

STRATHFIELD COUNCIL

EXTRAORDINARY COUNCIL MEETING

AGENDA

Friday 15 December 2023

10am

Ironbark Room, Strathfield Council Library and
Innovation Hub, 65-67 Rochester Street



Recording of Council Meetings

Persons in the gallery are advised that under the *Local Government Act 1993* a person may NOT tape record the proceeding of a meeting of a Council or committee without the authority of the Council or committee.

“Tape record” includes a video camera and an electronic device capable of recording speech.

Mobile phones must be turned off so as not to disrupt the meeting. Anyone, including Councillors, found using a mobile phone will be told to leave the meeting immediately and for the duration of the said meeting.

An audio recording of this meeting will be taken for minute taking purposes as authorised by the *Local Government Act 1993*.

This meeting is live streamed on Council’s website to allow the community to follow Council debates and decisions without the need to attend meetings in person. Members of the public attending or speaking at a meeting agree to have their image, voice and personal information (including name and address) recorded and publicly broadcast. Strathfield Council does not accept liability for any defamatory remarks or inappropriate comments that are made during the course of a meeting. Any part of the meeting that is held in closed session will not be streamed.

TABLE OF CONTENTS

Item	Page No.
1. Open	
2. Declarations of Pecuniary or Conflict of Interest (Nature of interest to be disclosed)	
3. Apologies	
4. General Business	
Corporate and Community Services Reports	
CCS1 Finance Related Policies	5
CCS2 Code of Meeting Practice Review	27
CCS3 Councillor Workshop 11 December 2023	76
Planning, Place and Development Reports	
PE1 15-17 Columbia Lane Affordable Housing Planning Agreement	78
5. Close	

MICHAEL MAMO
GENERAL MANAGER

CCSI FINANCE RELATED POLICIES
AUTHOR: Rodney Sanjivi, Chief Financial Officer
APPROVER: Michael Mamo, General Manager

RECOMMENDATION

1. That Council approves the Draft Pricing Policy and the Draft Financial Reserves Policy to be placed on public exhibition for a minimum of 28 days.
2. That following the public exhibition period, feedback from the staff and public be considered and incorporated (where appropriate) into the Draft Pricing Policy and Draft Financial Reserves Policy, prior to being brought back to the February 2024 ordinary Council meeting to be recommended for adoption by Council.

PURPOSE OF REPORT

The purpose of the report is to provide Council with the Draft Pricing Policy and the Draft Financial Reserves policy and seek Council endorsement for these policies to be placed on public exhibition, prior to being considered for adoption.

REPORT

As Council embarks on its annual budgeting cycle for 2024/2025 financial year, the following new finance related policies have been drafted that will serve as a guiding framework, ensuring prudent and equitable decision-making for the upcoming fiscal year.

1. Draft Pricing Policy
2. Draft Financial Reserves Policy

Nb: the draft policies are appended to this report.

Draft Pricing Policy

This policy takes a strategic approach to the setting of Council fees and charges, ensuring that fees match the actual costs of delivering services. It establishes a framework that guides decision-making, preventing arbitrary fee adjustments and reducing potential biases in the fee-setting process. This policy also ensures compliance with relevant legislative requirements and standards.

This policy precedes the drafting of Council's Annual Fees and Charges which will be presented to Councillors as part of Council's Annual Budget process. The Annual Fees and Charges will require a separate resolution from Council in 2024. As part of finalising the draft Annual Fees and Charges for the next Financial Year, Councillors will be able to determine which pricing principle is applied to each fee and charge prior to the draft Annual Fees and Charges being placed on public exhibition in May 2024 as part of the process for determining the 2024/25 budget and associated documents.

Draft Financial Reserves Policy

This policy clearly defines the purpose of establishing and managing financial reserves. It identifies different types of reserves and specifies the criteria and methodologies for allocating funds to these reserves. This includes determining optimal reserve levels based on risk assessments and financial needs.

The Policy establishes guidelines for managing and governing reserves, outlining responsibilities for oversight and decision-making processes. This involves setting protocols for approving withdrawals and replenishing reserves. The policy also clearly distinguishes and segregates externally restricted funds from other reserve categories, outlining their legislative purpose or grantor specified purposes and restrictions on their use.

FINANCIAL IMPLICATIONS

There are no immediate financial implications.

ATTACHMENTS


1. SMC - Draft Pricing Policy - V1 (Nov 2023)
2. SMC - Draft Financial Reserves Policy - V1 (Nov 2023)

ATTACHMENT 1

STRATHFIELD COUNCIL

PRICING POLICY



	PRICING POLICY		
RESPONSIBILITY	Chief Financial Officer		
DATE ADOPTED	TBC	MINUTE	TBC
REVISED	N/A	REVIEW	TBC
CM10 Record Number	23/77659		
ASSOCIATED POLICIES/ DOCUMENTS	<ul style="list-style-type: none"> Strathfield Council Fees and Charges Document 		
ASSOCIATED LEGISLATION	<ul style="list-style-type: none"> Local Government Act, 1993 Local Government (General) regulation, 2021 Pricing and Costing for Council Businesses, A Guide to Competitive Neutrality, Office of the Local Government, July 1997 Fees and Charges Operating Procedure [Draft] 		

1.0 Introduction

1.1 Background and Purpose of Policy

The pricing policy provides a transparent, consistent, and equitable framework for the setting of fees and charges under s608 of the Local Government Act 1993 (the Act), for services provided by Strathfield Municipal Council.

1.2 Definitions

The definitions of certain terms contained within this policy are:

- Financial Sustainability**

Financial sustainability is defined as:

- Where Council it is able to generate sufficient funds to provide the level of services agreed with its community.
- Where planned Council services are maintained without unplanned increases in pricing or the need to cut service levels.
- Where increases to Council services do not negatively impact on its ability to deliver its operational plans.

- Principle of Competitive Neutrality**

The principle of competitive neutrality is based upon the concept of “level playing field” between persons competing in a marketplace, particularly between private and public sector competitors. Essentially, the principle is that government businesses, whether commonwealth, State, or Local, should operate without net competitive advantages over other businesses as a result of their public ownership.¹

¹ As defined in “Pricing & Costing for Council Businesses, A Guide to Competitive Neutrality, July 1997”

- **Full Cost Recovery**

Full cost recovery is defined as the recuperation of all costs incurred directly or indirectly (including depreciation of assets and reasonable corporate support overheads) in the provision of services via the pricing for that service.

1.3 Policy Statement

Council is committed to providing a high-quality and efficient service. In doing so, Council applies a principles-based approach in setting its prices for providing service by balancing the following:

- Financial sustainability (cost of providing services per s610D of the Act)
- Legislative obligations and statutory constraints
- Principles of Competitive Neutrality, and
- Councils' boarder obligation to the community.

1.4 Scope of Policy

This policy covers all pricing set by Council for its services, under s608 of the Local Government Act, 1993 (the Act).

2.0 Pricing of Council Services

2.1 Principles

The following five principles guide how Council sets fees and charges for its services:

1. Importance of the Service to the Community

Council seeks to promote fair, just and equitable access to services, promote the participation of service target groups and encourage positive health and wellbeing outcomes (per s610D of the Act).

2. Financial Sustainability

Pricing for services is informed by:

- The true cost of providing services (per s610D pf the Act)
- The capacity of the user to pay
- Expected return on investment of community assets (where relevant)

3. Competitive Neutrality

Services provided on a commercial basis as part of defined Council business will be set at market price. This is to ensure that Council does not utilise its public sector position to gain an unfair advantage over private sector market participants.²

4. Legislative Compliance

Where applicable, pricing is in accordance with legislation and consideration is given to prices suggested (or defined) for those services by a relevant industry or legislative body (per s610D of the Act) such as, charges published by the Office of Local Government.

5. Customer Focused

² Refer to "Pricing & Costing for Council Businesses, A Guide to Competitive Neutrality, July 1997".

Pricing is set in a way that is:

- Consistent across Council services
- Presented in a way that is easily accessible and understood by the community
- Simple to administer
- Reviewed annually in conjunction with Council's budgeting cycle

2.2 Pricing Basis

Guided by the pricing principles set in section 2.1, Council determines an appropriate pricing methodology that is consistent with the level of individual and community benefit for the service.

Fees and Charges are classified according to the following pricing basis as outlined in table 1 below.

Table 1 – Pricing Basis

Pricing Basis	Description
Legislative Requirements	Price of the service is determined by legislation. Depending on the set price, this may or may not allow for full cost recovery.
Partial Cost Recovery	Pricing is set at an amount that recovers less than the full cost of providing these services. Pricing is often driven by boarder community service benefits.
Full Cost Recovery	Pricing is set an amount that recovers all direct and all reasonable indirect costs of providing the service (includes depreciation of assets and reasonable corporate support overheads).
Market Based Pricing	The pricing is determined by prevailing market conditions often informed by examining alternative prices of comparable surrounding services providers (i.e., other private service providers). ³
Zero Cost Recovery	Some Council services may be provided free of charge and the whole cost is determined as a community service or a class of public good.
Rate of Return	Pricing under this basis will include Full Cost Recovery (as defined) in addition to a profit margin to factor in a rate of return to Council for assets employed in providing the service or to provide an incentive to encourage compliant behaviour.

³ Council pricing set by reference to private market competitors may not always allow for full cost recovery for Council as cost factors for Council are often different to those applicable to the private sector. (e.g., NSW Government (State) Award).

Refer to the Pricing Basis Decision Tree (attached as appendix 1 to this policy) for the process of applying the pricing basis to fees and charges.

3.0 Policy Implementation

3.1 Policy Responsibilities

This policy applies to all employees, agents, officers, and Councillors of Strathfield Municipal Council (under s608 of the Act).

All Council officers who are responsible for determining pricing of Council's services will be responsible for the setting of fees and charges in accordance with this policy.

The Chief Financial Officer (CFO) has the responsibility of organising and implementing a process for the annual review of Council's fees and charges in accordance with legislative requirements and Council's annual budgeting cycle.

3.2 Procedures

Operational procedures that support this policy, may be approved by Council's Director of Corporate and Community, the General Manager or the Executive Committee from time to time and address such issues as:

- Administrative workflow for approvals
- Setting timeframes and assigning internal responsibility

3.3 Breaches

Non-compliance with this policy may constitute a breach of the Local Government Act and may result in punitive measures being imposed upon Council which will have implications on organisational reputation and community confidence.

4.0 Document Control

4.1 Review

This policy is to be reviewed at least once every three years and when relevant legislation changes.

The Director of Corporate and Community may approve non-significant and/or minor editorial amendments from time to time that do not change the substance of the policy.

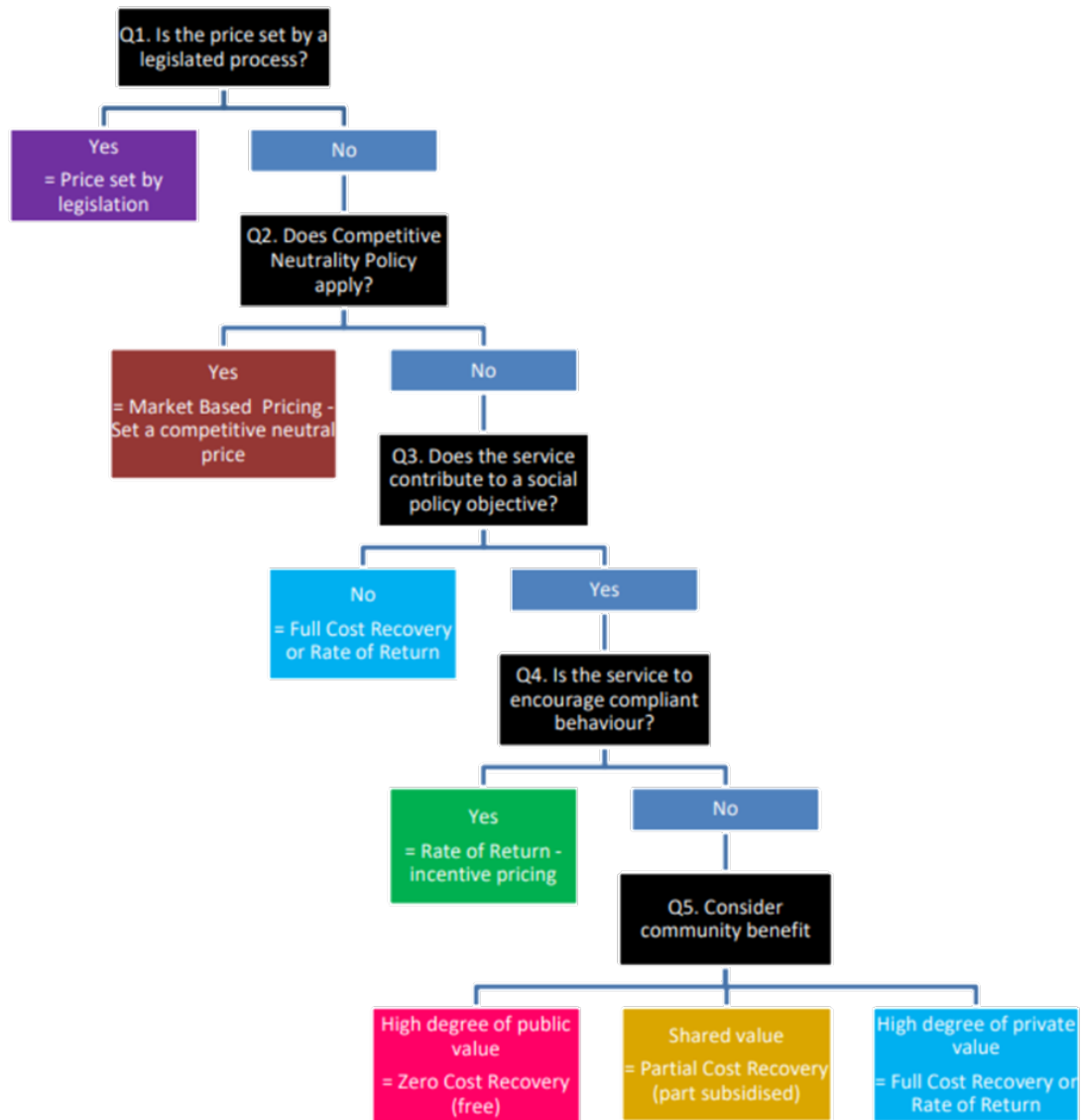
4.2 Related Documents

- Local Government Act, 1993
- Local Government (General) regulation, 2021
- Pricing and Costing for Council Businesses, A Guide to Competitive Neutrality, Office of the Local Government, July 1997
- Fees and Charges Operating Procedure [Draft]

4.3 4.0 Version Control

Version	Date	Details [Author]	Council Meeting Date
1	December 2023	Creation of document [Chief Financial Officer]	TBC

Appendix 1 – Pricing Basis Decision Tree



Appendix 2 – Pricing Principles


Pricing Principle	Pricing Basis
Public Good Service provides a broad community benefit. Inconceivable or impractical to charge for service on a user basis	Zero Cost Recovery
Practical Constraint Service is a minor part of the overall operation of the Council or the potential for revenue collection is so minor as to be outweighed by the costs of collection	Zero Cost Recovery
Shared Benefit Benefits from provision of the service accrue to the community as a whole as well as individual users (Community Service Obligation)	Partial Cost Recovery
Stimulus A stimulus to the demand for the service is required. In the short term, only part of the cost of the service is to be recovered	Partial Cost Recovery
Evasion Charging prices to recover full cost may result in widespread evasion	Partial Cost Recovery
Equity The service is targeted to low-income users	Partial Cost Recovery
Economic/Social/Community Welfare Service promotes or encourages local economic or social activity	Partial Cost Recovery
Private Good Service benefits particular users, making a contribution to their individual income, welfare or profits, without any broader benefits to the community	Full Cost Recovery
Monopoly Council has a monopoly over provision of the service and there is no community service or equity obligation	Full Cost Recovery
Development Fee set will enable Council to develop and maintain a service	Full Cost Recovery
Contribution Charges levied to compensate community for an increase in demand for service or facilities as a consequence of a development proposal	Full Cost Recovery
Regulatory: Non-Fixed Fee charges cover costs incurred by legislative requirements where no community service obligation exists	Full Cost Recovery
Regulatory: Fixed Fee fixed by legislation	Regulatory
Market Service provided is in competition with that provided by another council or agency (private or public) and there is pressure to set a price which will attract adequate usage of the service	Market Reference Pricing
In-House Service provided predominantly for Council use but sale to external markets may defray costs	Market Reference Pricing
Entrepreneurial The service is a profit-making activity and the price paid by users should recover an amount greater than the full cost of providing that service	Rate of Return Pricing
Penalty Fee charges is greater than cost of the service so as to act as a dis-incentive	Rate of Return Pricing
Utility Fee charges for possession, occupation or enjoyment of Council Land, Public Land and Air Space by Gas, Electricity, Telecommunications and Water Utilities	Rate of Return Pricing

ATTACHMENT 2

STRATHFIELD COUNCIL

FINANCIAL RESERVES POLICY



	<h2 style="text-align: center;">FINANCIAL RESERVES POLICY</h2>		
RESPONSIBILITY	Chief Financial Officer		
DATE ADOPTED	TBC	MINUTE	TBC
REVISED	N/A	REVIEW	TBC
CM10 Record Number	23/77647		
ASSOCIATED POLICIES/ DOCUMENTS	<ul style="list-style-type: none"> List all Strathfield Council Policies and other related internal documents 		
ASSOCIATED LEGISLATION	<ul style="list-style-type: none"> Local Government Act, 1993 Local Government (General) Regulation, 2021 NSW Local Government Code of Accounting Practice and Financial Reporting 		

1. Introduction

1.1. Background and Purpose of Policy

Financial Reserves are designated to allocate funds for specific Council projects and initiatives. Each Financial Reserve must align with the Integrated Planning and Reporting (IP&R) strategies. This policy ensures a clear connection between Council's Financial Reserves, the Operational Plan, Delivery Program, Council's asset management, and community plans.

