<Enter Council WIK Cost>> (excluding GST) within 28 days of a written demand by the Council for that payment.
- 20.2 The written demand referred to in Clause 20.1 is to be in the form of a Tax Invoice, and
- 30-120.3 Include a summary of Council's costs of preparing, negotiating and executing this Agreement if the amount in Clause 20.1 is exceeded.

Commented [DM20]: Amount to be advised by Council prior to this Agreement being executed.

3121 GST

- 31-121.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

The Sanctuary Works-in-Kind Agreement**Port Macquarie-Hastings Council**Bird in the Hand No. 2 Pty Ltd

- 31.221.2 Subject to clause 31.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 31.321.3 Clause 31.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 31.421.4 No additional amount shall be payable by the Council under clause 31.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 31.521.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:
- 31.5.421.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 31.5.221.5.2 that any amounts payable by the Parties in accordance with clause 31.2 (as limited by clause 31.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 31.621.6 No payment of any amount pursuant to this clause 31, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 31.721.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 31.821.8 This clause continues to apply after expiration or termination of this Agreement.

The Sanctuary Works-in-Kind Agreement
Port Macquarie-Hastings Council
Bird in the Hand No. 2 Pty Ltd

Schedule 1
Plan of works

(Insert Plan of Works)

Stamped and approved Section 138 Application No. 2014-114.1 dated 27 February 2023 by Port Macquarie-Hastings Council

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The Sanctuary Works-in-Kind AgreementPort Macquarie-Hastings CouncilBird in the Hand No. 2 Pty Ltd**Schedule 2**

Works Schedule

(Insert Works Schedule)Construction of Item 3 in Appendix 1 of the Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15, being described as:Intersection (No. 4) with Partridge Creek Access – Large rural roundabout (MR765A&B)ANDConstruction of 1 part of Item 9 in Appendix 1 Port Macquarie-Hastings Council Section 94 Local Roads Contributions Plan – Areas 13, 14, & 15, being described as:Koala & Pedestrian Underpasses x 2 (map 4.13 Area 13 DCP) (MR859A&B).The agreed cost of the above works is: \$3,484,044.66 (excluding GST)

[The Sanctuary Works-in-Kind Agreement](#)

Port Macquarie-Hastings Council

[Bird in the Hand No. 2 Pty Ltd](#)

Execution

Executed as an Agreement

Dated:

Executed by the Council:

General Manager

Witness/Name/Position:

Executed by the in accordance with s127 of the Corporations Act 2001 (Cth):

Developer Name/Position

Developer Name/Position

KING + CAMPBELL

AJT/DM_6689

Please quote our ref: 6689_104_SewerWork_DeedOffer.docx

5 February 2024

The Chief Executive Officer
Port Macquarie-Hastings Council (PMHC)
PO Box 243
PORT MACQUARIE NSW 2444

Attention: Mr Cameron Hawkins, Group Manager – Planning and Design
Community Utilities

Dear Cameron,

RE: Letter of offer to enter a Works Deed for Sewerage Infrastructure Works in respect to DA2014/114.1 (as amended) and DA 2022/822 (pending) at 344 John Oxley Drive, Thrumster (Lot 1 DP 1245588) also known as the Sanctuary Residential Estate

Reference is made to our meeting held at Port Macquarie-Hastings (PMHC) sewer and water operations centre on 17 January 2024 with PMHC staff and representatives of The Sanctuary Residential estate.

Attendees at the meeting were:

- Cameron Hawkins – Group Manager – Planning and Design Community Utilities (PMHC)
- Andrew Conochie – Bird in the Hand No. 2 Pty Ltd (Developer)
- Anthony Thorne – King and Campbell
- Michael Ward – King and Campbell
- David Matthews – King and Campbell

At that meeting in-principle agreement was reached that:

- A Works Deed based on Clause 2.5 of the DSP was a suitable means of recognising the Developer's contribution to Sewerage Infrastructure Works servicing the greater catchment within the West Lindfield Residential and Partridge Creek and West Lindfield Employment neighbourhoods of the Thrumster Urban Release Area(URA).
- The Sewerage Infrastructure Works include:
 - Design and Construction of Sewer Pump Station (SPS) Thrumster #3 and the Sewer Rising Main (SRM) and Trunk Gravity Main (TGM) linking to existing Thrumster PS1. As outlined in Attachment 3 the SPS, SRM & TGM have, in consultation with PMHC, been designed to service a catchment of 1,859 Equivalent Tenements (ETs).

integrated solutions | enhancing community

urban design

civil engineering

architecture

town planning

landscape architecture

surveying

interior design

directors

David Tooby
B L Arch, AAILA
Registered Landscape Architect

Scott Marchant
B Surv (Hons)
Registered Surveyor

Nigel Swift
B Arch, BA Arch, AIA
Nominated Architect
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The Sanctuary Residential Estate (DA 2014/114) has in consultation with PMHC been determined to contain 250 ETs being the approved 230ETs at the time of the consultation and an additional 20 ETs for increased residential density following completion of the approved subdivision Works (DA 2014/114).

DA 2022/822 has subsequently been lodged with PMHC and pending approval by the Council will ultimately result in an overall residential yield for the Sanctuary Residential Estate of 245 ETs.

On that basis, 265 ETs is proposed to be allocated as the ultimate residential yield at the Sanctuary Residential Estate considering the additional 20 ETs for increased residential density following completion of the approved subdivision Works as previously agreed with PMHC staff.

- Design and construction of the Southern Trunk Gravity Main (STGM) servicing both The Sanctuary Residential Estate and the proposed residential neighbourhoods of the Thrumster URA located on the south side of John Oxley Drive. Attachment 2 contains details of the proportions of the construction costs of the STGM attributable to the Sanctuary Residential Estate and to the residential catchments serviced on the southern side of John Oxley Drive.
- The Sewerage Infrastructure Works are not contained in the current Development Servicing Plans for Water Supply and Sewerage 2014 (DSP 2014), and so the Developer will be required to pay the current DSP 2014 Sewerage Developer Contributions in accordance with Condition E(21) of Development Consent DA 2014/114.
- The Sewerage Infrastructure Works are proposed to be included in the next version of the Water Supply and Sewerage DSP which is currently expected to be adopted by the Council in 2024.

This letter constitutes an offer to enter a Works Deed (Deed) pursuant to PMHC's Works-In-Kind Policy (WIK Policy) and Clause 2.5 – Out of Sequence Development of the Port Macquarie-Hastings PMHC Development Servicing Plans for Water Supply and Sewerage (DSP) as adopted by PMHC 17 September 2014:

The terms of the offer are outlined in this letter, which address how the offer meets the requirements of the WIK Policy and the DSP.

This letter of offer is supported by the following information:

- Attachment 1 – Draft Works Deed prepared in accordance with the PMHC's Template and includes the Works Plans
- Attachment 2 – Summary of Costs prepared by King & Campbell based on review of the processed Progress Claims and tax invoices from Kazac Civil: SEP4 – SPS & Sewer Rising Main Works – The Sanctuary Stage 1 by KAZAC Civil – 1 September 2022; and 12_717 The Sanctuary SEP2 Gravity Trunk Sewer Costs BOQ.xls; and 12_717 The Sanctuary SEP4 SPS & SRM Progress Claim Dec 2023
- Attachment 3 – The Sanctuary SPS Design Parameters

- Attachment 4 – History of the communication between PMHC and the Developer with respect to the subject Works Deed request through offers to negotiate either Works in Kind or Planning Agreements.

The Works Deed Offer

The Developer

This offer is made on behalf of Bird in the Hand No. 2 Pty Ltd (ABN: 15 639 066 083) being the developer of The Sanctuary Residential Estate pursuant to development consent DA2014/114.1 (as amended).

Out of Sequence Development Offer

The Developer is constructing, as approved by PMHC for DA2014/114.1 (as amended) and Subdivision Works Certificate Application No. 17.2014.0114.04:

1. Construction of Sewer Pump Station (SPS) Thrumster #3 and the Sewer Rising Main (SRM) Truck Gravity Main (TGM) linking to existing Thrumster PS1; and
2. Construction of the Southern Trunk Sewer Main (STGM)

Items 1 and 2 (the Sewerage Infrastructure Works) have a combined construction value of \$3,065,533.54 (excluding GST), as demonstrated in the table below, which is supported by information in Attachments 2 and 3.

The Sewerage Infrastructure Works have been designed and constructed to serve the broader Thrumster Urban Release Area catchment in accordance with PMHC's requirements.

On that basis, only part of the costs of the Sewerage Infrastructure Works is proposed to be borne by the Developer being that part of the serviced catchment within the Sanctuary Residential Estate development.

This Offer to enter a Works Deed seeks the remaining proportion of the cost of the Sewerage Infrastructure Works that is attributable to the servicing of the West Lindfield Residential and the Partridge Creek and West Lindfield Employment neighbourhoods of the Thrumster Urban Release Area to be repaid from PMHC to the Developer under Clause 2.5 of the DSP.

The Apportionment for the SPS and Rising main is calculated as follows, in accordance with Council's requirements as communicated via email dated 24 March 2022 (Attachment 3):

Catchment of SPS & SRM/TGM -	1859 ET
The Sanctuary Residential Estate	265 ET
The Sanctuary Residential Estate as %	14.255%

In respect of the Gravity Trunk Sewer Main, the costs are itemised in Attachment 2, with much of the cost being attributable to The Sanctuary Residential Estate.

Hence, the calculation of refund amount is as follows:

Works	Cost
SPS and SRM/TGM connection to existing Thrumster PS1	\$2,870,805.33
Electrical connection, consultant fees (survey, design, contract administration, project management) and application fees	\$265,974.00
Subtotal 1	\$3,136,779.33
Less portion attributable to the Sanctuary (14.255%)	\$447,147.13
Subtotal 2	\$2,689,632.20
Southern Gravity Trunk Main to John Oxley Drive	\$1,090,134.20
Less portion attributable The Sanctuary Estate	\$742,077.40
Subtotal 3	\$348,056.80
Consultant Fees (8%)	\$27,844.54
Subtotal 4	\$375,901.34
Amount to be refunded is Subtotal 2 + Subtotal 4 =	\$3,065,533.54

DSP Charges

In accordance with Clause 2.4 of the DSP and Condition E20 of development consent for DA2014/114.1 the s64 Levies are payable prior to the subdivision certificate. The proposed Works Deed (Attachment 1), as per Clause 2.5 of the DSP does not seek offsets to the s64 Charges and only seeks repayment in accordance with Clause 2.5 – Out of Sequence Development of the DSP.

Therefore, the following DSP Levies via S64 will be paid to PMHC:

- Current Sewer s64 Levy is \$4,530.00 per new allotment, noting these are subject to change should a new DSP be adopted by PMHC in the future.
- The Sanctuary Residential Estate has a current residential yield of 235 residential lots (DA 2014/114). The Developer has also lodged a DA 2022/822 for an additional 10 residential lots. Pending approval of DA 2022/822 by the Council, the ultimate residential yield of the Sanctuary Residential Estate will be 245 lots.
- Hence, \$4,530 x 245 residential lots = \$1,109,850.00 Total s64 Charges based on current published rates.

Justification of the Offer

DA2014/114.1 (as amended)

The Developer has been granted approval for the Sewerage Infrastructure Works being the sewer pumping station (Thrumster #3), and the sewer rising main (SRM) and trunk gravity main(TGM) connecting with the existing sewer pump station TSSPS01 at Thrumster via Subdivision Works Certificate 17.2014.144.04.

Whilst the Works are required to enable the development of the Sanctuary Residential Estate, the Works also serve to enable development within the West Lindfield Residential and the Partridge Creek and West Lindfield Employment neighbourhoods of the Thrumster Urban Release Area.

As outlined above, the Sanctuary Residential Estate represents 14.255% of the designed ET capacity for the SPS, SRM and TGM constructed by the Developer.

Hence, an agreement is sought under Clause 2.5 of the DSP as the capital works have been designed to PMHC's requirements and forward funded by the Developer to enable the development to occur in the broader catchment of the West Lindfield Residential and the Partridge Creek and West Lindfield Employment neighbourhoods of the Thrumster Urban Release Area.

The Developer has sought to negotiate an agreement with PMHC for the additional cost of the Sewerage Infrastructure Works serving the greater catchment within the Thrumster Urban Release Area since July 2021 and prior to the Works commencing.

Attachment 4 contains a summary of the correspondence between PMHC and the Developer and their representatives between July 2021 and November 2023 regarding the proposed works in kind and planning agreement offers with respect to the Sewerage Infrastructure Work and the John Oxley Drive Intersection Work .

In summary, that correspondence notes that in-principle agreement had been reached between the Developer and PMHC to combine the John Oxley Drive Intersection works with the Sewerage Infrastructure Works within an offer to negotiate a Planning Agreement (VPA). At that time this approach was agreed for various reasons, including the delay in preparing a new Water Supply & Sewerage DSP. Relevantly, PMHC advised the Developer on 19 April 2022 that a planning agreement offer was the preferred pathway for negotiating the reimbursement of the costs of the Sewerage Infrastructure Works between the parties.

On 23 August 2022 the Developer's representative lodged an offer to enter a Planning Agreement seeking refunds for the Sewerage Infrastructure Works and the John Oxley Drive Intersection works to be constructed by the Developer. Correspondence on the Planning Agreement offer continued between PMHC and the Developer's representative, up until March 2023, when PMHC advised the VPA offer in its current form was not acceptable.

A revised VPA offer was then lodged by the Developer's representative in August 2023. That offer was ultimately rejected by PMHC on 9 November 2023 in terms of the John Oxley Drive Intersection Works. The correspondence dated 23 November 2023 also advised that the Sewerage Infrastructure Works should be discussed with PMHC's Water and Sewer Section.

Hence, the current situation has brought forth this Offer which follows on from the meeting between PMHC staff and representatives of The Sanctuary Residential Estate held at PMHC's Sewer and Water Operation Centre on 17 January 2024, as mentioned above.

PMHC's Works-In-Kind Policy

Clause 2.8 of the DSP refers to PMHC's WIK Policy when contribution offsets are sought. This offer to enter a Works Deed under Clause 2.5 of the DSP, does not seek offsets to the s64 charges which are to be paid in full.

Nevertheless, the Works can still be considered 'Work-In-Kind', as they are forward funded capital works serving the broader catchment. Thus, the terms of the WIK Policy have been addressed in the fullness of this offer.

PMHC's WIK Policy provides six (6) criteria for consideration when assessing an offer and are addressed as follows:

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5 February 2024

- Works to be Undertaken: WIK Contracts will normally only be negotiated on those works detailed in the relevant contributions plan. Application for consideration of Material Public Benefit will require approval by a PMHC Meeting.

Comment: The Works are forward funded in accordance with Clause 2.5 of the DSP, that contemplates in some circumstances, where the developer bears such costs, a repayment by PMHC, and so subject to the approval of the Council meets the Works to be Undertaken criterion.

- Timing of works: No WIK Contracts will be negotiated retrospectively, i.e. after works commence.

Comment: As outlined in Attachment 4, the initial WIK Agreement Application for the Sewerage Infrastructure Works and the John Oxley Drive Intersection Works was lodged in February 2022.

The Developer commenced the Sewerage Infrastructure Works following the issue of the Subdivision Works Certificate Application No. 17.2014.0114.04 for the Sewer Pump Station on 19 August 2022.

The Developer made an offer on 23 August 2022 and again on 3 August 2023 to negotiate a planning agreement with PMHC in relation to the Sewerage Infrastructure Works following advice from PMHC at the time that the planning agreement approach was the preferred agreement format for the negotiation of contribution offsets and/or repayment of forward funded works.

The planning agreement offer dated 3 August 2023 was ultimately not accepted by PMHC in correspondence dated 9 November 2023.

The Works Deed application does not now meet the Timing of Works criterion of the WIK Policy. However, there are relevant extenuating circumstances that exist in this particular case including:

- The original application to negotiate an agreement with PMHC was made prior to commencement of the Sewerage Infrastructure Works and as outlined in this correspondence meets the remaining criteria in the WIK Policy that PMHC uses to assess such applications.
- The ongoing correspondence and consultation between the Developer PMHC (refer Attachment 4) regarding the negotiation of either a WIK Agreement or a Planning Agreement to deal with the Contribution Offsets and/or repayment of forward funded works for the Sewerage Infrastructure Works is relevant.

As outlined above in-principle agreement was reached with PMHC staff at the meeting on 17 January 2024 that a refund via a Works Deed under Clause 2.5 of the DSP was the appropriate means now for PMHC to recognise the contribution Sewerage Infrastructure Works to the sewerage infrastructure network for the Thrumster Urban Release Area.

This correspondence seeks to formalise the Works Deed Offer with PMHC and as part of completing the Agreement with PMHC, also seeks to vary the Timing of Works criterion of the WIK Policy in recognition of the circumstances of the case.

- Circumstances of the case: payment of cash contribution, in accordance with the provision of the Plan is unnecessary in the circumstances of the case.

Comment: The payment of the cash contributions in accordance with Condition E20 of development consent DA 2014/114 and PMHC's current DSP is intended to be made under the terms of the Deed as the Sewerage Infrastructure Works are not included in the current DSP. The Works Deed is seeking a repayment for the forward funding of capital works for sewer infrastructure under Clause 2.5 of the DSP.

This Works Deed Offer meets the Circumstances of the Case criterion.

Community Benefit: it can be demonstrated that approval of the application will be a significant benefit to the community.

Comment: Community or Public Benefit, as defined in the Draft for Exhibition – Local Planning agreements Practice Note – Dec 2023, as published by the Department Planning Housing and Infrastructure is:

“...a benefit enjoyed by the public as a consequence of an infrastructure contribution”.

The Sewerage Infrastructure Works the subject of this offer, service the broader catchment of the West Lindfield Residential and the Partridge Creek and West Lindfield Employment neighbourhoods of the Thrumster Urban Release Area which was established by PMHC in 2012.

As previously discussed, the Sanctuary Residential Estate forms only 14.255% of the capacity of the system required by PMHC for the broader Thrumster URA catchment. As such, the Sewerage Infrastructure Works will enable the provision of PMHC's sewerage services to enable the planned growth within the Thrumster Urban Release Area.

This Works Deed Offer meets the Community Benefit Criterion.

- Prejudicial Impact: the Application must not prejudice the timing or the manner of the provision of the infrastructure for which the contribution was required. Prejudicial impact will have regard of all items in the Plan's Work Schedule, not only the item(s) in the Application, and will consider any impacts, both negative and positive, upon service levels.

Comment: The payment of the cash contribution in accordance with Condition E20 of development consent DA 2014/114 and PMHC's current DSP is intended to be made under the terms of the Deed and so the provision of the infrastructure for which the contribution was required will not be prejudiced.

The Works Deed is seeking a repayment for the forward funding of capital works for sewerage infrastructure under Clause 2.5 of the DSP. The Sewerage Infrastructure Work is essential to the servicing of the West Lindfield Residential and the Partridge Creek and West Lindfield Employment neighbourhoods of the Thrumster Urban Release Area which was established by PMHC in 2012.

This Works Deed Offer meets the Prejudicial Impact Criterion.

- Financial Impact: the Application must be of reasonable cost when compared to the cost of PMHC's day labour (or regular contractors) to complete the work and the cost (if any) listed in the Plan's Work Schedule. Attention will also be paid to the financial health of the Plan, both with and without the approval of the Application.

Comment: The application is supported by Attachments 2 and 3 providing costs and apportionment for PMHC's assessment. The repayment sought under this offer will not adversely affect the health of the DSP as:

- payment of the cash contribution in accordance with Condition E20 of development consent DA 2014/114 and PMHC's current DSP is intended to be made under the terms of the Deed.
- The Sewerage Infrastructure Works are proposed to be included in the updated Water Supply & Sewerage DSP to be adopted by the Council this year, and
- The Sewerage Infrastructure Works are forward funded works that would have otherwise been contemplated by PMHC to service the Thrumster Urban Release Area . The repayment for such work is also contemplated by Clause 2.5 of the DSP.

This Works Deed Offer meets Financial Impact criterion.

In conclusion, the subject Works Deed offer for the Sewerage Infrastructure Works is consistent with five (5) of the six (6) criteria of the PMHC's Works in Kind Policy. This Offer seeks PMHC's agreement to enter a Works Deed with Bird in the Hand No. 2 Pty Ltd while varying the Timing of Works criterion of the policy considering the circumstances of this case.

Conclusion

This offer provides PMHC with reasonable circumstances under which a Works Deed in accordance with Clause 2.5 of the DSP and PMHC's WIK Policy can be agreed upon, where the Developer is repaid an amount of \$3,065,533.54 for the forward funded Sewerage Infrastructure Works.

Should you require any additional information in relation to this Offer, please do not hesitate to contact David Matthews, Senior Town Planner or the undersigned on Phone (02) 6586 2555.

Yours sincerely
King & Campbell Pty Ltd



Anthony Thorne
Consultant

cc Client

encl. As listed on page 1.