1.2. Objectives of the policy

Council is dedicated to maintaining best practices in financial reserves accounting, adhering carefully to both external statutory regulations and internal management reporting standards.

The policy objective is to establish a framework that ensures clear visibility and accountability in the separation of funds derived from yearly operations, intending to set aside these resources for future long-term expenditure. This includes not only emphasising transparency but also detailing comprehensive methodologies for calculating both the aggregate fund and the yearly fluctuations within it, thereby enabling a robust financial planning strategy aligned with the Council's overarching goals and priorities.

1.3. Coverage of the Policy

This policy covers all externally and internally restricted financial reserves.

1.4. Definitions

The definitions of certain terms are:

- **Externally Restricted Reserves** - are formed due to legal mandates guiding fund usage. These funds must be entirely spent for the defined purpose and cannot support Council's general operations.

- **Internally Restricted Reserves** - are funds earmarked by the Council for specific purposes. The Council can decide to alter the purpose of these funds through resolution.

2. Policy Statement

This Policy mandates specific procedures for managing Financial Reserves by Council.

2.1. Creation, Modification and Closure of Financial reserves

All significant decisions regarding Financial Reserves, including creating new reserves, modifying existing reserves, or discontinuing any reserve, necessitate a Council resolution. Amendments to individual reserves within this schedule can be made via Council resolution without altering the policy itself.

Any initiation, cessation, or transfer of funds to or from a reserve requires explicit authorisation through a Council resolution. Such resolutions require a detailed report outlining all implications involved, and the resolution must clearly specify the transfer amount.

A comprehensive schedule detailing existing Financial Reserves, their purposes, calculation methods, target balances, responsible Council positions/committees, and approval dates/minute numbers is appended to this policy.

2.2. Accounting for Financial Reserves

Transfers from any Financial Reserve cannot exceed its existing balance at the time of transfer unless a Financial Reserve overdraft is authorised via a Council resolution. The complete ramifications of such an overdraft must be considered in all financial management plans, and there should be adequate funds within the total of all Financial Reserves to accommodate a temporary overdraft.

If borrowing from externally restricted reserves becomes necessary, Council must adhere to legislative provisions governing such borrowing. This includes, but is not limited to, obtaining ministerial approval before executing the borrowing, in addition to passing a council resolution.

Every Quarterly Budget Review Statement must contain a Financial Reserves schedule displaying:

- Actual opening balance on 1st July
- Estimated transfer to the Reserve during the financial year
- Estimated transfer from the Reserve during the financial year
- Estimated closing balance on 30th June

3. Responsibility / Responsibilities

The designated Reserve Owners specified in the appendix to this policy are accountable for the respective reserves:

- Implementing a strategic approach and achieving the set target
- Ensuring integrity consistent with the strategic approach, target, purposes, and limitations.

The Chief Financial Officer holds the responsibility for:

- Maintaining a comprehensive schedule of all Financial Reserves
- Overseeing all accounting functions related to Financial Reserves
- Providing regular reporting through the Quarterly Budget Review Statement and internal management reporting requirements.

Operational procedures to support this policy shall be approved by the Director Corporate and Community.

4. Breaches

Inappropriate usage of Externally Restricted Reserves typically violates the Local Government Act and could lead to punitive actions against the Council.

Misuse of Internally Restricted Reserves against this policy may lead to disciplinary actions.

5. Version Control

This policy is reviewed at least every four years and when relevant legislation changes.

The Director Corporate and Community may approve non-significant and/or minor editorial amendments from time to time that do not change the substance of the policy. This includes modifying the policy's appendix to add, modify, or remove financial reserves that have been altered through a Council resolution.

Version	Date	Details	Officer	Council Meeting Date
1	Nov 2023	Creation of Document	Chief Financial Officer	TBC

Appendix to the Financial Reserves Policy

A. Externally Restricted Financial Reserves

Reserve Name	Reserve Purpose	Allocation Basis and Target Balance	Reserve Owner
1. Developer Contributions	<p>Cash contributions received under the Environmental Planning and Assessment Act 1979 related to S7.11, and S7.12 Contributions.</p> <p>Funds are to be expended in compliance with the Contribution Plans and related works program, Council's Delivery Program, and Operational plan.</p>	Target Balance: No specific target. Cash to be expended following the expenditure program outlined in the Delivery Program and Operational plan.	Manager Planning, Place & Development
2. Planning Agreements	<p>Cash collected under S7.4 (2) Environmental Planning and Assessment Act 1979 for following purposes, the:</p> <ul style="list-style-type: none"> a. provision of (or the recoupment of the cost of providing) public amenities or public services, b. provision of (or the recoupment of the cost of providing) affordable housing, c. provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land, d. funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure, e. monitoring of the planning impacts of development, f. conservation or enhancement of the natural environment. 	No Target. Planning agreements cash received fully expended for purpose collected.	Manager Planning, Place & Development
3. Stormwater Management	Council imposes a Stormwater Levy, aligned with the Minister's policy gazetted in October 2005, to enhance stormwater system management for a cleaner and safer environment, benefiting property owners, residents, and visitors.	No specific target. Cash received entirely utilised according to the expenditure program in the Delivery Program and Operational plan.	Manager Engineering

Reserve Name	Reserve Purpose	Allocation Basis and Target Balance	Reserve Owner
	The Levy's maximum amounts, set by Legislation, are detailed in the Delivery Program and Operational plan.		
4. Domestic Waste Management	<p>In compliance with Section 496 of the Local Government Act 1993, Council levies charges for domestic waste management services per rateable land parcel.</p> <p>Limited to recuperating the reasonable cost of providing domestic waste management services. Manager Waste & Cleansing develops the 10-year DWM Long Term Financial Plan.</p>	Cash received for these services, along with proceeds from garbage vehicle sales, is reserved for related expenses. Expenditures for the service and vehicle acquisition are funded through this reserve. The 10- year Domestic Waste Management Long Term Financial Plan supports the collection of cash.	Manager Environment and Waste
5. Special Purpose Unexpended Grants	This reserve holds unexpended grant funds received for specific projects, retained across fiscal years. It ensures the isolation and retention of unspent grant funds for future use aligned with the respective grant agreements' contractual obligations.	To specific target. Unexpended grant funds at year-end are restricted by contractual obligations outlined in the grant agreement.	Chief Financial Officer
6. SEPP – Advertising and Signage	Cash collected under planning agreements /State Environmental Planning Policy (Industry and Employment) 2021	No Target. Cash received fully expended in accordance with items identified under planning agreement and conditions of SEPP.	Manager Planning, Place & Development
7. Roads Reserve	Governed by S43 Roads Act 1993, this reserve is allocated proceeds from the sale of former public road land owned by Council. Unless designated as community land, funds received from land sales (net of associated fees) are reserved for acquiring land or conducting road work on public roads.	No specific target; funds from the gross sale proceeds (net of associated fees) are entirely allocated for acquiring land or performing road work on public roads.	Manager Engineering

B. Internally Restricted Financial Reserves

Reserve Name	Purpose	Calculation Basis / Target Balance	Reserve Owner
8. Plant and Fleet Reserve	Reserved cash for replacing plant and equipment (excluding garbage vehicles). Cash received from the sale of plant and equipment is transferred here. Expenditure for acquiring equipment is funded through this reserve. Internal plant hire recovery covers change-over costs.	Aligned with a 10-year Replacement Program.	Manager Operations
9. Employee Leave Entitlements	Provides funds for paying employee leave entitlements on retirement or resignation. Ensures liabilities are funded yearly, preventing future financial burdens on ratepayers.	Transfers are based on projected year-end liabilities, considering employee demographics.	Chief Financial Officer
10. General Funded Carryover Works	Funds Capital Program and grant-funded projects carried forward from the prior fiscal year. General revenue finances these projects, and the reserve clears to zero annually.	No specific target; reserve cleared at the end of each financial year.	Chief Financial Officer
11. Deposits, Retentions, Bonds	Holds cash for security bonds, deposits, and retentions as stated in the balance sheet. Transfers made annually based on net liabilities. Target balance: 90% - 100% of total liabilities.	Transfers based on annual security bonds, deposits, and retentions liabilities.	Chief Financial Officer
12. Election	Finances election costs spread over four years, aligning with estimated election expenses. Review of funding occurs after each election.	Transfers from the annual budget and to the Reserve are based on estimated election costs every four years.	Manager Governance & Procurement
13. Hudson Park Driving Range	Reserve for managing future driving range expenses. Transfers surplus operating funds annually to fund future site investments.	Annual transfer of operating surplus to fund future investments.	Director Engineering and Operations

Reserve Name	Purpose	Calculation Basis / Target Balance	Reserve Owner
14. IT and Office Equipment	Cash reserved for replacing office equipment and IT infrastructure. Transfers include proceeds from sales and annual allocations based on the IT Strategy.	Expenditure for acquiring office equipment and IT infrastructure funded through this reserve.	Manager Digital, Information and Customer
15. Financial Assistance Grants - Paid in Advance	Reduces the financial impact of overestimation of Financial Assistance Grants (FAG) received in the first year. Transfers FAG components actually received into the reserve.	Transfers FAG components actually received in a financial year. No specific target.	Chief Financial Officer
16. Grant Co-Funding Reserve	Established to provide matching funds for grant programs where external grant providers mandate Council's contribution of its own resources towards various programs and projects. This reserve aims to ensure the availability of dedicated financial support to match external grants, facilitating Council's ability to seize opportunities and maximise external funding.	An annual allocation from Councils general revenue is to be allocated towards this reserve commencing FY24/25. This allocation is to be determined as part of setting the annual operating budget.	Chief Financial Officer
17. Risk and Legal	Covers unexpected legal costs and liabilities. Transfers legal recoveries into the reserve.	Transfers legal recoveries from settlements or compensations into the reserve.	General Counsel
18. Work, Health and Safety	Utilises StateCover rebates for work health & safety initiatives. Utilises StateCover rebates and savings from reduced insurance premiums.	No specific target; expenditure aligned with Delivery Program and Operational Plan.	Chief Safety Officer
19. Strategic Priorities	To support and fund initiatives aligned with the evolving strategic objectives and long-term priorities of Council. The reserve will serve as a financial mechanism to strategically allocate resources, ensuring flexibility and responsiveness to emerging needs and opportunities that align with the council's overarching strategic goals.	Allocation to the Strategic Priorities Reserve will be made from cumulative corporate savings and operational budget reductions resulting from the execution of additional cost-saving measures.	Executive Committee

Reserve Name	Purpose	Calculation Basis / Target Balance	Reserve Owner
20. Public Liability Claims	Offset higher excesses from unexpended budget allocations. Covers unexpected increases in liability and indemnity insurance premiums.	Transfers savings in premiums versus budget into the reserve.	Chief Safety Officer
21. Business Improvement & Innovation	Funds business improvements and efficiencies. Annual budget allocation transferred from General Revenue.	No specific target; cash fully expended based on Delivery Program and Operational Plan.	Director Corporate and Community
22. Internal borrowings against consolidated internal restrictions	Borrowed cash for various projects to be repaid from General Revenue. No specific target; aims for a zero balance through annual repayments.	Borrowed amount to align with project budget.	Chief Financial Officer
23. Planning Proposals	Cash collected under Part 2 Clause 11 Environmental Planning and Assessment Regulation 2000 for operational costs and expenses incurred by Council in undertaking studies and other matters required in relation to a planning proposal.	No Target. Planning proposal cash received fully expended for purpose collected.	Manager Planning, Place & Development
24. Affordable Housing	To receive net rental proceeds from the Affordable Housing Tenancy Program for the specific purpose of future upgrades and maintenance of affordable housing stock, new capital works and acquisition and or leasing of additional affordable housing properties.	Net discounted rental proceeds and cash contributions received for affordable housing purposes from developers as part of the negotiated Planning Agreement process. No Target. Cash fully expended in accordance with Affordable Housing Program in the Delivery Program and Operational Plan.	Manager Planning, Place & Development
25. Parking Infrastructure	To fund parking infrastructure programs and initiatives.	Funds collected from parking revenue and fines above budget.	Manager Engineering

Reserve Name	Purpose	Calculation Basis / Target Balance	Reserve Owner
		No Target. Cash fully expended in accordance with expenditure program in Delivery Program and Operational plan.	
26. Contributions Towards Works	Funds received from external stakeholders for projects undertaken by Council, where Council may partially contribute to project.	Based on agreement between external stakeholder and Council	Chief Financial Officer

CCS2 CODE OF MEETING PRACTICE REVIEW

AUTHOR: Amanda Rutherford, Manager, Governance & Procurement

APPROVER: Michael Mamo, General Manager

RECOMMENDATION

That Council adopt the Code of Meeting Practice with the recommended amendments from both the review and following feedback from consultation as outlined in this report.

That Council endorse the update of clauses / references, and formatting per adopted changes to the Code of Meeting Practice.

PURPOSE OF REPORT

To provide the final draft Code of Meeting Practice for Council approval, following an initial review and completion of a 28-day consultation period.

REPORT

To ensure Strathfield Council's Code of Meeting Practice was up to date and included all mandatory text from the Model Code of Meeting Practice a review was undertaken comparing the Council's adopted Code against the Office of Local Government Model Code of Meeting Practice.

The review also provided the opportunity to review the non-mandatory provisions of the Code with a view to recommend the inclusion of additional clauses to respond to matters previously raised with Councillors. Not all non-mandatory provisions were recommended for inclusion, however all were considered by the Governance and Risk Team prior to finalising the recommendations.

The reviewed policy was placed on exhibition for 28 days during September/October 2023, with the following feedback provided and updates made to the attached Code of Meeting Practice:

1. **Adjust the policy to address in person attendance to be required for planning matters when on the agenda for a Councillor Workshop, as adjusted at clause 3.34.**

Pre-meeting briefing sessions are to be held in the absence of the public. Councillors may attend the sessions via an audio/visual link (with the exception of briefing session items which relate to planning matters), and must ensure that no other person is within sight or hearing of the meeting at any time including discussion of matters under section 10A of the Act. The audio/visual link will not be open in the event that the Councillor has declared a conflict of interest and is required to leave the session to manage the conflict.

2. **Address the use of Audio Visual and use of a camera at a Councillor Workshop, as adjusted at clause 3.35.**

Councillors attending a briefing session by audio-visual link must have their camera on at all times during any items listed as confidential at the meeting (with exception to planning matters as outlined in clause 3.34 above). Councillors must always ensure that no other person is within sight or hearing of the session, be appropriately dressed and ensure that no items are within sight of the meeting that are

inconsistent with the maintenance of order at the meeting or that are likely to bring the Council into disrepute.

3. Adjustment of the public forum process, at clauses 4.1, 4.4 and 4.5.

4.1 The Council holds a public forum during each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public. These may concern items of business to be considered at the meeting or matters notified prior to the meeting.

4.4 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by 12.00pm on the day of the meeting on which the public forum is to be held.

4.5 A person may apply to speak on no more than two (2) items of business on the agenda of the Council meeting, and / or one (1) general item per their prior submission as outlined in clause 4.1 above.

4. Cancellation of meetings addressed with minor amendment to clause 5.13.

Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire), or a public health emergency the General Manager may, in consultation with the Mayor cancel the meeting. The General Manager will in this instance then take all reasonable steps to inform each Councillor that the meeting is cancelled. Where a meeting is cancelled, notice of the cancellation will be as reasonably as practicable be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

5. Clarity provided to 'Council meetings' provided at various points through Clause 5.18 to 5.19, noting committee of the Council in the context of the Code of Meeting Practice refers only to those committees which are formed by all Councillors. By this definition there are currently no committees of Council. These changes are outlined in the attached for broader context and as follows:

Council Meetings held by audio-visual link

Attendance by Councillors at **Council** meetings by audio-visual link

A request by a Councillor for approval to attend a **Council** meeting by audio-visual link must be made by 12:00pm in writing to the General Manager prior to the meeting in question and must provide reasons why the Councillor will be prevented from attending the meeting in person.

A request to attend a **Council** meeting or committee of the Council by audio-visual link applies to a single meeting only. The request must specify the meeting the request relates to in addition to the information required under clause 5.19.

A decision whether to approve a Councillor's request to attend a **Council** meeting or committee of the Council by audio-visual link is at the Council's or the relevant committee's discretion. The Council and committees of the Council must act reasonably when considering requests by Councillors to attend meetings by audio-visual link. However, the Council and committees of the Council are under no obligation to approve a Councillor's request to attend a meeting by audio-

visual link where the technical capacity does not exist to allow the Councillor to attend the meeting by these means.

The Council and committees of the Council may refuse a Councillor's request to attend a meeting by audio-visual link where the Council meeting or committee is satisfied that the Councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the Council or a committee of the Council by audio-visual link.

This code applies to a Councillor attending a Council meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. Where a Councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.

A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The Councillor's camera must be on at all times during the Council meeting or committee of the Council, except as may be otherwise provided for under this code.

The following key is used in the attachment to indicate how the recommended amendments were determined:

- Text in **BLACK** is existing text in the Strathfield Code of Meeting Practice
- Text in **GREEN** is mandatory provisions from the model code that are missing from Council's adopted code
- Text in **PURPLE** is a new non-mandatory provision recommended for inclusion in the Council's Code
- Text in **RED AND STRIKETHROUGH** represents wording that was recommended to be deleted.
- Text in **BLUE** has been updated following the consultation period and submissions received.

FINANCIAL IMPLICATIONS

There are no financial implications.

ATTACHMENTS

1. Draft - Code of Meeting Practice

ATTACHMENT 1

STRATHFIELD COUNCIL

CODE OF MEETING PRACTICE

XX 2023

STRATHFIELD
COUNCIL

TABLE OF CONTENTS

1	INTRODUCTION.....	3
2	MEETING PRINCIPLES	4
3	BEFORE THE MEETING	5
4	PUBLIC FORUM.....	11
5	COMING TOGETHER.....	13
6	THE CHAIRPERSON	19
7	MODES OF ADDRESS.....	20
8	ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS.....	21
9	CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS.....	22
10	RULES OF DEBATE.....	24
11	VOTING.....	27
12	COMMITTEE OF THE WHOLE	28
13	DEALING WITH ITEMS BY EXCEPTION.....	29
14	CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC.....	30
15	KEEPING ORDER AT MEETINGS.....	35
16	CONFLICTS OF INTEREST.....	38
17	DECISIONS OF THE COUNCIL	39
18	TIME LIMITS ON COUNCIL MEETINGS	42
19	AFTER THE MEETING.....	43
20	COUNCIL COMMITTEES	45
21	IRREGULARITIES.....	48
22	DEFINITIONS.....	49

	CODE OF MEETING PRACTICE		
RESPONSIBILITY	Corporate Services		
DATE ADOPTED	14 June 2019	MINUTE	
REVISED	November 2022	REVIEW	2024
CM10 No			
ASSOCIATED POLICIES	Strathfield Council Code of Conduct Strathfield Council Privacy Management Plan Strathfield Council Access to Information Policy		
ASSOCIATED LEGISLATION	<i>Local Government Act 1993</i> <i>Local Government (General) Regulations 2021</i>		

1. Introduction

The Strathfield Code of Meeting Practice (the 'Code') is made under section 360 of the *Local Government Act 1993* (the 'Act') and the *Local Government (General) Regulation 2021* (the 'Regulation').

This Code applies to all meetings of Council and Committees of Council of which all the members are Councillors (committees of Council).

Council committees whose members include persons other than Councillors may adopt their own rules for meetings unless the Council determines otherwise.

Council must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Code of Meeting Practice (the 'Model Meeting Code') from the Office of Local Government.

A Council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions as adopted. Any Code of Meeting Practice adopted by a Council must not contain provisions that are inconsistent with the mandatory provisions of the Model Meeting Code.

Non-mandatory provisions of the Model Meeting Code are indicated in italics.

2. Meeting Principles

2.1 Council and committee meetings should be:

<i>Transparent:</i>	Decisions are made in a way that is open and accountable.
<i>Informed:</i>	Decisions are made based on relevant, quality information.
<i>Inclusive:</i>	Decisions respect the diverse needs and interests of the local community.
<i>Principled:</i>	Decisions are informed by the principles prescribed under Chapter 3 of the Act.
<i>Trusted:</i>	The community has confidence that Councillors and staff act ethically and make decisions in the interests of the whole community.
<i>Respectful:</i>	Councillors, staff and meeting attendees treat each other with respect.
<i>Effective:</i>	Meetings are well organised, effectively run and skillfully chaired.
<i>Orderly:</i>	Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

3. Before the Meeting

Timing of ordinary Council meetings

- 3.1 Ordinary meetings of Council will be held at 6.30pm on the ~~first (1st)~~ **fourth (4th)** Tuesday of each month **with exception to January and December each year, with the final** dates determined by resolution of the Council each year in the Council Chambers, 65 Homebush Road Strathfield or in another location as determined by the Council.

Note: Under section 365 of the Act, Councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a Council is required to meet each year under section 365A.

Extraordinary meetings

- 3.2 If the Mayor receives a request in writing, signed by at least two (2) Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The Mayor can be one of the two Councillors requesting the meeting.

Note: Clause 3.2 reflects section 366 of the Act.

Notice to the public of Council meetings

- 3.3 The Council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the Council.

Note: Clause 3.3 reflects section 9(1) of the Act.

- 3.4 For the purposes of clause 3.3, notice of a meeting of the Council and of a committee of Council is to be published before the meeting takes place. The notice must be published on the Council's website, and in such other manner that the Council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.

- 3.5 For the purposes of clause 3.3, notice of more than one (1) meeting may be given in the same notice.

Notice to Councillors of ordinary Council meetings

- 3.6 The General Manager must send to each Councillor, at least three (3) days before each meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

Note: Clause 3.6 reflects section 367(1) of the Act.

- 3.7 The notice and the agenda for, and the business papers relating to, the meeting may be given to Councillors in electronic form, but only if all Councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.7 reflects section 367(3) of the Act.

Notice to Councillors of extraordinary meetings

- 3.8 Notice of less than three (3) days may be given to Councillors of an extraordinary meeting of the Council in cases of emergency.

Note: Clause 3.8 reflects section 367(2) of the Act.

Giving notice of business to be considered at Council meetings

- 3.9 A Councillor may give notice of any business they wish to be considered by the Council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted to the General Manager (or their nominee) by no later than 5pm one week prior to the meeting.

- 3.10 A Councillor may, in writing to the General Manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

~~3.11 Where a Councillor seeks to move any motion other than the Council officer's recommendation, including any subsequent amendments, the alternative motion and subsequent amendments must be submitted in writing.~~

- 3.12 Any notice submitted under clause 3.9 and clause 3.11 which has legal, strategic, financial and/or policy implications that should be taken into account by the Council Meeting should be put in a form which calls for a report to the Council.

Questions with notice

- 3.13 A Councillor may, by way of a notice submitted under clause 3.9, ask a question for response by the General Manager about the performance or operations of the Council.

- 3.14 A Councillor is not permitted to ask a question with notice under clause 3.13 that comprises a complaint against the General Manager or a member of staff of the Council, or a question that implies wrongdoing by the General Manager or a member of staff of the Council.

- 3.15 The General Manager or their nominee may respond to a question with notice submitted under clause 3.13 by way of a report included in the business papers for the relevant meeting of the Council or orally at the meeting.

Agenda and business papers for ordinary meetings

- 3.16 The General Manager must ensure the agenda for a meeting of the Council or a committee of the Council to be prepared as soon as practicable before the meeting.
- 3.17 The General Manager must ensure that the agenda for an ordinary meeting of the Council states:
- a) all matters to be dealt with arising out of the proceedings of previous meetings of the Council, and
 - b) if the Mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - d) any business of which due notice has been given under clause 3.9.
- 3.18 Nothing in clause 3.17 limits the powers of the Mayor to put a Mayoral minute to a meeting under clause 9.6.
- 3.19 The General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is, or the implementation of the business would be, unlawful. The General Manager must report, without giving details of the item of business, any such exclusion to the next meeting of the Council.
- 3.20 The General Manager may not include in the Council or Committee business paper notice submitted under clause 3.9 which, in the opinion of the General Manager, is considered to be potentially defamatory, indecent, offensive, abusive, harassing, objectionable in language or substance, irrelevant, trivial, may breach privacy or confidentiality obligations or is outside of Council's powers or functions.
- 3.21 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the General Manager, is likely to take place when the meeting is closed to the public, the General Manager must ensure that the agenda of the meeting:
- a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
 - b) states the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.21 reflects section 9(2A)(a) of the Act.

- 3.22 The General Manager must ensure that the details of any item of business which, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to Councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and must not be

disclosed by a Councillor or by any other person to another person who is not authorised to have that information.

Statement of ethical obligations

- 3.23 Business papers for all ordinary and extraordinary meetings of the council and committees of the council must contain a statement reminding Councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the council's code of conduct to disclose and appropriately manage conflicts of interest.

Availability of the agenda and business papers to the public

- 3.24 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the Council and committees of Council, are to be published on the Council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the Council, at the relevant meeting and at such other venues determined by the Council.

Note: Clause 3.22 reflects section 9(2) and (4) of the Act.

- 3.25 Clause 3.24 does not apply to the business papers for items of business that the General Manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.

Note: Clause 3.25 reflects section 9(2A)(b) of the Act.

- 3.26 For the purposes of clause 3.24, copies of agendas and business papers must be published on the Council's website and made available to the public at a time that is as close as possible to the time they are available to Councillors.

Note: Clause 3.26 reflects section 9 (3) of the Act.

- 3.27 A copy of an agenda, or of an associated business paper made available under clause 3.24, may in addition be given or made available in electronic form.

Note: Clause 3.27 reflects section 9(5) of the Act.

Agenda and business papers for extraordinary meetings

- 3.28 The General Manager must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.

- 3.29 Despite clause 3.28, business may be considered at an extraordinary meeting of the Council, even though due notice of the business has not been given, if:

- a) a motion is passed to have the business considered at the meeting, and

- b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 3.30 A motion moved under clause 3.29(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.
- 3.31 Despite clauses 10.19–10.29, only the mover of a motion moved under clause 3.29(a) can speak to the motion before it is put.
- 3.32 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.29(b) on whether a matter is of great urgency.

Pre-meeting briefing sessions

- 3.33 Prior to each ordinary meeting of the Council, the General Manager may arrange a pre-meeting briefing session to brief Councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the Council and meetings of committees of the Council.
- 3.34 Pre-meeting briefing sessions are to be held in the absence of the public. Councillors may attend the sessions via an audio/visual link (with the exception of briefing session items which relate to planning matters), and must ensure that no other person is within sight or hearing of the meeting at any time including discussion of matters under section 10A of the Act. The audio/visual link will not be open in the event that the Councillor has declared a conflict of interest and is required to leave the session to manage the conflict.
 - a) ~~the session involves discussion of matters set out in section 10A of the Local Government Act 1993~~
- 3.35 Councillors attending a briefing session by audio-visual link must have their camera on at all times during any items listed as confidential at the meeting (with exception to planning matters as outlined in clause 3.34 above). Councillors must always ensure that no other person is within sight or hearing of the session, be appropriately dressed and ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the Council into disrepute.
- 3.36 The General Manager or a member of staff nominated by the General Manager is to preside at pre-meeting briefing sessions.
- 3.37 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal Council or committee meeting at which the item of business is to be considered.
- 3.38 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at pre-meeting

briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.

4. Public Forum

- 4.1 The Council holds a public forum during each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public. These may concern items of business to be considered at the meeting or matters notified prior to the meeting.
- 4.2 Public forums may be held by audio-visual link.
- 4.3 Public forums are to be chaired by the Mayor or their nominee.
- 4.4 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by 12pm on the day of the meeting on which the public forum is to be held. The applicant must identify the issues they wish to raise or the item of business on the agenda of the Council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.5 A person may apply to speak on no more than two (2) items of business on the agenda of the Council meeting, and / or one (1) general item per their prior submission as outlined in clause 4.1 above.
- 4.6 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.7 The General Manager or their delegate may refuse an application to speak at a public forum. The General Manager or their delegate must give reasons in writing for a decision to refuse an application.
- 4.8 No more than two (2) speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting.
- 4.9 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the General Manager or their delegate may request the speakers to nominate from among themselves the persons who are to address the Council on the item of business. If the speakers are not able to agree on whom to nominate to address the Council, the General Manager or their delegate is to determine who will address the Council at the public forum.
- 4.10 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the General Manager or their delegate may, in consultation with the Mayor or the Mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.
- 4.11 Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public forum, and to identify any equipment needs no more than three days before the public forum. The General Manager or their delegate may refuse to allow such material to be presented.
- 4.12 The General Manager or their delegate is to determine the order of speakers at the public forum. Priority will be given to considering reports on matters where there has been a written

p10

request to address Council. These matters will be dealt with in numerical order as set out in Clause 8 **Order of Business**.

- 4.13 Each speaker will be allowed three (3) minutes to address the Council with a maximum extension of two (2) minutes by agreement of the meeting. This time is to be strictly enforced by the chairperson.
- 4.14 Speakers at public forums must not digress from the item on the agenda of the Council meeting they have applied to address the Council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.15 A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.16 Speakers are under no obligation to answer a question put under clause 4.15. Answers by the speaker, to each question are to be limited to three (3) minutes with a maximum extension of two (2) minutes by agreement of the meeting.
- 4.17 Speakers at public forums cannot ask questions of the Council, Councillors, or Council staff.
- 4.18 The General Manager or their nominee may, with the concurrence of the chairperson, address the Council for up to five minutes in response to an address to the Council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.19 Where an address made at a public forum raises matters that require further consideration by Council staff, the General Manager may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.20 When addressing the Council, speakers at public forums must comply with this code and all other relevant Council codes, policies, and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's code of conduct or making other potentially defamatory statements.
- 4.21 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.20, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.22 Clause 4.21 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.
- 4.23 Where a speaker engages in conduct of the type referred to in clause 4.20, the General Manager or their delegate may refuse further applications from that person to speak at public forums for such a period as the General Manager or their delegate considers appropriate.
- 4.24 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the Councillor who made the declaration.

p11

5. Coming Together

Attendance by Councillors at meetings

- 5.1 All Councillors must make reasonable efforts to attend meetings of the Council and of committees of the Council of which they are members.

Note: A Councillor may not attend a meeting as a Councillor (other than the first meeting of the Council after the Councillor is elected or a meeting at which the Councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

- 5.2 A Councillor cannot participate in a meeting of the Council or of a committee of the Council unless personally present at the meeting, with the exception of attendance by audio-visual link under this code in accordance with clauses 5.15 or 5.18 to 5.20.
- 5.3 Where a Councillor is unable to attend one or more ordinary meetings of the Council, the Councillor should request that the Council grant them a leave of absence from those meetings. This clause does not prevent a Councillor from making an apology if they are unable to attend a meeting. However the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.
- 5.4 A Councillor's request for leave of absence from Council meetings should, if practicable, **be made in writing addressed to the General Manager and** identify (by date) the meetings from which the Councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 5.5 The Council must act reasonably when considering whether to grant a Councillor's request for a leave of absence.
- 5.6 A Councillor's civic office will become vacant if the Councillor is absent from three (3) consecutive ordinary meetings of the Council without prior leave of the Council, or leave granted by the Council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the Council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

Note: Clause 5.6 reflects section 234(1)(d) of the Act.

- 5.7 A Councillor who intends to attend a meeting of the Council despite having been granted a leave of absence should, if practicable, give the General Manager at least two (2) days' notice of their intention to attend.

The quorum for a meeting

- 5.8 The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office at that time and are not suspended from office.

pl2

Note: Clause 5.8 reflects section 368(1) of the Act.

- 5.9 Clause 5.8 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the Council.

Note: Clause 5.9 reflects section 368(2) of the Act.

- 5.10 A meeting of the Council must be adjourned if a quorum is not present:
- a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
 - b) within half an hour after the time designated for the holding of the meeting, or
 - c) at any time during the meeting.
- 5.11 In either case, the meeting must be adjourned to a time, date and place fixed:
- a) by the chairperson, or
 - b) in the chairperson's absence, by the majority of the Councillors present, or
 - c) failing that, by the General Manager.
- 5.12 The General Manager must record in the Council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- 5.13 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire), or a public health emergency, the General Manager may, in consultation with the Mayor, cancel the meeting. The General Manager will in this instance take reasonable steps to inform each Councillor that the meeting is cancelled. Where a meeting is cancelled, notice of the cancellation will be as reasonably as practicable be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.
- 5.14 Where a meeting is cancelled under clause 5.13, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the Council or at an extraordinary meeting called under clause 3.2.