Integrated Water Cycle Management Strategy

Community Exhibition - Version 4

Port Macquarie Hastings Council

Project Title IWCM Strategy – Draft Version 4
Project No.
Document Location 4515838-2081358160-121
Enquiries

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Draft V2	Draft	Lesliey Golds Luna Anindya Karen Giovinazzo Steve McAleer	Steve McAleer		
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Draft V4	Draft	Lesliey Golds Sarah Burnett	Janet Ammon	Karen Giovinazzo	08 Mar 2024



1 Acknowledgement of Country

Yii Birrbay Barray

This is Birpai Country

Nyura yii-gu mara-la barray-gu, nyaa-gi, ngarra-gi

You have come here, to the country to see, listen and remember

Gathay Nyiirun Wakulda

Let's all go together as one

We acknowledge the Birpai people, the traditional owners of the land in which we work and live. We pay our respects to Elders past, present and emerging, and extend our respect to all Aboriginal and Torres Strait Islander people who choose to call Port Macquarie Hastings home. We acknowledge the ongoing connection to the Traditional Owners and Custodians of the lands and waters of the Port Macquarie Hastings Region.



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2 A Message from our Mayor and CEO

[insert Mayor and CEO message once drafted]

DRAFT



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4 Abbreviations

Abbreviation	Definition
ABS	Australian Bureau of Statistics
CSP	Community Strategic Plan
DCP	Development Control Plan
DCCEEW	Department of Climate Change, Energy, the Environment and Water
NSW EPA	New South Wales Environment Protection Authority
IP&R	Integrated Planning and Reporting
IPRF	Integrated Planning and Reporting Framework
IWCM	Integrated Water Cycle Management
IWCMS	Integrated Water Cycle Management Strategy
LGA	Local Government Authority
LG ACT	Local Government Act 1993
LWU	Local Water Utilities
PMHC	Port Macquarie-Hastings Council
PRW	Purified Recycled Water
WWTP	Wastewater Treatment Plant
WTP	Water Treatment Plant

5 Glossary

Term	Definition
Biodiversity	Biodiversity is defined as the variety of living organisms on the planet. It includes terrestrial, aquatic, and other ecosystems and the ecological complexes of which they are a part. Biodiversity occurs at a variety of scales including genetic diversity, species diversity and ecosystem diversity. In this Strategy, biodiversity refers to plants and animals native to the Port Macquarie-Hastings Local Government Area.
Catchment	A natural drainage area, bounded by sloping ground, hills or mountains from which water flows to a low point. Flows within the catchment contribute to surface water sources as well as to groundwater sources.
Circular Economy	An economic system aimed at minimising waste and promoting the continual reuse of resources. The circular economy aims to keep products, equipment, and infrastructure in use for longer, thus improving the productivity of these resources.
Climate Change	A change in global or regional climate patterns over time; in particular, a change apparent from the mid to late 20th century onwards and attributed largely to the increased levels of greenhouse gas emissions such as carbon dioxide.
Cost Benefit Analysis	An appraisal and evaluation technique that estimates the costs and benefits of a project or program in monetary terms.
Critical Infrastructure	The assets, systems and networks required to maintain the security, health and safety, and social and economic prosperity of a community, such as energy, water, communications, transport, and health infrastructure.
Groundwater	Water located beneath the surface of the ground in the spaces between sediments and in the fractures of rock formations.
Independent Pricing and Regulatory Tribunal (IPART)	The independent pricing regulator for water, energy, public transport, and local government in NSW. IPART administers Operating Licence and determines the prices that can charge its customers.
Integrated water cycle management	Water management within an urban environment that considers all elements of the water cycle: natural aspects (such as waterways), built aspects (such as drainage systems, roads, and urban developments) and service aspects (such as drinking water supply and wastewater services).
Land use planning	The organisation of land, resources, facilities, and services with a view to securing physical and economic efficiency, social inclusion, the protection of environmental values, amenity, and health and wellbeing outcomes for urban and rural communities.

Local water utilities	Generally, council owned and operated utilities that provide water supply and wastewater services to local communities
Net Zero	Net Zero emissions are achieved when anthropogenic emissions of greenhouse gases to the atmosphere are balanced by anthropogenic removals over a specified period.
Potable water	Water that, based on current knowledge, is considered safe to drink over a lifetime, such that its consumption constitutes no significant risk to health.
Purified recycled water	Wastewater recycled by purifying or treating wastewater to an advanced level that makes it safe and suitable to go back into the drinking water supply
Rainfall independent water source	A source of water that does not depend on rainfall or stream flows for replenishment Includes seawater desalination and recycled water
Recycled water	Water that has been treated to a 'fit for purpose' standard for a specific application
Resilience	Resilience is the capacity to withstand disruption, absorb disturbances, act effectively in crisis and deal with climatic variability. For infrastructure to be resilient, it should be able to withstand disruption, operate in crisis and deal with and adapt to shocks (such as natural disasters, including bushfires and floods) and stresses (such as the vulnerability of ageing infrastructure).
Stormwater	The water resulting from rain draining into the stormwater system from roofs, roads, footpaths and other ground surfaces.
Water demand	The water needs of a community including homes, businesses, and public organisations.
Water quality	The biological, chemical, and physical properties of water.
Wastewater treatment plant	A facility to treat raw wastewater to produce treated effluent (for discharge or reuse) and biosolids (for solid waste treatment)
Wastewater	Water polluted with human and/or industrial waste that is discharged from homes and businesses in a community

Executive Summary

The Port Macquarie Hastings region is one of the fastest growing areas in New South Wales. Port Macquarie Hastings Council ("PMHC") provides safe, secure, and affordable water, wastewater, and stormwater services to maintain public health, enable our diverse economy and protect our unique and valuable environment, now and into the future. There are, however, many challenges facing our region and we need to be prepared for rapid transformation as our population grows, our assets age, and our communities' expectations change.

The Port Macquarie Hastings Council – Integrated Water Cycle Management Strategy outlines the leading principle of *"Water is essential for life. We manage the water cycle holistically to embrace sustainable solutions for all water services"* and supporting objectives which form the foundation of our approach to meet the challenges faced by the region in relation to the ongoing provision of a safe, secure, and affordable water supply, wastewater services and stormwater management.

Aligned with our Community Strategic Plan – Imagine2050, we are planning for a future that adopts sustainable and innovative practices to conserve our natural assets and deliver sound infrastructure to strengthen the liveability of our communities.

Our approach to address this challenge, seeks to integrate the provision of water supply, wastewater treatment, and stormwater management, with a view to developing and diversifying our water supply to include a rainfall independent water source in the future.

The objectives outlined in the IWCM Strategy will be achieved through the future development and implementation of supporting action plans. The action plans will outline the priority activities required to be undertaken by Council to fulfil the objectives of the Strategy.

The IWCM Strategy considers a 20+ year horizon, Council recognises that we operate in an ever-changing world. As such, Council will regularly monitor the Strategy and undertake periodic reviews and updates as required within five years or in response to significant events that require a more immediate response to enable alignment with the strategic direction of Council.



6 Setting the Scene

The PMHC local government area (LGA) covers a land area of 3,686 square kilometres and includes 34 communities spread across coastal, hinterland, urban, suburban, and rural areas. The region is situated approximately 420 kilometres north of Sydney central business district (CBD) and 510 kilometres south of Brisbane CBD, and is bounded to the north by Kempsey Shire, to the east by the Tasman Sea, to the south by Mid Coast Council, and to the west by Walcha Shire.

The area is one of the fastest growing regions in NSW and the traditional home of the Birapai people who settled the region more than 60,000 years ago. Our region is expected to grow to a population of 124,770 residents in 2056, requiring approximately 21,000 additional households, from a population of 86,638 in 2021. In 2021, we had approximately 90% of the population connected to the reticulated water supply network.

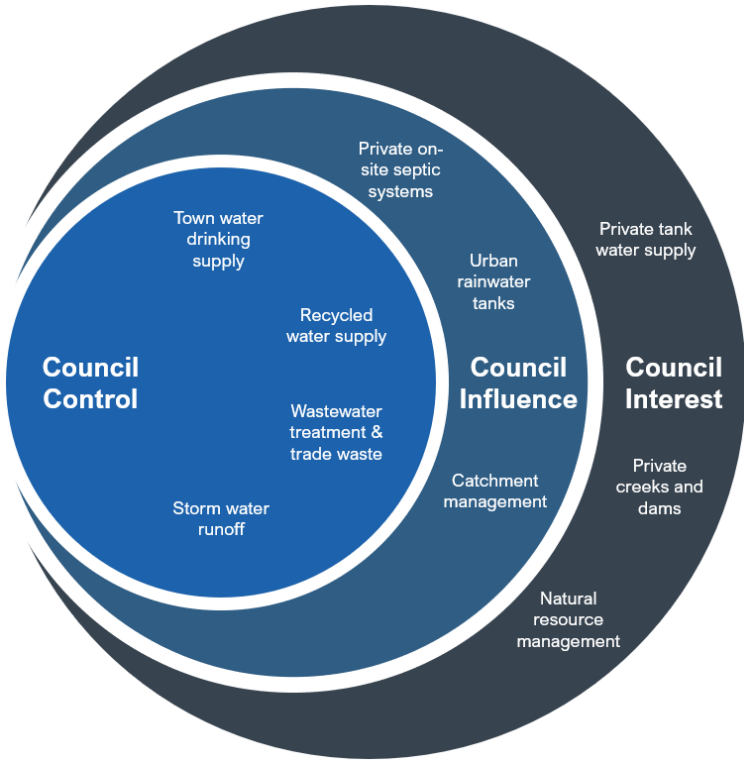
The region enjoys a diverse economy of tourism, business, agriculture and service industries. Port Macquarie city, as the regional centre and one of the North Coast's four regional cities, serves as a major hub for employment, education, services, health, recreation, and opportunities.

We are a coastal destination, renowned for extensive state forests, national parks, beaches, and waterways. The region includes the Hastings and Camden Haven Rivers and its tributaries, as well as the Lake Cathie/Lake Innes systems and the Wilson River to the north. These areas are seen as critical to the prosperity and liveability of the region by the community.



Figure 1: Regional Map

6.1 What we do



As a Local Water Utility (LWU), Council is responsible for delivering safe, secure, efficient, sustainable, and affordable drinking water supply and wastewater treatment services to the community. Our responsibility extends to stormwater services and managing the quantity and quality of stormwater runoff from lands within its urban catchments. We are responsible for the planning, design, delivery, operation, and maintenance of these systems, which operate as separate or integrated systems where it makes sense to do so.

Within Council's control, is the drinking water supply, recycled water supply schemes and wastewater treatment (excludes direct management of private septic systems) and stormwater runoff management. Council has influence in approving urban rainwater tanks and inspecting on-site septic tanks for those not connected to the main wastewater system. Services such as private tank water supply, private dams and creek water supply, and natural resource management within the river catchments are of interest to Council, however, Council does not have control or authority over these areas. The areas where Council has influence and interest are important in achieving a holistic approach to integrated water cycle management but are generally regulated by the State Government or other authorities.