Council Meetings held by audio-visual link

- 5.15 A meeting of the Council or a committee of the Council may be held by audio-visual link where the General Manager determines that the meeting should be held by audio-visual link because of a natural disaster (such as, but not limited to flood or bushfire), or a public health emergency. The General Manager may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The General Manager must make a determination under this clause in consultation with the Mayor and, as far as is practicable, with each Councillor.

p13

- 5.16 Where the Mayor determines under clause 5.15 that a meeting is to be held by audio-visual link, the General Manager must:
- (a) give written notice to all Councillors that the meeting is to be held by audio-visual link, and
 - (b) take all reasonable steps to ensure that all Councillors can participate in the meeting by audio-visual link, and
 - (c) cause a notice to be published on the Council's website and in such other manner the General Manager is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.

- 5.17 This code applies to a meeting held by audio-visual link under clause 5.15 in the same way it would if the meeting was held in person.

Note: Where a Council holds a meeting by audio-visual link under clause 5.15, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.

Attendance by Councillors at **Council** meetings by audio-visual link

- 5.18 Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link with the approval of the Council or the relevant committee should the Councillor be unable to attend in person due to a natural disaster, **emergency** **extenuating or other** circumstance or significant health issue.

Note: If audio-visual link is not available due to technical problems or unforeseen circumstances, the meeting will continue subject to clauses 5.8-5.10.

- 5.19 A request by a Councillor for approval to attend a **Council** meeting by audio-visual link must be made **by 12:00pm** in writing to the General Manager prior to the meeting in question and must provide reasons why the Councillor will be prevented from attending the meeting in person.
- 5.20 A request to attend a **Council** meeting **or committee of the Council** by audio-visual link applies to a single meeting only. The request must specify the meeting the request relates to in addition to the information required under clause 5.19.
- 5.21 The Council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.
- 5.22 A Councillor who has requested approval to attend a meeting of the Council or a committee of the Council by audio-visual link may participate in the meeting by audio-visual link until the Council or committee determines whether to approve their request and is to be taken as

present at the meeting. The Councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.

- 5.23 A decision whether to approve a request by a Councillor to attend a meeting of the Council or a committee of the Council by audio-visual link must be made by a resolution of the Council or the committee concerned. The resolution must state:
- (a) the meeting the resolution applies to, and
 - (b) the reason why the Councillor is being permitted to attend the meetings by audio-visual link.
- 5.24 If the Council or committee refuses a Councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.25 A decision whether to approve a Councillor's request to attend a Council meeting or committee of the Council by audio-visual link is at the Council's or the relevant committee's discretion. The Council and committees of the Council must act reasonably when considering requests by Councillors to attend meetings by audio-visual link. However, the Council and committees of the Council are under no obligation to approve a Councillor's request to attend a meeting by audio-visual link where the technical capacity does not exist to allow the Councillor to attend the meeting by these means.
- 5.26 The Council and committees of the Council may refuse a Councillor's request to attend a meeting by audio-visual link where the Council meeting or committee is satisfied that the Councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the Council or a committee of the Council by audio-visual link.
- 5.27 This code applies to a Councillor attending a Council meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. Where a Councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.
- 5.28 A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The Councillor's camera must be on at all times during the Council meeting or committee of the Council, except as may be otherwise provided for under this code.
- 5.29 A Councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the Council or the committee into disrepute.

Entitlement of the public to attend Council meetings

- 5.30 Everyone is entitled to attend a meeting of the Council and committees of the Council. The Council must ensure that all meetings of the Council and committees of the Council are open to the public.

Note: Clause 5.30 reflects section 10(1) of the Act.

- 5.31 Clause 5.31 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

- 5.32 A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or a committee of the Council if expelled from the meeting:

- a) by a resolution of the meeting, or
- b) by the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 5.32 reflects section 10(2) of the Act.

Webcasting of meetings

- 5.33 Each meeting of the Council or a committee of the Council is to be recorded by means of an audio or audio-visual device.

- 5.34 At the start of each meeting of the Council or a committee of the Council, the chairperson must inform the persons attending the meeting that:

- (a) the meeting is being recorded and made publicly available on the Council's website, and
- (b) persons attending the meeting should refrain from making any defamatory statements.

- 5.35 The recording of a meeting is to be made publicly available on the Council's website:

- (a) at the same time as the meeting is taking place, or
- (b) as soon as practicable after the meeting.

- 5.36 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting.

- 5.37 Clauses 5.35 and 5.36 do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.

Note: Clauses 5.35 – 5.37 reflect section 236 of the Regulation.

- 5.38 Recordings of meetings may be disposed of in accordance with the State Records Act 1998.

Attendance of the General Manager and other staff at meetings

- 5.39 The General Manager is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a committee of the Council of which all of the members are Councillors.

Note: Clause 5.39 reflects section 376(1) of the Act.

- 5.40 The General Manager is entitled to attend a meeting of any other committee of the Council and may, if a member of the committee, exercise a vote.

Note: Clause 5.40 reflects section 376(2) of the Act.

- 5.41 The General Manager may be excluded from a meeting of the Council or a committee while the Council or committee deals with a matter relating to the standard of performance of the General Manager or the terms of employment of the General Manager.

Note: Clause 5.41 reflects section 376(3) of the Act.

- 5.42 The attendance of other Council staff at a meeting, (other than as members of the public) shall be with the approval of the General Manager.

- 5.43 The General Manager and other council staff may attend meetings of the council and committees of the council by audio-visual-link. Attendance by council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the General Manager.

6. The Chairperson

The chairperson at meetings

- 6.1 The Mayor, or at the request of or in the absence of the Mayor, the deputy Mayor (if any) presides at meetings of the Council.

Note: Clause 6.1 reflects section 369(1) of the Act.

- 6.2 If the Mayor and the deputy Mayor (if any) are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council.

Note: Clause 6.2 reflects section 369(2) of the Act.

Election of the chairperson in the absence of the Mayor and Deputy Mayor

- 6.3 If no chairperson is present at a meeting of the Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.

- 6.4 The election of a chairperson must be conducted:
a) by the General Manager or, in their absence, an employee of the Council designated by the

p17

- General Manager to conduct the election, or
- b) by the person who called the meeting or a person acting on their behalf if neither the General Manager nor a designated employee is present at the meeting, or if there is no General Manager or designated employee.

6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.

6.6 For the purposes of clause 6.5, the person conducting the election must:

- a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
- b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.

6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

6.9 When the chairperson rises or speaks during a meeting of the Council:

- a) any Councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
- b) every Councillor present must be silent to enable the chairperson to be heard without interruption.

7. Modes of Address

7.1 If the chairperson is the Mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.

7.2 Where the chairperson is not the Mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.

7.3 A Councillor is to be addressed as 'Councillor [surname]'.

7.4 A Council officer is to be addressed by their official designation or as Mr/Ms [surname]

7.5 A Councillor who is not the chairperson, Council officers and members of the public are to stand when addressing the meeting unless unable to due to infirmity.

8. Order of Business for Ordinary Council Meetings.
- 8.1 The general order of business for an ordinary meeting of the Council, except for any meeting held in September to conduct the Mayor and/or Deputy Mayor elections ~~the meeting held in September each year after the election of Mayor by the Councillors~~, shall be:

1. **Moment of reflection**
2. Recognition of Traditional Custodians
3. Apologies **and applications for leave of absence**
4. Disclosures of interests (nature of interest to be disclosed)
5. Acknowledgements
6. Confirmation of Minutes
7. Mayoral minute(s)
8. Items by Exception
9. Public Forum
10. Notices of motion
11. Reports to Council
12. Reports of committees
13. Questions with notice
14. Matters of Urgency
15. Confidential matters
16. Conclusion of the meeting

~~Priority will be given to considering reports on matters where there has been a written request to address Council. These matters will be dealt with in numerical order.~~

~~The remaining items will be dealt with in numerical order after completion of those matters where there has been requests to address Council.~~

~~Where there are exceptional circumstances, the Council may by resolutions agree to vary these procedures based on the merits of each particular case.~~

~~Part 13 allows Council to deal with items by exception.~~

- 8.2 ~~A Council meeting at which there is to be the election of Mayor or Deputy Mayor, such an election will take place as the first item of business on the agenda for that meeting.~~
- 8.3 The order of business as fixed under clause 8.1 may be altered for a particular meeting of the Council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.
- 8.4 Despite clauses 10.19–10.29, only the mover of a motion referred to in clause 8.3 may speak to the motion before it is put.

9. Consideration of Business at Council Meetings

Business that can be dealt with at a Council meeting

9.1 The Council must not consider business at a meeting of the Council:

- a) unless a Councillor has given notice of the business, as required by clause 3.9, and
- b) unless notice of the business has been sent to the Councillors in accordance with clause 3.6 in the case of an ordinary meeting or clause 3.8 in the case of an extraordinary meeting called in an emergency.

9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:

- a) is already before, or directly relates to, a matter that is already before the Council, or
- b) is the election of a chairperson to preside at the meeting, or
- c) subject to clause 9.9, is a matter or topic put to the meeting by way of a Mayoral minute, or
- d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the Council.

9.3 Despite clause 9.1, business may be considered at a meeting of the Council even though due notice of the business has not been given to the Councillors if:

- a) a motion is passed to have the business considered at the meeting, and
- b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.

9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.19–10.29, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.

9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

Mayoral Minutes

9.6 Subject to clause 9.9, if the Mayor is the chairperson at a meeting of the Council, the Mayor may, by minute signed by the Mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the Council, or of which the Council has official knowledge.

9.7 A Mayoral minute, when put to a meeting, takes precedence over all business on the Council's agenda for the meeting. The chairperson (but only if the chairperson is the Mayor) may move the adoption of a Mayoral minute without the motion being seconded.

9.8 A recommendation made in a Mayoral minute put by the Mayor is, so far as it is adopted by the Council, a resolution of the Council.

- 9.9 A Mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the Council before the next scheduled ordinary meeting of the Council.

Staff reports

- 9.10 A recommendation made in a staff report is, so far as it is adopted by the Council, a resolution of the Council.

Reports of committees of Council

- 9.11 The recommendations of a committee of the Council are, so far as they are adopted by the Council, resolutions of the Council.
- 9.12 If in a report of a committee of the Council distinct recommendations are made, the Council may make separate decisions on each recommendation.

Questions

- 9.13 A question must not be asked at a meeting of the Council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.9 and 3.13.
- 9.14 A Councillor may, through the chairperson, put a question to another Councillor about a matter on the agenda.
- 9.15 A Councillor may, through the General Manager, put a question to a Council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the General Manager at the direction of the General Manager.
- 9.16 A Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents information. Where a Councillor or Council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the Council.
- 9.17 Councillors must put questions directly, succinctly, respectfully and without argument.
- 9.18 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a Councillor or Council employee.

10. Rules of debate

Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A Councillor who has submitted a notice of motion under clause 3.9 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 If a Councillor who has submitted a notice of motion under clause 3.9 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to Councillors, the Councillor may request the withdrawal of the motion when it is before the Council.
- 10.4 In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:
- a) any other Councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - b) the chairperson may defer consideration of the motion until the next meeting of the Council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the Council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 10.8 Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been lost.

Amendments to motions

- 10.9 An amendment to a motion must be moved and seconded before it can be debated.
- 10.10 An amendment to a motion must relate to the matter being dealt with in the original motion before the Council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.

- 10.11 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.
- 10.12 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before Council at any one time.
- 10.13 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.14 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.15 An amendment may become the motion without debate or a vote where it is accepted by the Councillor who moved the original motion.

Foreshadowed motions

- 10.16 A Councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the Council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.17 Where an amendment has been moved and seconded, a Councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the Council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.
- 10.18 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

- 10.19 A Councillor who, during a debate at a meeting of the Council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.20 A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.

- 10.21 A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than ~~three (3) minutes at any one time with a maximum extension of an additional two~~ **five (5) minutes at any one time** ~~minutes by agreement of the meeting.~~
- 10.22 Despite clause 10.21, the chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than ~~three (3) minutes with an additional maximum extension of two (2)~~ **five (5) minutes** ~~minutes by agreement of the meeting~~ on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.23 Despite clause 10.21, the Council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.
- 10.24 Despite clauses 10.19 and 10.20, a Councillor may move that a motion or an amendment be now put:
- a) if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or
 - b) if at least two (2) Councillors have spoken in favour of the motion or amendment and at least two (2) Councillors have spoken against it.
- 10.25 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.24. A seconder is not required for such a motion.
- 10.26 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.19.
- 10.27 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.28 All Councillors must be heard without interruption and all other Councillors must, unless otherwise permitted under this code, remain silent while another Councillor is speaking.
- 10.29 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

11. Voting

Voting entitlements of Councillors

- 11.1 Each Councillor is entitled to one (1) vote.

Note: Clause 11.1 reflects section 370(1) of the Act.

- 11.2 The person presiding at a meeting of the Council has, in the event of an equality of votes, a second or casting vote.

p24

Note: Clause 11.2 reflects section 370(2) of the Act.

- 11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at Council meetings

- 11.4 A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- 11.5 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the Council may resolve that the voting in any election by Councillors for Mayor or deputy Mayor is to be by secret ballot.
- 11.6 All voting at Council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

Voting on planning decisions

- 11.7 The General Manager must keep a register containing, for each planning decision made at a meeting of the Council or a Council committee (including, but not limited to a committee of the Council), the names of the Councillors who supported the decision and the names of any Councillors who opposed (or are taken to have opposed) the decision.
- 11.8 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11.9 Clauses 11.7–11.18 apply also to meetings that are closed to the public.

Note: Clauses 11.7–11.9 reflect section 375A of the Act.

Note: The requirements of clause 11.7 may be satisfied by maintaining a register of the minutes of each planning decision

12. Committee of the Whole

- 12.1 The Council may resolve itself into a committee to consider any matter before the Council.

Note: Clause 12.1 reflects section 373 of the Act.

- 12.2 All the provisions of this code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in committee of the whole, except the provisions limiting the number and duration of speeches.

Note: Clauses 10.19–10.29 limit the number and duration of speeches.

- 12.3 The General Manager or, in the absence of the General Manager, an employee of the Council designated by the General Manager, is responsible for reporting to the Council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.
- 12.4 The Council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the Council's minutes. However, the Council is not taken to have adopted the report until a motion for adoption has been made and passed.
13. Dealing with items by exception
- 13.1 The Council or a committee of Council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 13.2 Before the Council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask Councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The Council or committee must not resolve to adopt any item of business under clause 13.1 that a Councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the Council or committee must resolve to alter the order of business in accordance with clause 8.3.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the Council's Code of Conduct.
14. Closure of Council Meetings to the Public

Grounds on which meetings can be closed to the public

- 14.1 The Council or a committee of the Council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- a) personnel matters concerning particular individuals (other than Councillors),
 - b) the personal hardship of any resident or ratepayer,
 - c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,

p26

- d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the Council, or
 - (iii) reveal a trade secret,
- e) information that would, if disclosed, prejudice the maintenance of law,
- f) matters affecting the security of the Council, Councillors, Council staff or Council property,
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
- h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- i) alleged contraventions of the Council's code of conduct.

Note: Clause 14.1 reflects section 10A (1) and (2) of the Act.

- 14.2 The Council or a committee of the Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Note: Clause 14.2 reflects section 10A (3) of the Act.

Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:

- a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
- b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the Council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Note: Clause 14.3 reflects section 10B (1) of the Act.

- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:

- a) are substantial issues relating to a matter in which the Council or committee is involved, and
- b) are clearly identified in the advice, and
- c) are fully discussed in that advice.

Note: Clause 14.4 reflects section 10B(2) of the Act.

- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

Note: Clause 14.5 reflects section 10B(3) of the Act.

- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- a) a person may misinterpret or misunderstand the discussion, or
 - b) the discussion of the matter may:
 - (i) cause embarrassment to the Council or committee concerned, or to Councillors or to employees of the Council, or
 - (ii) cause a loss of confidence in the Council or committee.

Note: Clause 14.6 reflects section 10B(4) of the Act.

- 14.7 In deciding whether part of a meeting is to be closed to the public, the Council or committee concerned must consider any relevant guidelines issued by the Chief Executive of the Office of Local Government.

Note: Clause 14.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the Council, or of a committee of the Council, may be closed to the public while the Council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.22 as a matter that is likely to be considered when the meeting is closed, but only if:
- a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
 - b) the Council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

Note: Clause 14.8 reflects section 10C of the Act.

Representations by members of the public

- 14.9 The Council, or a committee of the Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 14.9 reflects section 10A(4) of the Act.

- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.
- 14.11 Where the matter has been identified in the agenda of the meeting under clause 3.22 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the Council in the approved form. Applications must be received by 3pm on the day of the meeting before the meeting at which the matter is to be considered.

p28

- 14.12 The General Manager (or their delegate) may refuse an application made under clause 14.11. The General Manager or their delegate must give reasons in writing for a decision to refuse an application.
- 14.13 No more than two (2) speakers 'for' or 'against' each item are to be permitted to make representations under clause 14.9.
- 14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the General Manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the Council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the General Manager or their delegate is to determine who will make representations to the Council.
- 14.15 The General Manager (or their delegate) is to determine the order of speakers.
- 14.16 Where the Council or a committee of the Council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.22 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than two (2) speakers 'for' or 'against' each item to make representations in such order as determined by the chairperson.
- 14.17 Each speaker will be allowed three (3) minutes to make representations, with an additional maximum extension of two (2) minutes by agreement of the meeting. This time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-Councillors from meetings closed to the public

- 14.18 If a meeting or part of a meeting of the Council or a committee of the Council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a Councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Obligations of Councillors attending meetings by audio-visual link

- 14.20 Councillors attending a meeting by audio-visual link must ensure that no other person is within

p29

sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

Information to be disclosed in resolutions closing meetings to the public

- 14.21 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
- a) the relevant provision of section 10A(2) of the Act,
 - b) the matter that is to be discussed during the closed part of the meeting,
 - c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Note: Clause 14.21 reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

- 14.22 If the Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.
- 14.23 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.22 during a part of the meeting that is webcast.

15. Keeping order at Meetings

Points of order

- 15.1 A Councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the Councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.
- 15.4 Upon a point of order being raised, the Councillor speaking shall resume his/her seat, until the point of order is dealt with.

Questions of order

- 15.5 The chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.6 A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.7 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.
- 15.8 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

- 15.9 A Councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.10 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.11 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

- 15.12 A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a committee of the Council:
- a) contravenes the Act or any regulation in force under the Act or this code, or
 - b) assaults or threatens to assault another Councillor or person present at the meeting, or
 - c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or the committee, or addresses or attempts to address the Council or the committee on such a motion, amendment or matter, or
 - d) insults or makes personal reflections on or imputes improper motives to any other Council official, or alleges a breach of the Council's code of conduct, or
 - e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or the committee into disrepute.
- 15.13 The chairperson may require a Councillor:
- a) to apologise without reservation for an act of disorder referred to in clauses 15.12(a) or (b), or
 - b) to withdraw a motion or an amendment referred to in clause 15.12(c) and, where appropriate, to apologise without reservation, or
 - c) to retract and apologise without reservation for an act of disorder referred to in clauses 15.12(d) and (e).

How disorder at a meeting may be dealt with

- 15.14 If disorder occurs at a meeting of the Council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The Council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

Expulsion from meetings

- 15.15 All chairpersons of meetings of the Council and committees of the Council are authorised under this code to expel any person, including any Councillor, from a Council or committee meeting, for the purposes of section 10(2)(b) of the Act.
- 15.16 Clause 15.15 does not limit the ability of the Council or a committee of the Council to resolve to expel a person, including a Councillor, from a Council or committee meeting, under section 10(2)(a) of the Act.
- 15.17 A Councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for having failed to comply with a requirement under clause 15.13. The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act of disorder concerned.

Note: Clause 15.17 reflects section 233(2) of the Regulation.

- 15.18 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for engaging in or having engaged in disorderly conduct at the meeting.
- 15.19 Where a Councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.20 If a Councillor or a member of the public fails to leave the place where a meeting of the Council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member of the public from that place and, if necessary, restrain the Councillor or member of the public from re-entering that place for the remainder of the meeting.

How disorder by Councillors attending meetings by audio-visual link may be dealt with

- 15.21 Where a Councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the Councillor's audio link to the meeting for the purposes of enforcing compliance with this code.
- 15.22 If a Councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the Councillor's audio-visual link to the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 15.23 Councillors, Council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the Council and committees of the Council.
- 15.24 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the Council or a committee of the Council without the prior authorisation of the Council or the committee.
- 15.25 Without limiting clause 15.18, a contravention of clause 15.24 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.18. Any person who contravenes or attempts to contravene clause 15.24, may be expelled from the meeting as provided for under section 10(2) of the Act.
- 15.26 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

16. Conflicts of Interest

- 16.1 All Councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the Council and committees of the Council in accordance with the Council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the Council's code of conduct. Where a Councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the Councillor's audio-visual link to the meeting must be suspended or terminated and the Councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the Council or committee, or at any time during which the Council or committee is voting on the matter.

Note: Councillor's obligations and management of conflicts of interests are dealt with in Council's Code of Conduct.

17. Decisions of the Council

Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.

Note: Clause 17.1 reflects section 371 of the Act.

- 17.2 Decisions made by the Council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering Council decisions

- 17.3 A resolution passed by the Council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.09.

Note: Clause 17.3 reflects section 372(1) of the Act.

- 17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Note: Clause 17.4 reflects section 372(2) of the Act.

- 17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice

p34

of it has been duly given in accordance with clause 3.09.

Note: Clause 17.5 reflects section 372(3) of the Act.

- 17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) Councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 17.6 reflects section 372(4) of the Act.

- 17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 17.7 reflects section 372(5) of the Act.

- 17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 17.8 reflects section 372(7) of the Act.

- 17.9 A notice of motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.10 with the consent of all signatories to the notice of motion.

- 17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the General Manager no later than 12pm the day after the meeting at which the resolution was adopted.

- 17.11 A motion to alter or rescind a resolution of the Council may be moved on the report of a committee of the Council and any such report must be recorded in the minutes of the meeting of the Council.

Note: Clause 17.11 reflects section 372(6) of the Act.

- 17.12 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the Council may be moved at the same meeting at which the resolution was adopted, where:

- a) a notice of motion signed by three Councillors is submitted to the chairperson, and
- b) a motion to have the motion considered at the meeting is passed, and
- c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.

- 17.13 A motion moved under clause 17.12(b) can be moved without notice. Despite clauses 10.19–10.29, only the mover of a motion referred to in clause 17.12(b) can speak to the motion before it is put.

p35

- 17.14 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.12(c).
Recommitting resolutions to correct an error
- 17.15 Despite the provisions of this Part, a Councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:
- a) to correct any error, ambiguity or imprecision in the Council's resolution, or
 - b) to confirm the voting on the resolution.
- 17.16 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.15(a), the Councillor is to propose alternative wording for the resolution.
- 17.17 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.
- 17.18 A motion moved under clause 17.15 can be moved without notice. Despite clauses 10.19–10.29, only the mover of a motion referred to in clause 17.15 can speak to the motion before it is put.
- 17.19 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.
- 17.20 A motion moved under clause 17.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.
18. Time limits on Council Meetings
- 18.1 Meetings of the Council and committees of the Council are to conclude no later than 10.30pm.
- 18.2 If the business of the meeting is unfinished at 10.30pm, the Council or the committee may, by resolution, extend the time of the meeting. ~~to 11.00pm.~~
- 18.3 If the business of the meeting is unfinished at 11.00pm, and the Council does not resolve to extend the meeting, the chairperson must either:
- a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or
 - b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the General Manager must:
- a) individually notify each Councillor of the time, date and place at which the meeting will reconvene, and
 - b) publish the time, date and place at which the meeting will reconvene on the Council's website and in such other manner that the General Manager is satisfied is likely to bring

p36

notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

19. After the Meeting

Minutes of meetings

- 19.1 The Council is to keep full and accurate minutes of the proceedings of meetings of the Council.

Note: Clause 19.1 reflects section 375(1) of the Act.

- 19.2 At a minimum, the General Manager must ensure that the following matters are recorded in the Council's minutes:

- a) the names of Councillors attending a Council meeting and whether they attended the meeting in person or by audio-visual link,
- b) details of each motion moved at a Council meeting and of any amendments moved to it,
- c) the names of the mover and seconder of the motion or amendment,
- d) whether the motion or amendment was passed or lost, and
- e) such other matters specifically required under this code.

- 19.3 The minutes of a Council meeting must be confirmed at a subsequent meeting of the Council.

Note: Clause 19.3 reflects section 375(2) of the Act.

- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 19.5 reflects section 375(2) of the Act.

- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

- 19.7 The confirmed minutes of a Council meeting must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The Council and committees of the Council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

p37

Note: Clause 19.8 reflects section 11(1) of the Act.

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 19.9 reflects section 11(2) of the Act.

- 19.10 Clause 19.8 does not apply if the Council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 19.10 reflects section 11(3) of the Act.

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the Council

- 19.12 The General Manager is to implement, without undue delay, lawful decisions of the Council.

Note: Clause 19.12 reflects section 335(b) of the Act.

20. Council Committees

Application of this Part

- 20.1 This Part only applies to committees of the Council whose members are all Councillors.

Council committees whose members are all Councillors

- 20.2 The Council may, by resolution, establish such committees as it considers necessary.
- 20.3 A committee of the Council is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.
- 20.4 The quorum for a meeting of a committee of the Council is to be:
- a) such number of members as the Council decides, or
 - b) if the Council has not decided a number – a majority of the members of the committee.

Functions of committees

- 20.5 The Council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Notice of committee meetings

- 20.6 The General Manager must send to each Councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:
- a) the time, date and place of the meeting, and
 - b) the business proposed to be considered at the meeting.
- 20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

- 20.8 A committee member (other than the Mayor) ceases to be a member of a committee if the committee member:
- a) has been absent from three (3) consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
 - b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.
- 20.9 Clause 20.8 does not apply if all of the members of the Council are members of the committee.

Non-members entitled to attend committee meetings

- 20.10 A Councillor who is not a member of a committee of the Council is entitled to attend, and to speak at a meeting of the committee. However, the Councillor is not entitled:
- a) to give notice of business for inclusion in the agenda for the meeting, or
 - b) to move or second a motion at the meeting, or
 - c) to vote at the meeting.

Chairperson and deputy chairperson of Council committees

- 20.11 The chairperson of each committee of the Council must be:
- a) the Mayor, or
 - b) if the Mayor does not wish to be the chairperson of a committee, a member of the committee elected by the Council, or
 - c) if the Council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The Council may elect a member of a committee of the Council as deputy chairperson of the committee. If the Council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the Council is able or willing to preside at a meeting of the committee, the committee must elect a member of the

p39

committee to be acting chairperson of the committee.

- 20.14 The chairperson is to preside at a meeting of a committee of the Council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the Council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the Council unless the Council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the Council or the committee determines otherwise in accordance with clause 20.15.
- 20.17 Voting at a Council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Closure of committee meetings to the public

- 20.18 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the Council to the public in the same way they apply to the closure of meetings of the Council to the public.
- 20.19 If a committee of the Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the Council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.
- 20.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.19 during a part of the meeting that is webcast.

Disorder in committee meetings

- 20.21 The provisions of the Act and this code relating to the maintenance of order in Council meetings apply to meetings of committees of the Council in the same way as they apply to meetings of the Council.

Minutes of Council committee meetings

- 20.22 Each committee of the Council is to keep full and accurate minutes of the proceedings of its

p40

meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:

- a) the names of Councillors attending a meeting and whether they attended the meeting in person or by audio-visual link,
 - b) details of each motion moved at a meeting and of any amendments moved to it,
 - c) the names of the mover and seconder of the motion or amendment,
 - d) whether the motion or amendment was passed or lost, and
 - e) such other matters specifically required under this code.
- 20.23 All voting at meetings of committees of the Council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.
- 20.24 The minutes of meetings of each committee of the Council must be confirmed at a subsequent meeting of the committee.
- 20.25 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.26 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.
- 20.27 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 20.28 The confirmed minutes of a meeting of a committee of the Council must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of meetings of committees of the Council on its website prior to their confirmation.
21. Irregularities
- 21.1 Proceedings at a meeting of a Council or a Council committee are not invalidated because of:
- a) a vacancy in a civic office, or
 - b) a failure to give notice of the meeting to any Councillor or committee member, or
 - c) any defect in the election or appointment of a Councillor or committee member, or
 - d) a failure of a Councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a Council or committee meeting in accordance with the Council's code of conduct, or
 - e) a failure to comply with this code.

Note: Clause 21.1 reflects section 374 of the Act.

Definitions

The Act	means the <i>Local Government Act 1993</i>
Act of disorder	means an act of disorder as defined in clause 15.12 of this code
Amendment	in relation to an original motion, means a motion moving an amendment to that motion
Audio recorder	any device capable of recording speech
Audio-visual link	means a facility that enables audio and visual communication between persons at different places
Business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
Chairperson	in relation to a meeting of the Council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.11 of this code
This Code	means the Council's adopted code of meeting practice
Committee of the Council	means a committee established by the Council in accordance with clause 20.2 of this code (being a committee consisting only of Councillors) or the Council when it has resolved itself into committee of the whole under clause 12.1
Council official	has the same meaning it has in the Model Code of Conduct for Local Councils in NSW
Day	means calendar day
Division	means a request by two Councillors under clause 11.7 of the Model Code of Conduct for Local Councils in NSW requiring the recording of the names of the Councillors who

voted both for and against a motion

Foreshadowed amendment	Means a proposed amendment foreshadowed by a Councillor under clause 10.17 of this code during debate on the first amendment
Foreshadowed motion	means a motion foreshadowed by a Councillor under clause 10.16 of this code during debate on an original motion
Open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
Planning decision	means a decision made in the exercise of a function of a Council under the Environmental Planning and Assessment Act 1979 including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
Performance Improvement Order	means an order issued under section 438A of the Act
Quorum	means the minimum number of Councillors or committee members necessary to conduct a meeting
The Regulation	Means the Local Government (General) Regulation 2021
Urgent business	means a matter that requires a decision by the Council before the next scheduled ordinary meeting of Council
Webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
Year	means the period beginning 1 July and ending the following 30 June

Document History

Date	Details	Council Meeting Date
14 December 2018	Office of Local Government released Model Code of Meeting Practice for Local Councils in NSW	N/A
March 2019	Draft Strathfield Council Code of Meeting Practice – March 2019 created	N/A
2 April 2019	Draft Strathfield Council Code of Meeting Practice Adopted with the following amendments: <ul style="list-style-type: none"> □ That under clause 4.3 of the Code of Meeting Practice the Chairperson may accept a request to speak from the floor. □ That under clause 4.10 of the Code of Meeting Practice the Chairperson may accept a request to speak from the floor. □ That clause 4.19 of the Code be removed – A person may apply to speak on no more than two (2) items of business on the agenda of the Council meeting. □ That under clause 3.9 of the Code of Meeting Practice the deadline to submit motions remain at 5pm. 	2 April 2019
	Public exhibition of the Strathfield Council Code of Meeting Practice (04.04.2019 to 02.05.2019)	
14 May 2019	Implementation of the Strathfield Council Code of Meeting Practice discussed at Councillors Workshop.	
14 June 2019	Strathfield Council Code of Meeting Practice endorsed	
17 June 2019	Strathfield Council Code of Meeting Practice distributed to all staff via iPolicy & staff noticeboards and loaded to the website for public access. Also sent to Councillors for their records.	
September 2020	Review. Change to Clause 5.21	
4 May 2021	Report 'CS2 COVID-19 Amendments to Model Code of Meeting Practice' to permit members' attendance of Council and Committee meetings via an audio-visual link were rejected by the Council.	
June 2021	Policy Review	CEO/Mayor

November 2022	Policy Review	
July 2023	Policy Review	

DRAFT

CCS3 **COUNCILLOR WORKSHOP 11 DECEMBER 2023**
AUTHOR: **Quinton Kohler, Governance and Corporate Support Officer**
APPROVER: **Michael Mamo, General Manager**

RECOMMENDATION

That the report be received and noted.

PURPOSE OF REPORT

The purpose of the report is to present a summary to Council of the items discussed at the Councillor Workshop held on Tuesday 11 December 2023 and follow up action required.

REPORT

Attendees

Councillors Pensabene, Reddy, Hall, Cai, Maheswaran and Datta.

Apologies

Councillor Blackmore.

Declarations of Interest

Nil.

The following items were discussed at the Councillor Workshop held 11 December 2023:

Item Reference	Title	Summary	Follow Up Action
CCS1	Finance and Related Policies	The Report was taken as read with the Finance and Related Policies (1) Draft Pricing Policy V1 (Nov 2023) and (2) Draft Financial Reserves Policy V1 (Nov 2023) recommend for public exhibition.	To go to Extraordinary Council Meeting 15 December 2023.
CCS2	Code of Meeting Practice Review	The Draft Code of Meeting Practice was discussed with some minor editorial changes for clarification.	To go to Extraordinary Council Meeting 15 December 2023.
<u>Mayor's Update</u> <ul style="list-style-type: none"> Nil The 30 November 2023 Mayor's Message, sent to residents and available on council's website, reported on recent and future activities. 			
<u>General Manager's Update</u> <ul style="list-style-type: none"> The Department of Planning will resource the preparation of a Masterplan for the area north of Homebush Station that we have called the Homebush Urban Village (also known as the Parramatta Road Corridor Urban Transformation Strategy – PRCUTS). 			

FINANCIAL IMPLICATIONS

There are no financial implications.

ATTACHMENTS

There are no attachments for this report

PE1 **15-17 COLUMBIA LANE AFFORDABLE HOUSING PLANNING AGREEMENT**

AUTHOR: **Joseph Gillies, Senior Planner**

APPROVER: **Michael Mamo, General Manager**

RECOMMENDATION

That Council resolve to:

1. Place the draft Planning Agreement and draft Explanatory note for 15-17 Columbia Lane on public exhibition for 28 days.
2. Delegate to the General Manager to execute the Planning Agreement following public exhibition and consideration of any submissions received.