6.2 Our Water Supply

We supply potable water to approximately 82,000 connected customers across the LGA, accounting for over 90% of the total population. This includes residential, commercial, and industrial customers, as well as community facilities such as parks, gardens, and sporting grounds.

Council provides these water services from two dams, via 744 km of pipes that deliver water to households and businesses and 97 km of larger pipes that carry water between different areas. There are also 20 water pump stations and 45 reservoirs with filtration provided by four water treatment plants to enable water supply for the community.

The bulk of our water supply comes from the Hastings River, via the Hastings Bulk Water Supply Scheme. Port Macquarie and Cowarra Dams provide the major storage locations, with water being drawn from the Hastings River when environmental conditions are favourable. For the smaller supply areas of Telegraph Point, Comboyne and Long Flat, water is extracted from the Wilson, Thone and Hastings Rivers, respectively, and treated at local water treatment plants for supply.

We manage two water supply dams, 841km of piping, 20 pumping stations, 45 water reservoirs, and 4 water treatment plants.

There are several small villages and rural areas not connected to the bulk water systems. Properties located in these areas generally have water supplied through rainwater tanks and/or groundwater bores and may have water delivered to the property in dry periods by water tankers. Although Council has an oversight role in tankers supplying water from the bulk water systems, the supply of water to these properties is not regulated by Council and is instead regulated by the State Government authorities in accordance with the *Water Management Act 2000* and relevant water sharing plans.

Recycled water is utilised in our region for commercial use, such as car washing, Port Macquarie Racecourse and East Port Bowling Club, for some households recycled water is soon to be provided for washing clothes, watering gardens, and flushing toilets. Whilst this water isn't for drinking purposes, it does ease the pressure on drinking water supplies by reducing the amount of water required from the environment.

The water we supply is required to meet the Australian Drinking Water Guidelines (ADWG) set and overseen by Government regulators, including NSW Ministry of Health. Regulations specify the quality of the water being supplied, the level of water security in the case of drought, as well as the maintenance and reliability of supply.

6.3 Our Wastewater System

Once water is used, Council is responsible for the collection and treatment of wastewater including the disposal or recycling of waste products.

For most customers, wastewater is collected through the wastewater network. The network is made up of pipelines which convey wastewater from property boundaries to one of the wastewater pump stations in the region. From these pump stations, wastewater is transferred through the bulk network to a wastewater treatment plant for treatment and disposal.

We manage 8 wastewater treatment schemes, which includes 648km of piping, 166 wastewater pumping stations, 171km of rising mains, and 8 wastewater treatment plants.

Council owns and operates eight wastewater schemes, serviced generally by conventional gravity wastewater reticulation systems with the wastewater collected by 648km of reticulation and transferred via 166 wastewater pump stations using 171 km of rising mains and treated at 8 Wastewater Treatment Plants.

The largest wastewater system is in Port Macquarie and provides more than half of the wastewater connections and volume for the region. This is followed by Camden Haven, Bonny Hills, Wauchope, and Kew/Kendall. Smaller systems servicing small villages have also been delivered in recent years in Comboyne, Long Flat and Telegraph Point.

Properties not connected to the wastewater system generally have on-site wastewater management systems that collect wastewater on-site prior to removal by waste collection vehicles. These on-site systems are approved and inspected by Council to ensure they meet basic operating standards.

The performance of these assets as well as the quality of waste product is regulated by the NSW Government via DCCEEW Water Group, the Environment Protection Authority (EPA) and others. These regulations specify the capacity of the systems required to minimise overflows to the environment, odour control and service reliability. The regulations and best practice standards are designed to protect public health and the environment.

6.4 Our Stormwater System

We are also responsible for the operation and maintenance of stormwater services in the region. There are 83 stormwater catchments, with more than 400 kilometres of pipes, 18 kilometres of open channels and 18,000 access pits. The primary purpose of stormwater management is to keep the community safe, and to protect community assets and the environment by effectively removing water from sensitive areas.

The management of stormwater is regulated by Council with reference to the Local Government Act 1993, other legislative instruments and overseen by several state authorities where it intersects their areas of remit. This includes dam safety, environmental regulation, environmental protection, and road and transport amongst others. In part, due to the significant floods experienced in NSW coastal areas in recent years, stormwater and flood management are a priority investment area for the Council.

We are responsible for 83 stormwater catchments, over 400km of stormwater pipes, 18km of open channels and 18,000 access pits.

7 What is Integrated Water Cycle Management?

The Water Association of Australia defines Integrated Water Management as a “process that brings together all stakeholders involved in planning and management of all water across the entire water cycle, to ensure that liveability, resilience and sustainability outcomes that the community is seeking are maximised across our cities and regions.”

Integrated Water Cycle Management (IWCM) in context for Council is defined as the integrated management of water supply, wastewater, and stormwater services within a whole of catchment strategic framework, having regard to other strategic documents for water management. IWCM helps to identify water management strengths and problems; to address these problems; to determine the appropriate management responses; and to manage the impacts so that social, environmental, and economic objectives are met.

The three components of urban water – potable (drinking) water, wastewater, and stormwater – share common issues, as well as individual problems. IWCM promotes holistic management of these services, which saves resources and improves services to customers. The integration of the systems is demonstrated pictorially in figure 3.

IWCM is of paramount importance for the sustainable and efficient management of the region's water resources. This comprehensive approach seeks to integrate the provision of water supply, wastewater treatment, and stormwater management.

By doing so, IWCM addresses a multitude of crucial objectives outlined by our community including the provision of stable infrastructure, protection of our environment, transparency in how resources are allocated across the region and ultimately quality of life considerations. IWCM promotes water security, ensuring that our communities have reliable access to clean water while also safeguarding against water scarcity and shortages.

IWCM plays a pivotal role in enhancing public health by effectively managing wastewater and stormwater, reducing the risk of waterborne diseases and pollution. Moreover, it contributes to environmental conservation by reducing the contamination of natural water bodies and preserving regional ecosystems. IWCM enhances the environment by reducing flooding, improving water quality, and promoting a higher quality of life for rural and urban dwellers. Therefore, integrated water cycle management is an essential strategy that not only meets the diverse needs of our community but also ensures the sustainable and resilient use of water resources in our region.

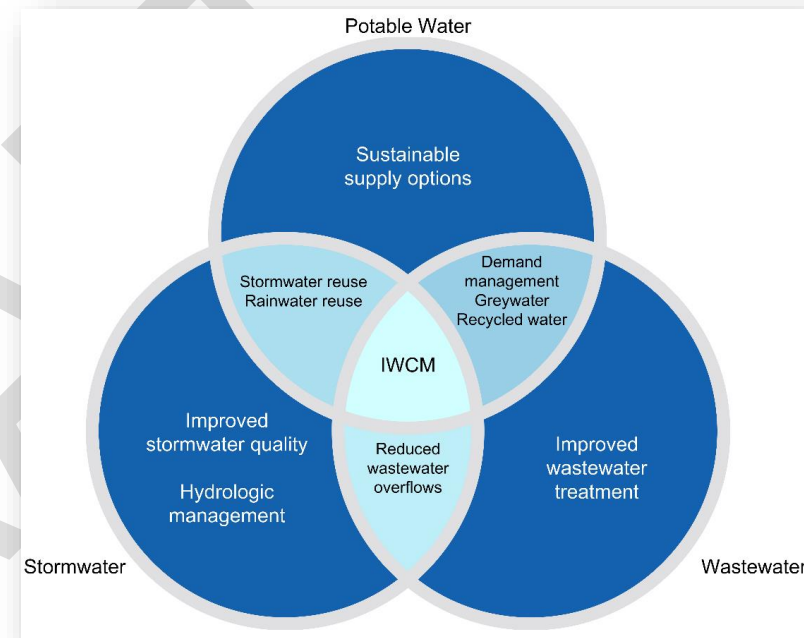


Figure 3: Integrated Water Cycle Management

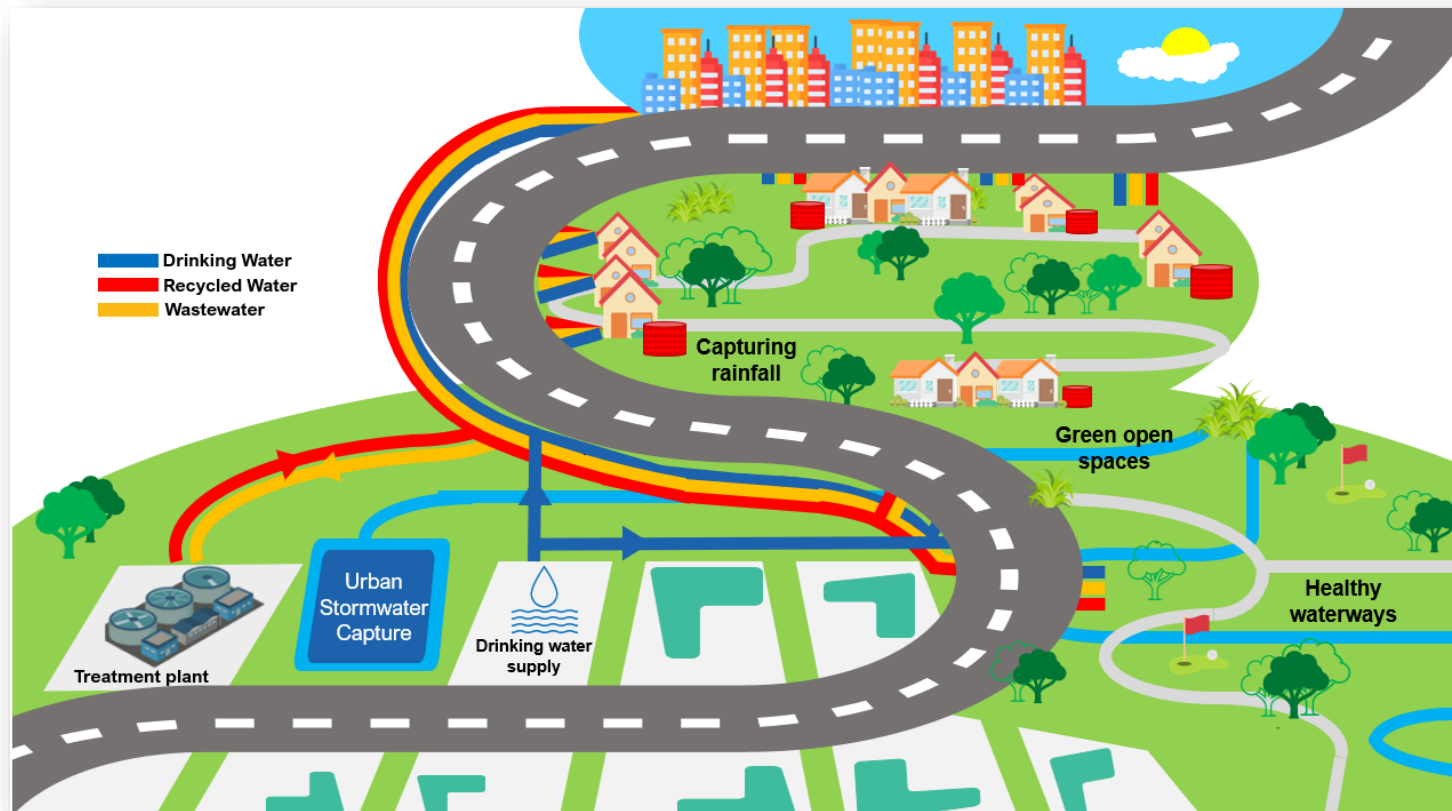


Figure 4: Our Water Cycle

8 Purpose of this Work

8.1 What are we trying to achieve?

The IWCM Strategy is a pivotal component in Council's efforts to enhance the quality of life for its residents, promote sustainability, and encourage innovative approaches to water management. By taking a systems thinking, integrated approach to water cycle management we can plan with a holistic view of the whole system. In doing so, we can maximise economic and social benefits with equality in mind without compromising the environment and future generations.

Our Community Strategic Plan – Imagine2050 describes our vision – “The most liveable, sustainable and innovative place in Australia”. Integral to creating a liveable, sustainable, and innovative place for residents and visitors is the development of the IWCM Strategy. The IWCM Strategy aligns with Council's commitment to enhancing the quality of life in the region, as it directly impacts various factors that contribute to liveability.

Liveable Place: Supports a high quality of life by ensuring a reliable and safe water supply. Access to clean water is fundamental to health and wellbeing, both for residents and visitors. It enhances the quality of the natural environment, improving resilience, and contributes to social stability by reducing the risk of water scarcity and water-related issues.

Sustainable Place: Essential for maintaining a resilient habitat for the region's diverse populations, including humans, flora, and fauna. It ensures the sustainable use of water resources, preventing over-extraction and pollution that can harm ecosystems. By managing water sustainably, Council can balance the economic and social needs of the present without compromising the ability of future generations to meet their own needs, a core principle of sustainability.

Innovative Place: Reflects innovation by exploring and implementing solutions to address water-related challenges. It encourages creative thinking in managing water systems efficiently and sustainably. The IWCM Strategy will enable Council to take advantage of opportunities presented by the changing climate and population dynamics, fostering creativity to find ways to make the water cycle management better and more adaptable to future needs.

8.2 Alignment with Planning Processes

We are responsible for delivering safe, secure, efficient, sustainable, and affordable water supply and wastewater services, subject to the Local Government Act 1993, the Water Management Act 2000, and relevant public health and environmental legislation.

From 1 July 2022, requirements for strategic planning for water and wastewater services are outlined in the NSW Department of Climate Change, Energy, the Environment and Water's 'Regulatory and assurance framework for local water utilities' ('the framework'). Under the framework, LWUs are responsible for developing their own strategic planning, with the framework aimed at supporting *effective, evidence-based strategic planning and the effective management of key risks to service provision*.

8.3 Regulatory and assurance framework

DCCEEW will assess whether a LWUs strategic understanding of and planning for each outcome is sufficient, appropriate, and robust against the 12 outcomes detailed below.

- Service needs
- Water security
- Water quality
- Environmental impacts
- System capacity, capability, and efficiency
- Key risks and challenges
- Solutions to deliver services
- Resourcing needs
- Revenue sources
- Make and implement sound strategic decisions
- Implement sound pricing and prudent financial management
- Promote integrated water cycle management

As a Local Government, Council is also required to undertake planning and reporting activities pursuant to the Integrated Planning and Reporting (IP&R) framework. The supporting guidelines set out the requirements for councils to ensure their planning and reporting are consistent with the Local Government Act 1993.

Council have developed a strategic planning framework which outlines the place of the IWCM Strategy within the broader State and Council planning structure and the Strategic Hierarchy Report which outlines the relationship between high-level strategies and execution. A summary of the key strategies and plans for water, wastewater and stormwater, and their position in the Strategic Hierarchy and IP&R framework, is included in Table 1 below.

The IWCM Strategy is a Council level document that has been developed drawing upon the collective input and insights from a diverse stakeholder group, encompassing council staff, council members, and representatives from the local community, ensuring it resonates with the vision and principles embraced by the Port Macquarie – Hastings community.

Table 1: Strategic Hierarchy, Plans/Strategies, and Integrated Planning & Reporting (IP&R) Framework

Strategy Hierarchy	Plan/Strategy	IP&R Process	IP&R Strategic Questions
Lead Strategies	Community Strategic Plan (CSP)	CSP	Where are we now? Where do we want to be?
	Infrastructure Strategy	Council Strategies and Plans	
	Local Strategic Planning Statement		
Theme Strategies	IWCM Strategy (this document)		
Strategic Plans	Water Security & Resilience Plan		How will we get there?
	Wastewater Servicing Plan		
	Stormwater Strategic Plan		
Action Plans	Wastewater and Stormwater Catchment Management Plans	Delivery Program	
	Water and Wastewater Total Asset Renewal Plans		
	Operational Plan		

The IWCM Strategy is expected to work in tandem with the NSW State Water Strategy and the Regional Water Strategy (RWS) for the North Coast. These documents set the agenda for water management outcomes, in alignment with State and Federal legislation and priorities.

As a principle and objective based document, the IWCM Strategy is focused on building on work done to date to strengthen compliance with the strategic planning inputs. A significant part of this guidance is to undertake future action planning with community engagement to inform needs, values and preferences for water and wastewater services, with reference to service levels, water quality, water security. Predominantly, this is recommended to be achieved through community engagement and/or encapsulated in the CSP. The IWCM Strategy will build on the relevant visions and objectives in the CSP to address these outcomes.

8.4 How we are measured

Our strategic planning is overseen by DCCEEW, who seek to ensure that we are managing the following key risk areas.

Water Security	Council is required to provide a secure water supply for the Port Macquarie-Hastings community, now and into the future. That means that the supply will meet the needs of customers and the community, over time and in response to changes in supply and demand, including the impacts of climate change, population growth and extreme events. What is an acceptable level of security is determined by guidelines set by the NSW Government, as well as discussions with the community to understand the expected level of service and level of investment.
Water Quality	Council is required to provide water that is fit-for-purpose. We have a sound understanding of water quality risks and have in place the measures to address these risks in line with state regulations and the Australian Drinking Water Guidelines. This includes monitoring and reporting on the performance of the water supply systems for drinking water and recycled water supplies.
The Environment	A key driver of our management of the water, wastewater and stormwater systems is understanding any current and future environmental impact and risks and any measure to manage them. The regulatory and assurance framework specifically refers to the management of wastewater and discharges of effluent the environment, however all three waters can have significant impacts on the environment. The quality and quantity of waters taken from or discharged to the environment, as well as the energy, chemicals and the production of greenhouse gases used to treat and transfer water, are all key considerations in how best provide the services required.
Assets & Infrastructure	To deliver water services across the region, Council needs to know the capacity and capability of their systems. This includes knowing the future capacity and capability, as planning for the future of our assets (which includes maintenance through an assets lifecycle) is important to ensure customer needs are met.
Customers	Customer's ability, and willingness to pay for services for sustainable infrastructure, quality of life, a thriving economy, affordable living, and transparency to sustain a safe, prosperous, and inclusive living environment that aligns with the residents' needs and expectations.
Financial Sustainability	How Council set and structure pricing to recover revenue requirements, promote efficient use of water and achieve equitable and affordable pricing and intergenerational equity.

9 How the strategy was developed

The IWCM Strategy is a principle and objectives-based document to provide strategic direction for Council's water supply, wastewater, and stormwater management service delivery to the community through the lens of an integrated water cycle.

Understanding current state, challenges, desired future state, and community values are essential to the development of IWCM Strategy. The IWCM Strategy was developed with input from internal and external stakeholders, Council and community consultation.

Strategy Development Process

In a concerted effort to engage both the Council and the community in shaping this transformative strategy, a series of carefully planned consultations were conducted. These sessions facilitated open discussions and collaboration, ensuring that a diverse range of stakeholders had the opportunity to contribute their insights to the development of a long-term plan.



Figure 5: Four Step Engagement Process

Literature Review

A detailed review of relevant Council and State Government documents was conducted to align themes, objectives, and principles for this Strategy with the other documents. A comprehensive mapping exercise was undertaken to align key themes with the DCCEEW strategic planning principles. The outcomes from the document review were utilised for pre-workshop consultations, workshops, and strategy development.

Council Engagement

Council consultation comprised of a series of workshops conducted with the aim of understanding the current and future states for the region and community. The information gathered through the consultation highlighted a synergy with the challenges of progressing IWCM in other jurisdictions.

The consultation aimed to further explore and validate the insights gathered from early consultation and literature reviews. This process helped to define and understand the challenges, opportunities, and the envisioned future of integrated water management, for Council, across different time horizons:

- The present timeframe, spanning 1-4 years
- The near-future timeframe, covering the next 4-15 years
- The long-term timeframe, extending beyond 15 years

Through these activities, themes of water security, water quality, the environment, assets and infrastructure, customers, and financial sustainability were used to frame the feedback. Various iterations were developed through this process to confirm alignment with stakeholders and community which informed the first draft of the IWCM Strategy, including a leading principle and supporting objectives.

Councillors and Executives

Consultation with the Councillors and Council Executives was also conducted to ensure the principle and objectives are aligned with Council's strategic direction, and community sentiment. The information gathered through this consultation was then used to further develop the leading strategy principle and objectives ahead of community engagement and comment.

Community Engagement

Council has engaged the community in the development of this Strategy through the conduct of a number of interactive face to face sessions, community pop-up events and a "Have Your Say" survey offered via the PMHC website and lastly the public exhibition of the draft strategy. The purpose of the community engagement was to solicit feedback and gain insight into the views, values, and preferences of the community. This feedback will be utilised to shape the final strategy, which will subsequently be presented to the Council for adoption.

Bringing it Together

The development process for the Strategy was a cohesive effort that has integrated input from diverse stakeholder and community groups. Consultation with Council and executives has ensured that the Strategy's leading principle and objectives are aligned with the Council's overarching goals and community sentiment. Subsequently, community engagement activities, including face-to-face sessions, pop-up events, online surveys, and the public exhibition of the Strategy have provided avenues for gathering feedback and insight from the community. Synthesising the input from both stakeholders and community, the Strategy emerges as comprehensive and well-informed to address the needs of the community while aligning with the strategic direction of Council.