PURPOSE OF REPORT

To inform Council of a draft Planning Agreement for dedication of eight (8) affordable housing units to Council at 15-17 Columbia Lane and seek endorsement for execution of the Planning Agreement following public exhibition.

REPORT

Development Application 2019/143 was approved by the Sydney Eastern Planning Panel in October 2020. The development comprises a total of 360 residential units across 26 storeys over four levels of basement and is located at 15-17 Columbia Lane (southern side of Parramatta Road).

Condition 2 of the Notice of Determination (NOD) requires dedication of eight (8) of the approved units to Council in perpetuity and free of cost.

The developer (JQZ) has approached Council with a letter of offer relating to dedication of the eight (8) units, proposing a Planning Agreement be entered into to facilitate the dedication. In response, Council has prepared a draft Planning Proposal which is attached to this report, as well as an explanatory note.

In accordance with Section 7.5 of the Environmental Planning and Assessment Act 1979, a Planning Agreement cannot be entered into until the proposed agreement has been available for public inspection for a period of not less than 28 days. Council will make the subject draft Planning Agreement available on the public notices page on Council's website and in the eNews.

In order to allow for completion of the development via registration of the Occupation Certificate, the Planning Agreement must be entered into. Noting that the next Council meeting is scheduled for 27 February, it is recommended that the General Manager be delegated the authority to execute the Planning Agreement following completion of public exhibition.

In accordance with Council's Planning Agreement Policy, amendments to the draft Planning Agreement may be required because of public submissions received during public notification or for other reasons. Amendments can be made following public notification however if the amendments materially affect the nature, scope or timing of the public benefits in the Planning Agreement, re-notification must occur. Considering the scope of the Planning Agreement is embedded in the Notice of Determination for the development (being eight (8) affordable housing units), the potential for amendments is limited.

On 18 July 2023, Council staff inspected the units, with a final inspection required as part of the Planning Agreement.

Council has an Affordable Housing Tenancy Policy which establishes tenancy management criteria, processes and procedures for Community Housing Providers who will be managing Council's affordable housing dwellings, as well as processes and procedures for Council.

The public purpose of the Planning Agreement is the provision of affordable housing that will provide a public benefit in terms of increase the availability of new and contemporary affordable housing in the Strathfield Local Government Area. The Planning Agreement is the most suitable means of achieving that purpose.

FINANCIAL IMPLICATIONS

The financial implications of entering into the Planning Agreement include management costs associated with the units once dedicated to Council. Council will receive revenue to address these costs via rent in accordance with Council's Affordable Housing Tenancy Policy.

ATTACHMENTS

1. Draft Planning Agreement Explanatory Note
2. Draft Planning Agreement

ATTACHMENT 1

EXPLANATORY NOTE

Planning Agreement

15-17 Columbia Lane, Homebush

1 Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (described in this Explanatory Note as the **Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with Development Application number DA/2019/143 (as modified) (described in this Explanatory Note as the **Development Application**).

This Explanatory Note has been prepared jointly by the parties to the Planning Agreement as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (described in this Explanatory Note as the **Regulation**).

In this Explanatory Note, capitalised terms have the meaning given to those terms in the Planning Agreement unless otherwise defined.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (a) **Strathfield Municipal Council** ABN 52 719 940 263 (described in this Explanatory Note as the **Council**); and
- (b) **JQZ FOUR Pty Limited** ACN 162 702 963 (described in this Explanatory Note as the **Developer**).

3 Description of the Land

The Planning Agreement applies to Lot 1 in Deposited Plan 1262011 and known as 15-17 Columbia Lane, Homebush being the land comprised in certificate of title folio identifier 1/1262011 (described in this Explanatory Note as the **Land**).

4 Description of the Proposed Development

No change is proposed to an environmental planning instrument.

The Owner seeks to carry out redevelopment of the Land in accordance with the Development Application for:

Site preparation works including demolition, excavation and remediation, the construction of a mixed use development comprising of 2 residential towers (Building A at 25 storeys and Building B at 26 storeys) connected by an 8 storey podium accommodating rooftop communal open space containing a total of 360 apartments, 2 ground floor retail premises and a further rooftop terrace to Building A situated over 4 levels of basement parking containing 381 car parking spaces, with associated ground floor communal open space and entry court yard, construction of an extension to Nipper Street and landscaping works

(described in this Explanatory Note as the Development).

5 Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the delivery by the Developer to Council of:

- (a) Eight (8) residential units and their associated parking spaces and storage spaces.

(described in this Explanatory Note as the **Contribution**).

To secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement require the provision of security in the form of bank guarantees or security deposits for the amounts stipulated in the Planning Agreement.

The public benefits to be provided under the Planning Agreement are summarised as follows:

- (a) The construction and fit out of the Contribution;
- (b) The dedication or transfer of the Contribution to Council for the provision of public housing.

6 Assessment of the Merits of the Planning Agreement

6.1 How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement provides for the provision of new public housing, vested in Council and available to meet housing needs of the community.

In doing so, the Agreement promotes the following objects of the Act:

- (a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;
- (b) To promote the orderly and economic use and development of land; and
- (c) To promote the delivery and maintenance of affordable housing.

6.2 How the Planning Agreement promotes the objects of the Local Government Act 1993 (LG Act) and the elements of the Council's charter

The Planning Agreement promotes the exercise by Council of its functions in accordance with the guiding principles set out in Chapter 3 of the *Local Government Act 1993* because it will assist Council to provide infrastructure and public spaces for the benefit of the community in the area of the Development.

Council's strategic planning for the Strathfield Local Government Area envisions an attractive, vibrant and sustainable urban place which provides quality residential and commercial developments complimented with enhanced pedestrian, bike and road access.

In summary, the Planning Agreement promotes the Council's charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following aspects of Council's charter under the LG Act:

- (a) Councils should plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community (section 8A(1)(c));
- (b) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way (section 8A(1)(g)); and
- (c) Council should work with others to secure the appropriate services for local community needs (section 8A(1)(g)).

6.3 The impact of the Planning Agreement on the public or any section of the public

The scope of the Planning Agreement will benefit the local and wider community as it will increase the availability of new and contemporary public housing.

6.4 Whether the Planning Agreement conforms with Council's capital works program

The scope of the Planning Agreement is consistent with Council's capital works program.

6.5 The planning purpose or purposes of the Planning Agreement

The public purpose of the Planning Agreement is the provision of public housing that will provide a public benefit in terms of increase the availability of new and contemporary public housing in the Strathfield Local Government Area.

As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable means of achieving that purpose.

6.6 Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates

The Contribution under the Planning Agreement must be provided in accordance with the timing provisions as set out in the Planning Agreement. Details of the proposed timing for the delivery of the Contribution are set out in the Annexure to this Explanatory Note.

ATTACHMENT 2

Planning Agreement

[Date]

STRATHFIELD MUNICIPAL COUNCIL
ABN 52 719 940 263

and

JQZ FOUR PTY LIMITED
ACN 162 702 963

PLANNING AGREEMENT

Contents

1	Planning Agreement under the Act	2
1.1	Planning Agreement	2
2	Definitions and interpretation	2
2.1	Definitions	2
2.2	Interpretation	6
3	Application of this agreement	7
3.1	Application	7
3.2	Operation	7
4	Contributions to be made under this agreement	8
4.1	Contributions	8
4.2	Application of s 7.11, s 7.12 and s 7.24 of the Act	8
5	Registration of this agreement	8
5.1	Interest	8
5.2	Registration of this agreement	8
5.3	Removal from Register	9
5.4	Caveat	9
6	Review of this agreement	10
6.1	Review	10
7	Dispute Resolution	11
7.1	Reference to Dispute	11
7.2	Notice of Dispute	11
7.3	Representatives of Parties to Meet	11
7.4	Further Notice if Not Settled	11
7.5	Mediation	11
7.6	Expert determination	12
7.7	Litigation	13
7.8	No suspension of contractual obligations	13
8	Enforcement	13
8.1	Default	13
8.2	Security	14
8.3	Compulsory Acquisition	16
8.4	Restriction on the issue of Certificates	16
8.5	General Enforcement	16
8.6	Overdue Payments	17
9	Assignment and Dealings	17
9.1	Assignment	17
9.2	Transfer of Land	18
9.3	Mortgagee arrangements	18
10	Approvals and consents	19
10.1	Approvals	19

11	No fetter	19
11.1	Discretion	
11.2	No fetter	
11.3	Planning certificates	
12	Release and indemnity	
12.1	Release and Indemnity	
13	Confidentiality	
13.1	Confidentiality	
14	Costs, duty and GST	
14.1	Legal expenses and stamp duty	
14.2	Duty	
14.3	GST	
15	Notices	
15.1	Notices	
15.2	Change of address	
16	General	
16.1	Relationship between parties	
16.2	Schedule of Annexures	
16.3	Time for doing acts	
16.4	Further assurances	
16.5	Variation	
16.6	Counterparts	
16.7	Entire agreement	
16.8	Representations and warranties	
16.9	Severability	
16.10	Invalidity	
16.11	Waiver	
16.12	Governing law and jurisdiction	
16.13	Electronic signature	
	Execution Page	a
	Schedule 1 – Reference schedule	b
	Schedule 2 – Contribution Schedule	c
	Schedule 3 – Contribution Items	d
	Schedule 4 – Construction Terms	f
	Schedule 5 – Specifications for Units	p
	Schedule 6 – Summary of Requirements (Section 7.4 of the Act)	q
	Schedule 7 – Development Consent (as modified)	r
	Schedule 9 – Approved Plans	s

PLANNING AGREEMENT

Date

Parties

First Party

Name	STRATHFIELD MUNICIPAL COUNCIL (Council)
ABN	52 719 940 263
Contact	The General Manager
Telephone	XXX
Email	XXX

Second Party

Name	JQZ FOUR PTY LIMITED (Developer)
ACN	162 702 963
Contact	XXX
Telephone	XXX
Email	XXX

Background

- A As at the date of this agreement, the Developer is the owner of the Land.
- B The Developer is the developer of the Development on the Land.
- C The Developer made a Development Application to the Council seeking Development Consent to carry out the Development on the Land.
- D On 29 January 2021, Development Consent was granted by the Land and Environment Court for the Development.
- E On 19 October 2023, the Developer made an offer to enter into this agreement to make contributions for public purposes associated with the Development Consent.
- F On 7 November 2023, the Developer lodged a modification application to modify the Development Consent.

1 Planning Agreement under the Act

1.1 Planning Agreement

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 6 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

2 Definitions and Interpretation

2.1 Definitions

In this agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this document and includes all Schedules, Annexures and other documents or instruments forming part of it.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law or by any Authority for the commencement and carrying out of any works required under this agreement or the Development and includes a Development Consent or other approval under the Act.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building and Development Certifiers Act 2018* (NSW).

Annexure means an annexure to this agreement.

Bank Guarantee means an irrevocable and unconditional undertaking that:

- (a) is an unconditional undertaking;
- (b) has no expiry date (or with an expiry date which is approved by the Council);
- (c) is issued by a trading bank which is:
 - (i) within the Sydney metropolitan area; and
 - (ii) holds a current Australian banking licence; and
- (d) is in a form and upon such terms and conditions as are acceptable to Council; and,
- (e) requires payment of an amount or amounts of money to the Council on demand.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

-
- (a) be signed and issued by an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
 - (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB+ (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) bbb (Bests);
 - (c) be issued on behalf of the Developer;
 - (d) have no expiry or end date;
 - (e) have the beneficiary as the Council;
 - (f) be irrevocable;
 - (g) state either individually, or in total with other lodged compliant forms of Security, the relevant minimum amount required to be lodged as security; and
 - (h) state the purpose of the deposit required in accordance with this agreement.

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

Certificate means a Construction Certificate, Occupation Certificate, Subdivision Works Certificate or Subdivision Certificate.

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense.

Compliance Certificate means a compliance certificate as defined under section 6.4 of the Act.

Construction Certificate means a construction certificate as defined under section 6.4 of the Act.

Construction Terms means the terms set out in Schedule 4.

Contribution Item means an item listed in the Contributions Schedule.

Contributions means the dedication or transfer of the Units and provision of material public benefits required under this agreement, the nature and extent of which are set out in the Contributions Schedule.

Contributions Plan has the same meaning as under the Act.

Contributions Schedule means the table contained in Schedule 2.

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Developer means JQZ FOUR PTY LIMITED ACN 162 702 963, being the Proponent of the Development and the registered proprietor of the Land, jointly and severally.

Development is the development approved at the Land under the Development Application, as described in the Reference Schedule.

Development Application means the Development application under which the Development was approved, as described in the Reference Schedule and has the same meaning as in the Act.

Development Consent has the same meaning as in the Act and includes the development consent, as modified, granted under which the Development Application, as described in the Reference Schedule.

Explanatory note means the explanatory note relating to and publicly notified with this agreement, as required by clause 25E of the Regulation.

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 of or administration of the GST.

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;

-
- (g) an execution or analogous process is levied or enforced against the property of that party;
 - (h) that party disposes of, or threatens to dispose of, a substantial part of its business or threatens to cease or suspend, the conduct of all or a substantial part of its business;
 - (i) part of its assets;
 - (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
 - (k) that party is unable to pay the party's debts as and when they become due and payable.

Interest Rate means the rate charged from time to time on overdraft facilities of more than \$100,000 by the Council's principal bank plus a margin of 2% per annum; **Land** means the land described at Item 2 of the Reference Schedule;

Land means the property identified as Lot 1 in Deposited Plan 1262011 and known as 15-17 Columbia Lane, Homebush.

Law means:

- (a) any law applicable including legislation, rules, ordinances, codes, regulations, proclamations or by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP means the *Strathfield Local Environmental Plan 2012* (2013 EPI 115).

Modification Application means any application to modify the Development Consent under sections 4.55 and 4.56 of the Act.

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act and includes an Occupation Certificate issued for part of a building.

Offer means the letter of offer reference RM:CM 4786187 dated 19 October 2023 made by the Developer (through its solicitor) to Council for the dedication of eight (8) Units to Council free of all costs and includes the annexed draft plan of subdivision (reference number SY073481.002.25 sheets 1 to 21 of 21, prepared by Royston Lowe – Land Partners Pty Ltd, dated 29 September 2023).

Reference Schedule means the table contained in Schedule 1.

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

Regulation means the *Environmental Planning and Assessment Regulation 2000*, as was in force at the time of the grant of the Development Consent for the Development on the Land.

Security means a Bank Guarantee or Bond.

Strata Plan means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes Development Act 2015* (NSW).

Subdivision Certificate means a subdivision certificate as defined under section 6.4 of the Act.

Subdivision Works Certificate means a subdivision works certificate as defined under section 6.4 of the Act.

Units means the residential units, and the associated car parking space/s and storage area/s, to be dedicated or transferred by the Developer to Council, free of all costs, in accordance with the Offer and Schedule 3.

Works means all works, including all design, engineering, survey, fit out, environmental assessment and construction works, required to deliver the Units required under this agreement consisting of the provision of a material public benefit.

2.2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) a word that is derived from a defined word has a corresponding meaning;
- (j) the singular includes the plural and vice-versa;
- (k) words importing one gender include all other genders;

-
- (l) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
 - (m) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
 - (n) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
 - (o) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
 - (p) an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
 - (q) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
 - (r) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
 - (s) a reference to dollars or \$ is to Australian currency;
 - (t) a reference to a month is a reference to a calendar month; and
 - (u) a reference to a year is a reference to twelve consecutive calendar months.

3 Application of this Agreement

3.1 Application

This agreement applies to:

- (a) the Development, and
- (b) the Land.

3.2 Operation

This agreement commences on and from the date it is executed by all parties.

4 Contributions to be made under this Agreement

4.1 Contributions

- (a) The Developer must deliver the Contributions to the Council at the time and in the manner set out in the Contributions Schedule.
- (b) The parties acknowledge and agree that the Contributions serve the public purpose/s set out in the Contributions Schedule.

4.2 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act to the Development, as set out in Items 4, 5 and 6 of the Reference Schedule.
- (b) Any Contributions made under this agreement are not to be considered when determining any development contribution under section 7.11 of the Act.

5 Registration of this agreement

5.1 Interest

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

5.2 Registration of this Agreement

- (a) The Developer agrees to promptly do all things that are necessary to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents,to enable the registration of this agreement in accordance with clause 5.2.
- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and

- (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

(d) In the alternative to (a), (b) and (c) above, and at the complete discretion of Council, registration of this agreement in the relevant folios of the Register of the Land may not be required if:

- (i) The dedication or transfer of the Units to Council is to be effected by the Developer in a time that does not practically facilitate and/or necessitate the registration of this agreement;
- (ii) The Developer has provided documentary evidence of the above to the satisfaction of Council; and
- (iii) Council has provided the Developer with confirmation in writing that registration of this agreement is not required.