10 Understanding the Current State

Council's current state encompasses the water related services we offer, and our state as an organisation. There is a strong emphasis on the need for a strategic, high-level approach that guides decision-making (without making or pre-empting the actual decisions). The IWCM Strategy is a living document and will be sustainable over time by providing guidance and principles for prioritising projects rather than dictating specific project lists.

There is a call for integration in various aspects related to the management of water, wastewater, stormwater, and land use planning. Integration is seen as crucial for integrated water management through effective collaboration facilitated by governance arrangements (structures which facilitate collaboration). The lack of integration between land use planning and water, and wastewater, systems historically has led to challenges in understanding the costs associated with servicing growth areas.

There are also challenges related to data availability and establishing a definitive source of truth. This limited data availability reduces our ability to quantify benefits, provide measurable impacts from investments and provide advice to developers on investments – all of which are critical to effective investment planning.

It is noted that inadequacies in asset data are primarily due to resource constraints, however, several programs are in place covering catchment analysis, new water, and wastewater (sewerage) treatment plants, hydrographic studies, erosion impacts on water quality, coastal hazards assessment, and lake, and estuary, modelling.

Water Security



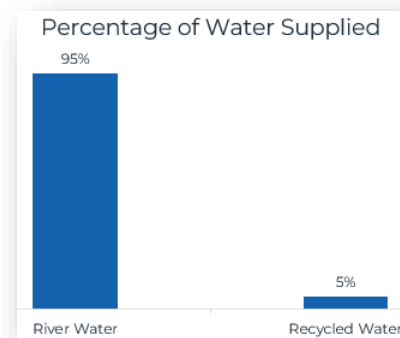
Water security is about our community having access to an adequate, reliable, and resilient quantity and quality of water for health, livelihoods, ecosystems, and productive economies.

Our water supply is rainfall dependent, with almost all of the water we supply being drawn from the rivers (Hastings, Wilson and Thone Rivers) when environmental conditions are favourable. This means that we cannot draw water from the river due to unfavourable conditions, whether that be low river flows or poor river water quality.

We currently supply recycled water for golf course and sporting field irrigation, and for some households recycled water is provided for washing clothes, watering gardens, and flushing toilets. The recycled water makes up approximately 5% of our total water supply. Whilst this water isn't for drinking purposes, it does ease the pressure on drinking water supplies by reducing the amount of water required from the environment.

Current Challenge

Being a rainfall dependent system means that we're susceptible to drought. In the 2019/20 drought, the existing dam storages went from almost full (98%) in September 2018, down to below 40% by January 2020.



Our drought management plan was created to minimise the impact on customers and the water supply during these times. With climate variability, droughts may become more common in the future.

A key challenge in having a secure water supply for our region, is that our current supply relies on stream flows created by rainfall to ensure we can extract enough water so that the community has water available for drinking and other uses. Another challenge is the restrictions we have on drawing water when water quality isn't favourable. While having large dam storages does provide a buffer to fluctuations in river flows, current storage volumes can only last approximately 2 years without being topped up from rainfall generated river flows. This buffer will reduce as demand increases with a growing population.

Water Quality



Majority of our drinking water is currently treated and disinfected by balancing the pH levels, fluoridating, and chlorinating to meet the Australian Drinking Water Guidelines. For our customers in the Wauchope, Telegraph Point, Long Flat and Comboyne regions, water is filtered by treatment plants.

Current Challenge

The key challenge to water quality at present is the limited treatment available for customers in the Port Macquarie – Camden Haven Supply Schemes, which is managed by extracting from the Hastings River when the water quality is high, and by taking water from the dam at variable locations/depths.

Maintaining appropriate levels of chlorine in the water supply is also a current challenge given the length of the supply system. Chlorine breaks down over time so that initial dosing levels can be quite high if a residual amount of chlorine is required at a supply point much further along in the network.

Managing recycled water supply as a 'purple pipe' option requires resourcing and the right level of expertise. The Lake Cathie and Bonny Hills areas have access to recycled water to use for activities that don't require drinking water quality. The recycled water comes from the Recycled Water Treatment plant which makes wastewater safe to use again for specific uses.

The Environment



Water

We extract water from several rivers in the region, with the majority of the volume coming from the Hastings River via the Koree Island pumping station. The volume of water that we can extract, and when we can extract it, is determined by the Water Sharing Plan for the Hastings River and Alluvial Water Sources (2019), which is regulated by the NSW government. We recognise that the amount of water taken from the environment means less freshwater for the ecosystems within our beautiful estuaries and wetlands, and the species which thrive from that freshwater to saltwater barrier. Whilst it has been identified as a priority, it has been a challenge to understand environmental improvement opportunities due to the lack of quality data.

Wastewater

Wastewater must be treated according to the NSW EPA standards for it to be discharged into the environment. We are responsible for majority of the wastewater services in the region including pump stations, pipes, and wastewater treatment plants. Rural villages and localities within the region, who aren't connected to the town wastewater services, utilise on-site sewage management systems, such as septic tanks. Council, with financial assistance from the NSW Government, has recently invested over \$27 million to enhance the environmental outcomes for our natural environment with the construction of town wastewater services in the townships of Telegraph Point, Long Flat and Comboyne.

Alongside residential wastewater services, we are also responsible for liquid trade waste disposal from commercial businesses or industrial activities. These businesses must have permission from us as it is important to maintain correct disposal of trade waste in the wastewater systems, for effective treatment processes.

Wastewater poses a challenge environmentally due to the potential of wastewater overflows during extreme weather events, such as heavy rain, which leads to an increase in nutrients into our catchment. An increase in nutrients can lead to algal blooms in waterways, impacting aquatic species, such as shellfish, and impacting catchment water quality.

As the Port Macquarie region grows and expands, the wastewater network also needs continued growth to support this. The network treatment and capacity are a current challenge.

Stormwater

We are also responsible for the management of the quantity and quality of stormwater that flows off the land in the area it operates and include services to manage the re-use of stormwater for any purpose. The primary objectives of stormwater management by Council are to protect the community from the risk of flooding, and to protect the environment which receives stormwater run-off.

The impacts on the environment can be summarised as changes to the quantity of freshwater going to waterways (as runoff increases through urbanisation), changes to the flow regimes of these waterways, and the introduction of pollutants to these waterways, such as pathogens and chemicals from fertilisers and roads.

At present, we have focused on the efficient and effective removal of stormwater from urban areas. The region is an area with a history of flooding, and Council have an important role in ensuring people and property are protected. Stormwater is conveyed through a large system of pits, pipes and channels which are sized to service local rainfall catchments. With changing weather patterns seemingly leading to more intense storms and rainfall, the capacity of the pit and pipe systems, based on historical design standards, to safely convey the stormwater away from properties is being challenged.

Pollution in stormwater affects the environment in various ways including causing health effects in aquatic animals and birds, as well as affect the way our catchment looks. Stormwater services are also not currently integrated with wastewater and water supply services. This is a challenge for stormwater services as, sometimes, stormwater can inflow or infiltrate into the wastewater system, which in turn then overflows, polluting the stormwater system, which can also impact water supply services.

Assets and Infrastructure



Well planned infrastructure and the effective maintenance of our assets, influences every aspect of our community – from where we live to how we work, our social interactions and recreations activities, our economic structures and increasingly our environmental footprint. We are one of many organisations, including federal and state government and the private sector responsible for providing the infrastructure, that supports our region. At a local government level, we have a lead responsibility for the provision of local roads, walking and cycling, open space infrastructure that supports urban and rural settlements and importantly, in the context of integrated water cycle management, water, stormwater, and wastewater infrastructure. Council provides wastewater infrastructure that protects public health and the natural environment and provides for the development and continuity of service for our communities. We also provide water supply infrastructure, for maintaining safe and secure drinking water, and stormwater infrastructure that helps our community maintain liveability. Understanding system capacities are highlighted as crucial factors to enable an understanding of water, wastewater (sewerage) treatment, and stormwater capabilities.

Current Challenge

It is acknowledged that the infrastructure needed to deliver these services is complex, expensive, and largely located underground, which makes it challenging to provide and maintain. To this end, the Infrastructure Strategy 2022 - 2042, outlines several challenges the region faces in relation to the provision of our infrastructure and its ongoing maintenance and are summarised below.

- **Population Growth:** The increasing population in the region requires more water and produces more wastewater, putting pressure on the existing infrastructure.
- **Aging Infrastructure:** The water, stormwater, and wastewater systems are deteriorating and struggling to meet capacity demands. Changing weather patterns and more frequent, higher intensity storms are putting pressure on stormwater infrastructure capacity.
- **Time and Capital-Intensive Solutions:** Developing new water supply solutions can be time-consuming and costly, making it challenging to address short-term droughts.
- **Water Quality and Regulatory Expectations:** Meeting community expectations and complying with water quality regulations adds complexity to water management.
- **Geographic Location:** Our region is subject to natural hazards such as flooding and coastal erosion, which is a challenge when planning infrastructure assets such as wastewater and stormwater.

Customers



Our customers primarily include residents and businesses in the region. From our population, approximately 90% are connected to our reticulated water services. Figure 6 provides a sample profile for 2024 of our population to forecast our future population growth.

Our customers have been clear and concise in outlining their priorities for Council as follows: sustainable infrastructure, quality of life, a thriving economy, affordable living, and transparency. These priorities guide Council's efforts to provide a safe, prosperous, and inclusive living environment that aligns with the residents' needs and expectations.

Previous community surveys conducted indicated a decline with both importance and satisfaction metrics for Council's performance with overall satisfaction sitting at 78% across the community.

From an investment perspective, our customers cite priorities for critical areas of infrastructure and community well-being. These priorities encompass water security, sustainable infrastructure, and stormwater infrastructure. Water supply services are paramount, given the significance of access to safe and reliable drinking water. An adequate stormwater drainage system is crucial to mitigate flood risks and environmental sustainability. Additionally, disaster management and preparedness are fundamental, enabling the community to respond effectively to natural disasters and emergencies. These key areas of importance underscore the Council's commitment to meeting the diverse and pressing needs of the community.

Current Challenge

Our customers' views are shaped by a combination of personal experiences and expectations. The views of customers can vary significantly based on individual circumstances, geographic location within the council area, and personal preferences. Council often conducts surveys, consultations, and community engagement initiatives to gather feedback from its customers and ensure that water services align with their needs and expectations.