5.3 Removal from Register

- (a) Once Council is satisfied the Developer has satisfied all of its obligations under this agreement, the Council must within 20 Business Days of being requested to do so by the Developer:
 - (iv) provide a full release and discharge of this agreement with respect to the whole of the Land and documentation required to remove the notation of this agreement on title to the Land;
 - (v) should the Council not already have done so, sign such documentation as is necessary to remove any caveat lodged by Council in relation to the Land pursuant to clause 5.4 of this agreement.
- (b) Despite clause 5.3(a), from time to time, the Developer may request a release and discharge of this Deed so that the Developer may remove the notation of this Deed from the Register for a part of the Land, and the Council must provide a release and discharge within 20 Business Days, provided that:
 - (i) all obligations under clause 4 of this agreement have been met for the relevant part of the Land;
 - (ii) the Developer has provided Council with all Security required in accordance with clause 8.2 and any defects liability security required under the Construction Terms; and
 - (iii) the Developer is not otherwise in default of any of its obligations under this agreement, as determined by Council (acting reasonably) at the time of the Developer's request.
- (c) For the avoidance of doubt, a release under clause 5.3 does not operate as a release from any outstanding obligation under this agreement and is intended only to allow removal of the notation of this agreement from the Register for the relevant part of the Land.

5.4 Caveat

- (a) The Developer acknowledges and agrees that:

-
- (i) when this agreement is executed, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) Council may lodge a caveat restricting transfer of the Land to protect its rights under this agreement and the Developer will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council, provided the caveat does not prevent registration of any dealing or plan other than a transfer.
 - (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 5.2.
 - (c) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed:
 - (A) the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the land or property to be transferred, or dedicated to, the Council under this agreement for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW); and
 - (B) the Council has sufficient interest in the land or property to be transferred, or dedicated to, the Council under this agreement in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will notify the Council that any plan of subdivision or Strata Plan that creates any lot, strata lot or stratum lot to be transferred, or dedicated, to the Council under this agreement the Strata Plan has been registered within 5 Business Days of registration; and
 - (iii) it will not object to Council lodging a caveat in the relevant folios of the Register for the lot, the strata lot or the stratum lot to be transferred, or dedicated, to the Council under this agreement, nor will it seek to remove any such caveat lodged by Council.

6 Review of this Agreement

6.1 Review

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing, exhibited in accordance with the Regulation and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or because of, a review.

7 Dispute Resolution

7.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

7.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute;
- (b) The alleged basis of the dispute; and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

7.3.1 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 15 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 7.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

7.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 7.5 or by expert determination under clause 7.6.

7.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;

-
- (b) the mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
 - (c) the mediator appointed pursuant to this clause 7.5 must:
 - (i) have reasonable qualifications and practical experience in the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
 - (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
 - (e) the parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
 - (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
 - (g) in relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

7.6 Expert Determination

If the dispute is not resolved under clause 7.3 or clause 7.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached, or no appointment is made within 10 Business Days of the agreement, to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;

-
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
 - (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
 - (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

7.7 Litigation

If the dispute is not finally resolved in accordance with this clause 7, then either party is at liberty to litigate the dispute.

7.8 No suspension of Contractual Obligations

Subject to any interlocutory order obtained under clause 7.1, the referral to or undertaking of a dispute resolution process under this clause 7 does not suspend the parties' obligations under this agreement.

8 Enforcement

8.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (Default Notice) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time, not being less than 10 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice, it may refer the dispute to dispute resolution under clause 7 of this agreement.
- (d) If the Developer fails to comply with a Default Notice, the Council may perform the obligations the Developer has failed to fulfil in accordance with the Default Notice and do anything which the Developer should have done under this agreement in relation to the Developer's obligations the subject of the Default Notice.

-
- (e) Without limiting clause 8.1(d), the Developer agrees that the Council, its employees, agents and contractors, may when exercising its rights under that clause, enter onto the Land and do whatever is necessary to remedy the default, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
 - (f) The Developer indemnifies and will keep the Council indemnified from and against all Claims and Damages reasonably incurred by the Council or which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 8.1, except to the extent that such Claim or Damage is caused by Council's negligence or default, and Council may call on any Security provided to it under clause 8.2 to satisfy any Claim under this clause.

8.2 Security

- (a) The Developer must provide to the Council Security for the delivery of the Contributions as specified in the Contributions Schedule.
- (b) The Council may reject any Security provided by the Developer that is expressed as expiring on a certain date, in which case the Developer will be taken not to have satisfied its obligation to provide the Security under this agreement.
- (c) The Council may call on a Security provided under this clause 8.2 if:
 - (i) the Developer has been issued with a Default Notice under clause 8.1 and failed to rectify the default in accordance with that notice; or
 - (ii) the Developer becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Security provided under clause 8.20, the Developer must provide the Council with one or more replacement Securities in an amount calculated in accordance with the following:

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

Where:

A is the amount of the replacement Security, B is the amount of the Security to be replaced,

C is the CPI for the quarter ending immediately before the date of the Security to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Security,

provided A is greater than B.

- (e) On receipt of a replacement Security provided under clause 8.2(d), the Council must release and return to the Developer, as directed, the Security that has been replaced as soon as reasonably practicable.

-
- (f) At any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Securities which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to this clause 8.2 and the provisions of this agreement, the Council may apply the proceeds of a Security in satisfaction of:
- (i) any obligation of the Developer under this agreement to which the Security applies, and
 - (ii) any associated 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.
- (h) The Council must promptly return a Security provided under this clause 8.2 if requested by the Developer and:
- (i) the Developer has delivered the Contribution Item to which the Security applies to the Council's satisfaction; and
 - (ii) where Works are involved, the Developer has provided a Security under clause 11 of the Construction Terms for that item of Works.
- (i) For the avoidance of doubt, the Developer may direct the Council in writing to continue to hold a Security provided under this clause 8.2 in satisfaction of the requirement to submit a Security under clause 11 of the Construction Terms.
- (j) The provision of a Security under this clause 8.2 does not relieve the Developer from any of its obligations under this agreement.
- (k) Nothing in this clause 8.2 prevents or restricts the Council from taking any enforcement action in relation to:
- (i) any obligation of the Developer under this agreement; or
 - (ii) any associated 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,

that is not or cannot be satisfied by calling on a Security.

8.3 Compulsory Acquisition

- (a) If the Developer does not transfer or grant to the Council the interests in the Units as required by this agreement, the Council may compulsorily acquire the Units, in which case the Developer consents to the Council compulsorily acquiring the Units for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any applicable Security provided under clause 8.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land.

-
- (b) If Council compulsorily acquires the Units, clause 8.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
 - (c) The Developer approves, in accordance with section 188 of the *Local Government Act 1993*, of the acquisition of the Units as required by this agreement for the purposes of re-sale by the Council.
 - (d) Except as otherwise agreed between the parties, the Developer must ensure the Units to be acquired by the Council are freed and discharged from all encumbrances and affectations (including any charge or liability for rates, taxes, strata levies and charges), on the date of acquisition.
 - (e) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council because of any acquisition by the Council of the Units under clause 8.3(a).
 - (f) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the Units or any interest in land under clause 8.3(a) that are not or cannot be recovered by calling on a Security.

8.4 Restriction on the issue of Certificates

- (a) If the Contributions Schedule specifies that:
 - (i) a Contribution Item; or
 - (ii) a Securitymust be delivered prior to the issue of an Occupation Certificate, in accordance with provisions of any Law (including the Act or the Regulation or both), the Occupation Certificate must not be issued unless that Contribution Item or Security has been delivered.
- (b) If a Default Notice has been issued by Council under clause 8.1 and the Developer has failed to rectify the default, an Occupation Certificate must not be issued for any part of the Development until the default has been rectified to the satisfaction of Council or any dispute about the Default Notice has been finally resolved.

8.5 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

8.6 Overdue Payments

- (a) The Developer agrees to pay interest to Council on any amount payable by it under this agreement from when the amount becomes due for payment, during the period it remains unpaid, on demand or at times determined by Council, calculated on daily balances and applying the Interest Rate.
- (b) Interest which is not paid when due for payment may be capitalised by Council at intervals which Council determines from time to time or, if no determination is made, then on the first day of each month.
- (c) Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 8.6.
- (d) If a liability under this agreement becomes merged in a judgment or order, then the Developer agrees to pay interest to Council on the amount of that liability as an independent obligation.
- (e) Interest payable under clause 8.6(d) accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the Interest Rate.
- (f) For the avoidance of doubt, if a liability under this agreement becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated in accordance with this clause 8.6, but not both.

9 Assignment and Dealings

9.1 Assignment

- (a) The Developer must not assign or deal with any right under this agreement without the prior written consent of the Council.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) is taken to be an assignment of this agreement for the purposes of this clause 9.1.
- (c) Any purported dealing in breach of this clause 9.1 is of no effect.

9.2 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (Transferee) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this agreement;
 - (ii) the Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the

outstanding obligations of the Developer under this agreement and to be bound by the terms and condition of this agreement as if the Transferee had executed this agreement;

- (iv) the Transferee provides to the satisfaction of the Council any Security required under this agreement to secure the outstanding obligations under this agreement;
- (v) the Transferee provides to the satisfaction of the Council copies of insurances or other documents required under this agreement for the carrying out of any Works;
- (vi) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine; and
- (vii) the Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

9.3 Mortgagee Arrangements

- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer defaults under the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

10 Approvals and Consents

10.1 Approvals

- (a) Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party.
- (b) Subject to statutory requirements, a party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

11 No Fetter

11.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to a Development Application, Planning Proposal or any other application for Approval (all referred to in this agreement as a "**Discretion**").

11.2 No Fetter

- (a) Nothing in this agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law.
- (b) Nothing in this Deed is to be construed as limiting or fettering in any way the exercise of Discretion.
- (c) Nothing in this Deed imposes any obligation on an Authority to grant any Development Consent or exercise any function or power under the Act in relation to a change, or a proposed change to an environmental planning instrument.
- (d) If, contrary to the operation of this clause 11, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
 - (ii) if clause 11.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
 - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

11.3 Planning Certificates

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7(5) of the Act that this agreement affects the Land.

12 Release and Indemnity**12.1 Release and Indemnity**

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer.
- (b) The Developer releases the Council from any Claim incurred in connection with the Developer's obligation to provide the Contributions, except where arising and to the extent of any negligence or default of the Council.
- (c) The Developer indemnifies the Council (to the extent that any Claim is made against it) against all Damages incurred, in connection with the Council reasonably enforcing the Developer's obligation to provide the Contributions in accordance with this agreement and / or the Council reasonably exercising the Council's rights under or by virtue of this agreement.
- (d) The indemnity in clause 12.1(c) is a continuing obligation, independent of the Developer's other obligations under this agreement and continues after this agreement ends.

-
- (e) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause 12.1.
 - (f) A party must pay on demand any amount it must pay under an indemnity in this clause 12.1.

13 Confidentiality

13.1 Confidentiality

The parties agree that the terms of this agreement are not confidential, and this agreement may be treated as a public agreement and exhibited or reported without restriction by any party.

14 Costs, Duty and GST

14.1 Legal Expenses and Stamp Duty

The Developer must pay the Council's reasonable costs (including legal costs) and disbursements in connection with:

- (a) The drafting, negotiation, preparation, execution, carrying into effect, and registration of this agreement;
- (b) The cost of any legal advice obtained in connection with this agreement;
- (c) Exercising, enforcing or preserving or attempting to exercise, enforce or preserve rights under this agreement, including in connection with the default of any party other than the Council; and
- (d) any waiver, variation, release or discharge of this agreement.

14.2 Duty

The Developer must pay or reimburse the Council on demand for taxes and fees (including without limitation registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this agreement or a payment or receipt or any transaction contemplated by this agreement.

14.3 GST

- (a) Words and expressions which are not defined in this agreement, but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) The parties agree, in accordance with Class Ruling CR2013/13 published by the Commissioner, that Contributions required to be made under this agreement are exempt from GST.
- (d) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

-
- (e) This clause 14.3 will not merge on completion or termination of this agreement.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) Must be in writing and signed by a person duly authorised by the sender;
- (b) Must be addressed and delivered to the intended recipient by hand, by prepaid post or by email at the address specified in this agreement, or at the address last notified by the intended recipient to the sender after the date of this agreement;
- (c) Is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address or when the Notice is first opened or read by the recipient, whichever occurs first.
- (d) If under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Change of Address

If a party gives another party 3 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

16 General

16.1 Relationship Between Parties

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.

-
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Schedules and Annexures

The parties agree that all the Schedules and Annexures form part of this agreement and to agree to comply with the provisions of those Schedules and Annexures.

16.3 Time for Doing Acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.4 Further Assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.5 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Entire Agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.8 Representations and Warranties

- (a) Each party individually represents and warrants that:
- (iii) it has power to enter into this agreement and comply with its obligations under this agreement;
 - (iv) this agreement does not contravene its constituent documents (if any) or any law or obligations by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;

-
- (v) it has in full force and effect the authorisations necessary for it to enter into this agreement, to comply with its obligations and to exercise its rights under this agreement and to allow this agreement to be enforced;
 - (iv) its obligations under this agreement are valid and binding and are enforceable against it in accordance with the terms of this agreement;
 - (v) it does not any immunity from the jurisdiction of a court or from legal process; and
 - (vi) it benefits by entering into this agreement to which it is a party.
- (b) Each party acknowledges that the other party has entered into this agreement in reliance on the representations and warranties in this clause.

16.9 Severability

- (a) 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.
- (b) 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.

16.10 Invalidity

- (a) A word or provision must be read down if:
- (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
- (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.10(b) applies.

16.11 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

-
- (b) 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. 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 obligation or breach in respect of which it is given. 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.

16.12 Governing Law and Jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

16.13 Electronic Signature

- (a) In this clause 16.13, electronic signature means a digital signature or other visual representation of a person's handwritten signature or mark placed or typed on a copy of this Agreement by electronic or mechanical means (including by using DocuSign or other electronic signing platform agreed between the parties) and electronically signed has a corresponding meaning.
- (b) The parties consent to this agreement being signed by or on behalf of a party by electronic signature.
- (c) Where this agreement is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by this agreement.
- (d) This agreement may be physically or electronically signed in any number of counterparts which together will constitute one document.
- (e) Each party consents to the exchange of counterparts of this agreement by delivery by email to the party or its legal representative or other electronic means of exchange as the parties may agree.
- (f) On request, each party must deliver a physical counterpart of this agreement with the handwritten signature or signatures of the party and any written evidence of the authority of a person signing on their behalf, but a failure to comply with this request will not affect the validity of this agreement.

EXECUTION PAGE

EXECUTED for and on behalf of
STRATHFIELD MUNICIPAL COUNCIL ABN
52 719 940 263 by its authorised delegate
pursuant to Section 377 of the *Local
Government Act 1993* (NSW) in the presence
of:

Signature of Witness:

Signature of Authorised Delegate:

Name of Witness (printed):

Name of Authorised Delegate (printed):

Position of Authorised Delegate (printed):

EXECUTED by **JQZ FOUR PTY LIMITED**
ACN 162 702 963 in accordance with section
127 of the *Corporations Act 2001* (Cth) by:

Signature of Director:

Signature of Director/Secretary:

Name of Director (printed):

Name of Director/Secretary (printed):

a

SCHEDULE 1 – REFERENCE SCHEDULE

Item	Reference Information
Item 1 – Development	Site preparation works including demolition, excavation and remediation, the construction of a mixed use development comprising of 2 residential towers (Building A at 25 storeys and Building B at 26 storeys) connected by an 8 storey podium accommodating rooftop communal open space containing a total of 360 apartments, 2 ground floor retail premises and a further rooftop terrace to Building A situated over 4 levels of basement parking containing 381 car parking spaces, with associated ground floor communal open space and entry court yard, construction of an extension to Nipper Street and landscaping works
Item 2 – Land	Lot 1 in Deposited Plan 1262011 15-17 Columbia Lane, Homebush
Item 3 – Development Application	DA/2019/143 (as modified)
Item 4 – Exclusion of Section 7.11	This Agreement does not exclude the application of section 7.11 of the Act to the Development.
Item 5 – Exclusion of Section 7.12	This Agreement does not exclude the application of section 7.12 of the Act to the Development.
Item 6 – Exclusion of Section 7.24	This Agreement does not exclude the application of section 7.24 of the Act to the Development.

b

SCHEDULE 2 – CONTRIBUTION SCHEDULE

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
Construction, fit-out and transfer or dedication of the Units as set out in Schedule 3.	To increase the public housing in the Strathfield local government area.	Works to construct and fit-out the Units as set out in Schedule 3, to a final and complete state, to Council's satisfaction, so that the Units are immediately fit for habitation and transfer to Council, free of any Costs to Council.	Prior to the issue of any Occupation Certificate for the Development.	<p>The Units are to be transferred or dedicated to Council in accordance with Schedules 2 to 5.</p> <p>The works to construct and fit-out the Units must be carried out in accordance with Schedules 2 to 5.</p> <p>The Units must be designed and constructed to meet the specifications in Schedules 2 to 5.</p>	XXX	XXX

SCHEDULE 3 – CONTRIBUTION ITEMS

1 Contribution Items Description

As set out in the Offer, the Developer will transfer or dedicate the following Units of the Development to Council, free of all costs:

- (a) **Lot 8** being a three-bedroom residential unit with one car parking space and one storage unit;
- (b) **Lot 10** being a one-bedroom residential unit with one car parking space and one storage unit;
- (c) **Lot 14** being a two-bedroom residential unit with one car parking space and one storage unit;
- (d) **Lot 16** being a one-bedroom residential unit with one storage unit;
- (e) **Lot 19** being a two-bedroom residential unit with one car parking space and one storage unit;
- (f) **Lot 32** being a two-bedroom residential unit with one car parking space and one storage unit;
- (g) **Lot 34** being a one-bedroom residential unit with one car parking space and one storage unit;
- (h) **Lot 42** being a two-bedroom residential unit with one car parking space and one storage unit.

2 Interpretation

For the purposes of this Schedule 3, the defined terms in clause 2.1 of this agreement and the Interpretation principles in clause 2.2 of this agreement will apply and, unless context indicates a contrary intention:

Encumbrance means any:

- (a) Security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) Right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) Right that a person (other than the owner) has to remove something from land (known as a profit-à-prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) Third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or to allow them to exist;

Permitted Encumbrance means each of:

- (a) Easements benefiting statutory authorities authorised by Approvals;

d

-
- (b) Environmental management requirements imposed under an Approval;
 - (c) An Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person) the Council agrees in writing is a Permitted Encumbrance;

3 Manner of Delivery

- (a) Prior to delivery to Council, the Developer must ensure that all Units have been to be constructed and fitted out in accordance with the Development Consent for the Development and Schedule 4, with all fixtures and fittings completed so as to allow their immediate use as residential dwellings.
- (b) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Units freed and discharged from all Encumbrances, taxes, rates or charges except Permitted Encumbrances.
- (c) The obligation to dedicate or transfer the Units will be taken to have been satisfied when a Certificate of Title is issued by NSW Land Registry Services for each of the Units identifying the Council as the registered proprietor of that Unit.

SCHEDULE 4 – CONSTRUCTION TERMS

1 Interpretation

For the purposes of this Schedule, the defined terms in clause 2.1 of this agreement and the Interpretation principles in clause 2.2 of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works;

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Contamination has the same meaning as in the Contaminated Land Management Act 1997 (NSW).

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date of Handover.

Handover means Council's acceptance of delivery and responsibility for the Works in accordance with clause 8.1 of this Schedule 5.

Insurer means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

Maintain means works to bring an item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any damage.

Maintained and Maintenance have corresponding meanings.

Practical Completion means practical completion of Works in accordance with clause 7 of this out in this Schedule 5.

Remediation has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Remediation Action Plan means any plan approved by a Site Auditor for the remediation of any part of the Land, or land on which the Works will be located, including by way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining any Approval.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval.

Site Auditor has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Standard Requirement means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard, any requirement, standard or specification applied by an Authority, any applicable public domain manual or guidelines issued by Council, applicable planning controls and any other engineering requirement to ensure a work is functional and suitable for its intended purpose.

f

2 Approvals

The Developer must at its cost and risk:

- (a) Prepare all Applications and submit such applications to the relevant Authorities and obtain all Approvals necessary to carry out works; and
- (b) Comply with all conditions of Approvals for the works.

3 Design phase

- (a) The Developer agrees to procure the design of the Works in accordance with this agreement and the Development Consent granted for the Development.
- (b) Prior to submission of a Development Application for the Works or any Application for Approval of the Works, the Developer must provide a draft of the design of the Works to the Council.
- (c) The Developer acknowledges and agrees that prior to the issue of an Occupation Certificate for the Development, the Council may require the design for the Works to be adjusted so that it is consistent with a Standard Requirement.

4 Construction drawings

- (a) Prior to obtaining an Occupation Certificate for the Development, the Developer must provide construction drawings for the relevant item of Works to the Council.
- (b) The Council must provide a response to the Developer within 10 Business Days of the Developer providing the construction drawings, and
 - (i) The Council may, by notice in writing and acting reasonably, approve, vary or direct a variation to the construction drawings to reflect a Standard Requirement; and
 - (ii) The Developer must comply with any direction given by the Council under clause 4(b)(i) of this Schedule.
- (c) The Developer acknowledges and agrees that:
 - (i) The Council may, but is not obliged to critically analyse the plans and specifications for the Works;
 - (ii) The Council is not responsible for any errors, omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications for the Works;
 - (iii) The Council is not liable for any Claim or Damage incurred by the Developer because of any defect in the design or construction of any part of the Works, other than a defect caused by the Council; and
 - (iv) No comment, review or information supplied to the Developer by the Council alters or alleviates the Developer's obligation to construct and complete the Works in accordance with this agreement.

-
- (d) For the avoidance of doubt:
 - (i) Any approval of the construction drawings provided by Council under this agreement does not constitute the grant of any Construction Certificate or other building certification under the Act; and
 - (ii) The Council is not responsible for the costs of any variation in accordance with this clause 4.

5 Construction Phase

- (a) The Developer must procure, at its cost and risk, the execution and completion of the Works, including the relocation of any utility services, in a good and workmanlike manner and so that they are diligently progressed to Practical Completion, and in accordance with:
 - (i) The Approvals;
 - (ii) Any Development Program provided to the Council under this Schedule;
 - (iii) The requirements of all Laws, including without limitation, workplace health and safety legislation; and
 - (iv) Its other obligations under this agreement.
- (b) If the Developer or the employees or agents of the Developer damage any public utilities and Services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.
- (c) The Developer must keep the Council reasonably informed of progress of the Works and provide to the Council such information about the Works as the Council reasonably requests.
- (d) The Developer must procure the Works to be carried out:
 - (i) Using good quality materials, which must be suitable for the purpose for which they are required under this agreement;
 - (ii) In a proper and tradesmanlike manner;
 - (iii) Without the use of asbestos in any form;
 - (iv) In compliance with relevant Australian Standards, the Building Code of Australia and any relevant manufacturers' standards; and
 - (v) So that the Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.
- (e) The Developer undertakes the Works entirely at its own risk.
- (f) The Developer must, at the Council's request, provide the Council with a copy of the development program for the Works and provide updates on the development program from time to time as the Development progresses.

6 Inspection

- (a) The Council may enter the common areas of the building of the Development and the Units to inspect the progress of the Works subject to:
 - (i) The terms of any Construction Contract (save for any clause of the Construction Contract which prevents Council from accessing the Land);
 - (ii) Giving reasonable notice to the Developer;
 - (iii) Complying with all reasonable directions of the Developer;
 - (iv) Exercising its rights under this clause entirely at its own risk in all respects; and
 - (v) Being accompanied by the Developer or its nominee, or as otherwise agreed.
- (b) The Council may, within 10 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period. Such work may include, but is not limited to:
 - (i) Removal of defective or non-complying material;
 - (ii) Demolishing defective or non-complying work;
 - (iii) Reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) Not delivering any defective or non-complying material to the site of the Works.
- (c) If the Developer is issued a direction to carry out further work under clause 6(b) of this Schedule, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the period specified in the Notice.
- (d) If the Developer fails to comply with a direction to carry out work given under clause 6(b) of this Schedule, the Council will be entitled to refuse to accept Practical Completion and Handover of the Works in accordance with this agreement.
- (e) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 6(b) of this Schedule does not constitute:
 - (i) Acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) An Approval by the Council in respect of the Works; or
 - (iii) An agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

7 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 7(a) of this Schedule, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) Provide written certification to the Developer that the Works have been completed; or
 - (ii) Notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 7(b) of this Schedule, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 7(a) of this Schedule for written certification that the Works have been completed.
- (d) Practical Completion will be achieved in relation to the Works or any part of the Works when Council certifies that the Works have been completed in accordance with clause 7(a) of this Schedule.

8 Handover

- (a) Subject to clause 10 of this Schedule, the Council will assume responsibility for the Works when they have reached Practical Completion and:
 - (i) Following transfer or dedication to the Council of the Units; or
 - (ii) On the case of Works that are not located on land to be dedicated, when the Developer provides documentary evidence to the Council that public access easements permitting public access to the Works have been registered on title to the relevant part of the Land.
- (b) Prior to Handover of the Works, the Developer is responsible for:
 - (i) The delivery and care of the Works;
 - (ii) Providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable under the Law; and
 - (iii) Taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Developer liable under the Law.

9 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after Handover in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
 - (i) All “as built” full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) All necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) Copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

10 Defects Liability and Maintenance

- (a) During the Defects Liability Period, the Developer must:
 - (i) Maintain the Works or any part of the Works; and
 - (ii) Rectify any defects in the Works.
- (b) The Developer must follow relevant Council policies and obtain all Approvals necessary to carry out any work required under this clause 10.1.
- (c) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (Rectification Notice) in writing that identifies a defect in the Works or a failure to Maintain the Works and specifies:
 - (i) Action required to be undertaken by the Developer to rectify the defect or Maintain the Works (Rectification Works); and
 - (ii) The date on which the Rectification Works must be completed (Rectification Date).
- (d) The Developer must comply with the Rectification Notice by:
 - (i) Procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
 - (ii) Keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) Carrying out the Rectification Works.
- (e) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.

-
- (f) When the Developer considers that the Rectification Works are complete, the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
 - (g) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 10.6 of this Schedule and, acting reasonably:
 - (i) Issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) Notify the Developer in writing that it is satisfied the Rectification Works are complete.
 - (h) The Developer must meet all costs of and incidental to the carrying out of any Rectification Works under clause 10 of this Schedule.
 - (i) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) Call upon any Security provided to the Council under clause 10.13 of this this Schedule 5 to meet its costs of carrying out Rectification Works; and
 - (ii) Recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in carrying out Rectification Works.
 - (j) The Developer indemnifies Council for all monies payable by the Developer to Council pursuant to clause 10.9 of this Schedule 5 that are not satisfied by the calling up of a Security, provided that the Council takes any reasonable action to mitigate the costs incurred and the indemnity excludes and costs arising due to the negligence of the Council.
 - (k) The Developer must request that the Council inspect the Works 20 Business Days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before to the end of the Defects Liability Period.
 - (l) If, prior to the end of the Defects Liability Period:
 - (i) The Developer fails to request the inspection, or
 - (ii) The Council does not carry out the inspection,the Council may extend the Defects Liability Period so that the inspection may be carried out.

11 Security for Defects Liability

- (a) Prior to the Practical Completion and Handover for each item of the Works the Developer must deliver to the Council Security in an amount equivalent to 2.5% of the construction costs for the particular item of Works.

-
- (b) Within 15 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Security provided under clause 11(a) of this this Schedule 5 for that item of Works (or any remaining balance of it) to the Developer.
 - (c) Notwithstanding clause 11(b) of this this Schedule 5, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Security provided to it until the Rectification Works have been completed.

12 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure there is effected and maintained insurance policies covering risks, and on terms, reasonable acceptable to Council including:
 - (i) Physical loss, damage or destruction of each item of the Works (including any associated temporary works)
 - (ii) Construction works insurance for the value of the Works;
 - (iii) Public risk insurance for at least \$20 million;
 - (iv) Workers compensation insurance as required by Law; and
 - (v) Professional indemnity insurance with respect to design works only.
- (b) The policies must provide cover for the period from the date of the commencement of construction of the Works until the end of the Defects Liability Period for each and every aspect of the Works and during the Defects Liability Period, for the purpose of providing insurance cover in respect of the Developer's defect liability and maintenance obligations under this agreement.
- (c) The insurance cover under clause 12(a) of this this Schedule 5 in relation to any construction works insurance must be for an amount not less than the full insurable value of the Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).
- (d) All insurances which the Developer is required by clause 12(a) of this this Schedule 5 to effect and maintain:
 - (i) Must be with an Insurer; and
 - (ii) Must not in any respect limit or derogate from the liabilities or obligations of the Developer under this agreement.
- (e) The Developer must give Council certificates of insurance policies which are required by clause 12(a) of this this Schedule 5, prior to the commencement of the Defects Liability Period, and otherwise whenever reasonably requested in writing by Council.
- (f) The Developer must punctually pay or procure that all premiums in respect of all insurances required under clause 12(a) of this this Schedule 5 be paid.

m

-
- (g) The Development must:
- (i) Not do or omit to do anything which if done or not done is likely to vitiate, impair, derogate or prejudice any insurance or is likely to prejudice any claim under any insurance policy required under this agreement;
 - (ii) If necessary, rectify or cause to be rectified anything which might prejudice any insurance cover;
 - (iii) Reinstate or cause to be reinstated an insurance policy if it lapses;
 - (iv) Immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
 - (v) Give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any prejudice or affect any such insurance cover or the payment of all or any benefits under the insurance.
- (h) If all or any part of the Works are damaged or destroyed prior to Practical Completion and Handover:
- (i) All insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Works, except if the damage or destruction is caused by the Council;
 - (ii) If the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Works using its own funds; and
 - (iii) If the insurance proceeds received under the insurances in respect of the damage or destruction exceed the costs of repairing or replacing the Works, the Developer will be entitled to keep the excess.

13 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to the Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

14 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims and Damages arising in connection with the carrying out by the Developer of the Works except to the extent such Claim or Damage arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence or default.

n

15 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

16 Contamination and Remediation

- (a) The Developer must, at its cost, carry out any Remediation of the Land, or any land on which the Works will be carried out, in accordance with the Contaminated Land Management Act 1997, any Remediation Action Plan and any other legislation and guidelines relating to the Remediation.
- (b) Prior to Handover of any Works, the Developer must:
 - (i) Provide to Council a Site Audit Report or, as the case may be, a preliminary investigation report prepared by a Site Auditor, confirming that the land on which the Works are located is suitable for its intended purpose; and
 - (ii) Satisfy any conditions in the Site Auditor's statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.
- (c) The Developer, to the fullest extent permitted by Law, indemnifies and releases the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

SCHEDULE 5 – SPECIFICATIONS FOR UNITS

Each Unit and the associated car space and storage space to be transferred to the Council will be to the following standards:

- (a) The quality and standards of construction and finish of an AHU, car space and storage space to be transferred to the Council is to be the same as any other similar unit, car space and storage space in the building which is not an AHU or for the purposes of an AHU.
- (b) All fixtures, fittings and inclusions in an AHU, car space and storage space to be transferred to the Council are to be consistent with and of the same quality and standards as other similar units, car spaces and storage spaces within the Building unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed between the parties in a detailed Schedule of Finishes.
- (c) The AHU, car space and storage space will comply with appropriate Australian Standards and the Building Code of Australia
- (d) The AHU will be equipped with the following minimum fittings, if not already included in an agreed Schedule of Finishes or as otherwise agreed between the parties in writing:
 - (i) Floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s),
 - (ii) Light fittings fit for purpose in each room,
 - (iii) Telephone and television aerial points in the lounge and main bedroom,
 - (iv) Cable television fittings if provided in the Building,
 - (v) Allocation of car and storage spaces consistent with other units,
 - (vi) All opening windows to have fly screens; and blinds consistent with other units, if other units do not have fly screens or blinds then fly screens and blinds are to be installed for the AHU to a type and standard approved by the Council,
 - (vii) Sliding doors to have blinds and security fly screen door provisions consistent with other units, if other units do not have fly screen doors then fly screen doors are to be installed for the AHU to a type and standard approved by Council,
 - (viii) Provision of air conditioning to living area and bedroom/s,
 - (ix) Security and/or intercom system.

Prior to the dedication or transfer of each Unit:

- (a) The Unit (and associated car space and storage) is to be inspected by nominated Council officer/s; and
- (b) Council is to inform the Developer/Proponent in writing that the specification and condition of the Unit is satisfactory, and that dedication or transfer may occur.

p

SCHEDULE 6 – SUMMARY OF REQUIREMENTS (section 7.4 of the Act)

Subject and Subsection of the Act	Planning Agreement
Development Application – Section 7.4(1)	
The Developer has:	
(a) Sought a change to an environmental planning instrument	<input type="checkbox"/> Yes <input type="checkbox"/> No
(b) Made, or propose to make a Development Application	<input type="checkbox"/> Yes <input type="checkbox"/> No
(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	<input type="checkbox"/> Yes <input type="checkbox"/> No
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	Refer to Schedule 1
A description of the development to which the Planning Agreement applies – Section 7.4(3)(b)	Refer to Schedule 1
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)	Refer to Schedule 2
Whether benefits are to be taken into consideration when determination development contributions – Section 7.4(3)(e)	Refer to clause 4
Mechanism for dispute resolution – Section 7.4(3)(f)	Refer to clause 7
Enforcement of the Planning Agreement – Section 7.4(3)(g)	Refer to clause 8
Registration of the Planning Agreement – Section 7.4(3)(g)	Refer to clause 5
No obligation to grant consent or exercise functions – Section 7.4(9)	Refer to clause 11 (no fetter)

SCHEDULE 7 – DEVELOPMENT CONSENT (as modified)

r

SCHEDULE 8 – APPROVED PLANS

s