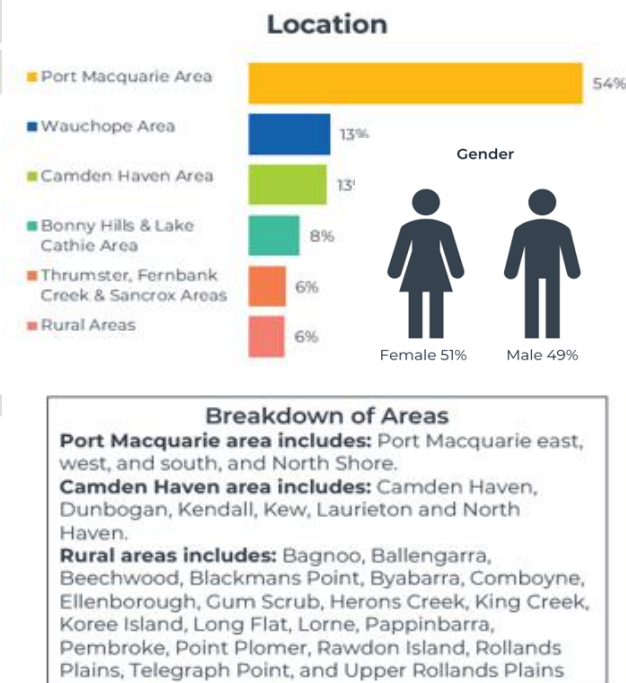


Figure 6: Sample Profile of the PMHC Community

Noting the recent impact of COVID 19, natural disasters, cost of living stresses, and skill shortages, community perceptions in relation to the provision of water services by Council are diverse.

- **Concerns about Affordability:** Affordability of water services, especially if they are on fixed or lower incomes. Water bills can be a significant part of household expenses.
- **Environmental Consciousness:** Environmental impact of water services. Express support for water conservation initiatives, efficient use of resources, and sustainable water management practices.
- **Water Quality and Health:** Sensitive to the quality and safety of the water supply. Issues related to water quality, contamination, or health concerns draw significant attention.

Financial Sustainability



Maintaining a strong and stable local economy whilst ensuring the delivery of services, facilities and infrastructure is financially sustainable is a key responsibility for us. Council services are provided by income generated through rates and annual charges, including user charges and fees for services (such as water), grants and contributions from state and federal government, developer contributions and interest received from investments and other revenue such as management income, fines and rental of Council facilities. Council acknowledges the criticality of efficiently managing these resources to meet the communities needs over the short, medium, and long term.

For larger infrastructure projects, such as Cowarra Water Treatment Plant and Thrumster Wastewater Treatment Plant, Council has the opportunity to apply for state and federal government funding, as well as utilise our own funding to deliver assets and other projects.

Working within the framework outlined in Council's Investment Policy and compliance with section 625 of the Local Government Act 1999, Council demonstrates its commitment to responsible financial stewardship by employing a range of internal control practices aimed at ensuring effective governance and transparent performance measurement in the management of its cash and investment portfolio.

These practices encompass key aspects, including robust financial planning, cash flow management to guarantee the prudent allocation of our finite resources. Moreover, the Council has in place investment approval processes, ensuring that investment decisions align with established policies and meet specified criteria.

To gauge the effectiveness of its investments, Council employs rigorous measurement and performance benchmarks, facilitating ongoing evaluation and optimisation. Additionally, the practice of regular reporting and auditing via our Annual Report and Financial Statements provides both accountability and transparency, ultimately enabling Council to maximise the utilisation of its funding and investments while maintaining fiscal responsibility.

Current Challenge

- **Revenue Constraints:** Council relies on user chargers to provide water and wastewater services, and our stormwater funding is fixed and restricted within our General Fund. Economic downturns or changes in government funding impacts revenue streams.
- **Rising Costs:** The costs of delivering essential services and infrastructure rises over time. Managing these cost increases while maintaining current and future service levels is an ongoing financial challenge.
- **Infrastructure Maintenance and Renewal:** Maintaining and renewing essential infrastructure, such as water supply systems, and wastewater treatment facilities, is a significant financial investment. Aging infrastructure is costly to repair and replace. Through consultation with our community, we know you have expressed the importance of having sustainable and adequate infrastructure.
- **Population Growth:** As the population in the region grows, our customer base also grows. Whilst this increases our income, it is offset with the increased demand for services which affects our asset and infrastructure capacity. Meeting the needs of a growing community, including providing additional services and maintaining or expanding infrastructure, can strain the Council's budget.
- **Changing Climate and Natural Disasters:** Council has experienced and will continue to be impacted by the increasing frequency and intensity of events resulting from changing climate including bushfires, floods, and droughts. Dealing with the impacts and the costs associated with disaster recovery and mitigation will be a competing factor in the allocation of Council's financial resources.
- **Regulatory Compliance:** Compliance with various state and federal regulations can require significant financial resources. This includes meeting environmental standards, work health and safety requirements, and other legal obligations.

**Top Areas of
Importance for Our
Community**

- Water Supply Services
- Adequate Storm Water Drainage System
- Sustainable Infrastructure

11 Our Future

Water is essential for life. We manage the water cycle holistically to embrace sustainable solutions for all water related services.

An integrated water services system is essential for Council's water services to run smoothly. It also supports a liveable community and increases resilience. Council will embrace innovative and sustainable solutions to managing the water cycle, including investigating water sensitive urban design for stormwater, diverse solutions to safeguard our supply, and upgrading our wastewater infrastructure to improve environmental health.

A secure water supply and effective management of the water systems is essential for the health, and wellbeing, of the community and the prosperity of the region. Households, communities, industries, cities, and towns all expect to have access to a water supply that can withstand drought and natural hazards. Council recognises the impact of a changing climate on its water services and management systems, in pursuit of its vision, and is actively responding to the evolving future conditions through the development of the IWCM Strategy. In doing this, Council strives for the region to become the most liveable, innovative, and sustainable place.

We need to ensure our region has enough water to cater for growth and provide water security in the event of future changes in climate. By safeguarding and diversifying our water supply, in an integrated way, we can build more resilient and sustainable water services now and into the future.

Empowering our community to actively participate in ensuring a holistic and diversified water supply is recognised as a pivotal element to success.

Major cities around the world source their water supplies from a variety of different means, in this regard, our region is no different. The sustainable consumption of our natural water resources requires solutions that can address the challenges of wastewater generation, increased stormwater runoff resulting in the pollution of our river systems and coastal waters.

With a clear vision of providing the region with long term and sustainable options, Council will plan towards securing sources of water for drinking and non-drinking purposes that are not rainfall dependent with increased focus on diversifying our supply.


11.1 What does the future hold?

The Strategy will enable success for Council as a water utility, which is seen as having a clear program of works, confidence in servicing zoned land, and a plan for releasing new land that is created through a more strategic process independent of developers and landholders when determining what can or cannot be serviced. To enhance our planning efficiency, early involvement of asset planners, as well as better integration across government departments can assist. Incorporating Natural Resource Management (NRM) early on, as well as improving communication between different areas, can also help to prevent costly mistakes in planning areas.

Visibility and communication with our community is essential, with this strategy being a community facing roadmap that provides direction for internal and external expectations.

Water Security

Objectives

	Number	Objective
	WS1	Safeguard our water supply for future generations
	WS2	Diversify our water supply to reduce our reliance on rainfall
	WS3	Drive initiatives and support our community to increase value in water and reduce water demand

Water security is a critical topic for the Port Macquarie Hastings region, with past droughts and water restrictions to conserve our water. It is important to understand that, when talking about water security, we are meaning those connected to the town water system. Those not on the town water system (e.g., tank water, and drawing directly from a water source etc.), are regulated by the State Government, except in the case that tankered water from the town supply is used to support those community members during drought.

The first step by Council will be the delivery of the Cowarra Water Treatment Plant, which will enhance the resilience of the water supply by enabling water extraction from the Hastings River even under more challenging conditions and ensure Council are best able to make the most of their existing sources.

To ensure there is enough water for the future, with an increasing population and uncertainty around changing weather patterns, Council are committed to investigating a rainfall independent water source to diversify the water supply. A diversified water supply is more resilient to change and is not solely dependent on rainfall for safeguarding supply. Continual planning by Council to account for future changes will enable future impacts to be mapped out and accounted for, leading to greater community resilience.

The Cowarra Water Treatment Plant will enhance the resilience and safeguard our water supply by enabling water extraction under challenging environmental conditions.


A stronger community appreciation for water reduces demand and assists in safeguarding our supply.

A strong appreciation of water, its value in supporting a liveable community, and a sustainable environment will help to improve water security across the region. Council will lead community education programs to reduce water demand and increase conservation of water, empowering our community to enable sustainable, and innovative change.

Catchment health is interlinked with a secure water supply, as well as water quality, and improving catchment health can aid in safeguarding our supply. While catchment management sits outside of Council's direct control under this strategy, Council will explore innovative and sustainable solutions through partnerships with other stakeholders to reduce pollution entering our waterways, and environmental enhancement to lessen the impact of extreme weather events.

Drinking Water Quality

Objectives

	Number	Objective
	DWQ1	Uphold our drinking water quality to ensure safe drinking water for all
	DWQ2	Continue to meet the Australian Drinking Water Guidelines and ensure we can adapt to changing standards in the future
	DWQ3	Improve water quality by implementing sustainable catchment management practices to reduce pollution and regenerate aquatic ecosystem health

Council aims to become an industry leader for drinking water quality. Ensuring our community has safe drinking water, that meets the Australian Drinking Water Guidelines, is of high importance to Council. In diversifying our water supply, we need to make sure that the quality of drinking water still meets National guidelines. As well as meeting current guidelines and standards, Council will need to account for any possible future changes in guidelines. Adopting an innovative, forward-thinking, integrated approach will enable Council to adapt to future changes in water industry.

Our catchments are also a key linkage to upholding drinking water quality, as suboptimal catchment health due to pollution and elevated nutrients, can challenge our ability to deliver high quality water. For example, excess nutrients can, in some cases, cause taste and odour issues, and in rare cases, lead to toxins in the water supply. Council will investigate initiatives and partnerships that can improve the catchment to reduce pollution, regenerate aquatic ecosystems and aid in improving water quality.

Better management of the catchments where we source our water as well as the planned upgrade of the Cowarra Water Treatment Plant will help us to exceed the Australian Drinking Water Quality Guidelines, reduce the risk of future taste and odour issues and improve the resilience of the water supply system.

The Cowarra Water Treatment Plant will help Council to exceed the Australian Drinking Water Quality Guidelines, reduce the risk of future taste and odour issues, and improve the resilience of the water supply system.



The Environment

Objectives

	Number	Objective
	E1	Enhance and regenerate the environment we operate in now, and into the future
	E2	Efficiently use and manage our finite, natural resources to reduce our ecological footprint
	E3	Manage pollution to reduce the threat to the environment

We are fortunate to have many beautiful waterways in and around the Port Macquarie Hastings region. The environment and water services are interconnected, making it crucial to enhance and regenerate them for a sustainable and secure supply, robust community well-being, and adaptability to future events. Wastewater discharges, stormwater runoff, and the impact of extracting water for drinking affect the environment, and in turn affect the community in some way.

To improve the health of our waterways, Council seeks to improve wastewater and stormwater systems to decrease the amount of pollution entering the waterways, preserve our environmental values, and create integrated green urban areas for the community to improve quality of life.

Sustainable stormwater management is vital to supporting the enhancement of the environments we operate in and can improve water quality by reducing the impacts of changes to the natural flow of waterways and reducing the release of sediments and pollution. Applying innovative solutions such as artificial wetlands, rain gardens, green roofs, permeable pavements, and stormwater harvesting, can all help to reduce the amount of runoff, and the amount of pollution in the runoff. Council will look to involve the community in education programs targeted in understanding environmental effects of polluted stormwater and how being water wise can improve your budget. The significant impact of stormwater on various community infrastructure, particularly roads, means that considering the water system holistically will lead to better outcomes across a water and non-water assets. By doing so, enhanced planning and renewal programs can be implemented, resulting in mitigation of these impacts and their subsequent reduction.

Applying innovative solutions such as artificial wetlands, rain gardens, green roofs, permeable pavements, and stormwater harvesting, can all help to reduce the amount of runoff, and the amount of pollution in the runoff.

In the future, Thrumster Wastewater Treatment Plant will increase capacity and resilience of the wastewater system, reducing the potential impact on the environment.


Council embraces a circular approach to finite resource use, promoting sustainable resource use and environmental stewardship through community education programs, and infrastructure planning. Council aims to minimise waste, maximise resource recovery, and enhance environmental outcomes using innovative technologies and best practices. Achieving this would reduce carbon emissions and our ecological footprint, in line with State and Federal Government legislation and policies.

Through diligent monitoring, Council will close the loop by treating wastewater appropriately to reduce pollution overflows in our waterways and promote a holistic approach to water services. This circular mindset ensures that we not only prioritise efficient water management but also actively contribute to enabling a healthier environment and more resilient communities. In the future, the Thrumster Wastewater Treatment Plant will increase capacity and resilience of the wastewater system, reducing the impact on the environment with potential overflows.

We are also planning the Kew/Kendall wastewater diversion to eliminate discharges into the Camden Haven River. In diverting the wastewater to the Camden Haven Wastewater Treatment Plant, it eliminates discharging into the Camden Haven River and thus protecting the estuary system that includes Watson Taylor Lake. The treated effluent is then discharged into the ocean, allowing for a greater dilution in the ocean, minimising the impact on the river estuary environment. By holistically managing the environment in which we operate, we can achieve sustainable water management.

Assets and Infrastructure

Objectives

	Number	Objective
	AI1	Renew and enhance our infrastructure to improve resilience and support sustainable growth
	AI2	Encourage the development of innovative, smart, sustainable, and efficient water services infrastructure
	AI3	Align with priorities in the Infrastructure Strategy, Resourcing Strategy and Asset Management Strategy for water services

Water services that Council offer to the community rely heavily on assets to be resilient and reliable. This infrastructure includes wastewater treatment plants, water treatment plants, pipelines, Council owned dams, and stormwater pits and pipes, among others. It is critical that Council have a comprehensive understanding of the state of our assets and infrastructure to effectively identify the timing and locations where asset renewal and infrastructure enhancement are necessary.

Imperative to renew and enhance infrastructure for improved resilience is the requirement for the broader integration of data management systems to monitor the performance of water assets. This highlights the importance of leveraging technology for informed decision-making and proactive maintenance.

In addition to this, integrating all services when planning renewals, enhancements and new infrastructure will help Council to improve resilience and support our region's growth in a financially sustainable manner. This knowledge, and the integration, is crucial for the seamless management of water services for the community.

Council commits to encouraging the use of smart, innovative, sustainable solutions for our assets and infrastructure.




Council commits to encouraging the approach of using smart, innovative, sustainable solutions when renewing, enhancing, and commissioning assets or infrastructure. This could include the use of energy efficient equipment, new technologies, and smart metering. Encouraging the use of these solutions will help to increase resilience in our assets, and systems. To further the resilience of our systems, mapping of future flooding and bushfire risks will give Council an understanding of the potential impacts to be able to plan for, and anticipate, these events.

Council will also consider co-benefits across all elements, not just water systems, such as environmental and tourism/recreational benefits, when planning asset operation and maintenance. Taking a holistic view of investments beyond like-for-like replacements and focusing on strategic value would be beneficial in adding an increase in community liveability, resilience, local economy, and ecosystem health. Thinking of co-benefits and holistic thinking will align all decisions and priorities with the expectations of a growing community in relation to core infrastructure requirements.

Customers

Objectives

	Number	Objective
	C1	Provide environmentally and financially sustainable water services that meet our communities' expectations
	C2	Engage with our community to foster water literacy, innovation, and collaboration across all water services

As an LWU, we firmly believe that to deliver a contemporary customer experience and successful outcomes that align with the expectations of our community, we need to prioritise our customers in delivering environmentally and financially sustainable water services that not only meet but exceed community expectations.

Recognising that meeting customer requirements is paramount; we prioritise understanding your needs and expectations. As such, it's critical for the Council to maintain a comprehensive understanding of the state of our assets and infrastructure. This will enable us to accurately identify when and where asset renewal and infrastructure enhancements are needed, ensuring that customer needs are met efficiently and effectively. As part of our commitment to customer satisfaction, we align our efforts with the priorities outlined in our Resourcing Strategy and Long-Term Financial Plan for water services. Ensuring the reliability and smooth operation of water services for our community is a priority for the Council. Our water infrastructure, including water and wastewater treatment plants, pipelines, dams, and stormwater drainage systems, forms the backbone of these essential services.



By prioritising essential expenditures such as renewal, maintenance, and operations, we can guarantee reliable and resilient water services that meet the evolving needs of our community, ultimately achieving successful outcomes for all stakeholders.

Our customer objectives for IWCM are also aligned and support commitments outlined in our Community Strategic Plan – Imagine 2050. In an ongoing commitment to serving our community, Council has actively engaged with the community to address key priorities and concerns.

Through comprehensive engagement initiatives, we have actively sought and will continue to engage to understand and identify community priorities within the LGA. This includes assessing the community's overall satisfaction with Council performance, gauging support levels for priority areas, desired investments in Council services, and evaluating residents' perceived quality of life within the Port Macquarie Hastings region. By valuing and incorporating the perspectives of our residents, we will continue to strive to ensure that our initiatives and services effectively meet the needs and aspirations of our community.

Key to this is our objective of promoting community education to foster water literacy, innovation, and collaboration across all water services. We value open and transparent communication with our customers and actively engage the community in educational initiatives. By promoting water literacy, we aim to empower our customers with knowledge that enables responsible water usage, encourages innovative solutions, and fosters collaboration in our collective efforts to achieve sustainable water management practices.

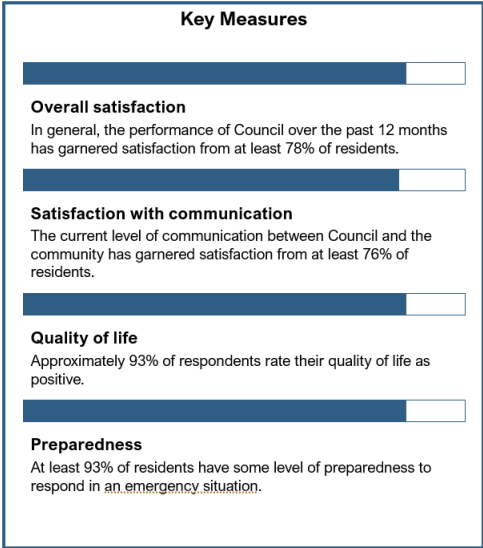


Figure 7: Community Key Measures. Source: Micromex Research (Sept 2022)

Financial Sustainability

Objectives

\$	Number	Objective
	FS1	Integrate with Resourcing Strategy, Long Term Financial Plan priorities for water services
	FS2	We engage with our community to provide financially sustainable water services

Achieving a financially sustainable approach for integrated water cycle management requires a proactive focus on several key areas, aligning with the priorities outlined in our Resourcing Strategy and Long-Term Financial Plan for water services. Firstly, we ensure that essential expenditures such as renewal, maintenance, and operations are appropriately prioritised, funded, and implemented efficiently within planned timeframes.

By aligning our financial strategies with the priorities outlined in our long-term plans, we can effectively allocate resources to meet both current and future needs, ensuring the long-term viability of our water services while also fulfilling our commitment to financial sustainability. As such, Council can optimise the use of infrastructure and consider where applicable the upgrade of existing infrastructure over the construction of new assets wherever possible, allowing us to allocate funds towards other improvement initiatives that enhance overall water services. This approach, aligning with a holistic, circular approach, not only minimises costs but also reduces the environmental and social impact associated with large-scale construction activities.

To support our long-term financial stability, Council will maintain sufficient cash reserves that can be allocated based on population needs. Council will also evaluate different approaches and consider innovative alternatives, ensuring that as communities grow and change, we have the necessary resources to meet the evolving water requirements into the future. In addition, prioritising proactive maintenance practices will be aimed at preventing costly repairs and disruptions in the systems, developing, and implementing programs for a collaborative assessment of assets. Using this approach will make sure investments are in line with our strategic direction for the community and long-term financial plans.

Our financial sustainability, as a LWU, hinges on not only our operational efficiency but also our engagement with the community we serve. Through active involvement with our customers, we aim to understand their needs and concerns, fostering a relationship built on transparency and trust. By soliciting feedback and addressing community concerns, we strive to provide water and wastewater services that are not only reliable but also financially accessible.

In line with this objective, we will explore various avenues to maintain a delicate balance between affordability and sustainability. This includes initiatives such as promoting water conservation practices, offering hardship assistance programs, and exploring innovative financing models such as the use of variable water pricing mechanisms based on the state of dam supply and drought risk indicators. By adjusting prices to reflect these factors, we seek to incentivise responsible water usage whilst ensuring fair allocation during times of scarcity.



Our goal is to ensure that everyone in our community has equitable access to essential water services while safeguarding the long-term viability of our operations. Through collaborative efforts with our stakeholders, we are committed to achieving a financially sustainable future for water and wastewater services that meets the needs of both current and future generations.

Council's approach to financial sustainability combines strategic decision-making, proactive maintenance practices, collaborative assessment methods, accurate data management, variable pricing models, and proactive funding allocation. Through these efforts, we aim to optimise value for money while providing reliable and efficient water services to our community.

Next Steps

This strategy provides the strategic direction to develop action plans, in an integrated and sustainable manner. Once this strategy is adopted by the Council, action plans for water services will be developed to achieve the objectives. This strategy will also integrate and inform other water management plans such as the catchment management plan, stormwater management plan, and wastewater management plans.

Port Macquarie Hastings Council is committed to making our region the most liveable, innovative, and sustainable region.

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