



Willoughby City Council

ORDINARY COUNCIL

ATTACHMENT BOOKLET

27 MARCH 2023

TABLE OF CONTENTS

TABLE OF CONTENTS	2
12 REPORTS TO COUNCIL	3
CUSTOMER & CORPORATE DIRECTORATE.....	3
12.4 ARIC ANNUAL REPORT AND MEETING MINUTES 30 NOVEMBER 2022	3
PLANNING & INFRASTRUCTURE DIRECTORATE.....	30
12.6 PUBLIC EXHIBITION – PLANNING AGREEMENT – 849-859 PACIFIC HIGHWAY, CHATSWOOD	30
12.7 COUNCIL RELATED DEVELOPMENT APPLICATIONS POLICY.....	78
12.8 MINUTES – TRAFFIC COMMITTEE MEETING HELD ON 23 FEBRUARY 2023	94
COMMUNITY, CULTURE & LEISURE DIRECTORATE.....	112
12.11 OUTCOME OF PUBLIC EXHIBITION OF THE REVIEW OF THE SYNTHETIC SPORTSGROUND MANAGEMENT PLAN AND THE COMMUNITY USE OF SPORTS FACILITIES POLICY	112

12 REPORTS TO COUNCIL

CUSTOMER & CORPORATE DIRECTORATE

12.4 ARIC ANNUAL REPORT AND MEETING MINUTES 30 NOVEMBER 2022

Annual ARIC Report January 2022 – December 2022

About the report

This annual report documents the operation and activities of the Audit, Risk & Improvement Committee (ARIC) and an overview of the Internal Audit function for Willoughby City Council for the period from 1 January 2022 to 31 December 2022.

Willoughby City Council's ARIC provides Council with independent assurance and assistance on its compliance, risk management, financial management, governance, audit, fraud control and service delivery responsibilities.

There are 3 independent members and 2 Councillor Members on the Committee

Purpose of this report

The purpose of this report is tabled under Clause 5.1 of the ARIC Charter which requires that:

"The Committee through the Chairperson, shall also submit and present on an annual basis, a formal report to Council outlining the Committee's major achievements, issues identified and other relevant matters, to a closed session of a Council meeting."

Member Profiles

Willoughby City Council's ARIC has been established as an advisory committee of Council to provide independent assurance.

Members have varied qualifications and experience which contribute to the effectiveness of the Committee.

Here is a snapshot of the members:

Independent Members

Elizabeth Gavey-Committee Chair

B Com (Economics), LLB, GAICD

Elizabeth joined Willoughby City Council's Audit Risk and Improvement Committee as an independent member in November 2020. She also serves as Chair on the Audit Risk and Improvement Committees for 3 other Local Councils in New South Wales and on the Audit and Risk Committees for the NSW Electoral Commission, the Office of Independent Review and the Audit Office of New South Wales.

She has 30 years' plus experience gained in commercial law, investment banking and the health sector and is an experienced Company Director in the Not for Profit sector.

Christopher Davies – Committee Member

MCorpGov, GradDipFraudInvest, GradCertBusLaw, GradCertFinInvest, BCom, CRMA, PMIIA, FGIA, ACPA

Chris joined Willoughby City Council's Audit Risk and Improvement Committee as an independent member in November 2020. He has over 20 years' experience in internal audit, risk management, fraud control, probity and business continuity gained as a management consultant as well as in the entertainment and energy industries. Chris has also served on an Audit, Risk and Improvement Committee for a large regional council.

Chris is a member of the ARIC in his own personal capacity and is employed by one of the "Big 4" consulting firms, specialising in risk management, governance and assurance on significant infrastructure projects across Australia.

Robert Lagaida – Committee Member

BEc MComm FCPA GAICD PSM

Robert joined Willoughby City Council's Audit Risk and Improvement Committee as an independent member in November 2020. He also currently serves as an independent member for other Councils, and as Chair of Audit and Risk Management Committees for a number of NSW Government agencies: Multicultural NSW, Health Education Training Institute and Bureau of Health Information. Robert also currently serves as a Board Director and Trustee for both government and not for profit organisations.

Robert previously worked as a senior executive within NSW Health for over 20 years, with experience in policy, finance, corporate, capital works, ICT, procurement and clinical services. He was awarded a public service medal at the 2018 Australian Day Honours List. .

Councillor Members**Cr Robert Samuel**

Robert Samuel is one of two Councillor representatives on the Willoughby City ARIC elected to the position by his fellow Councillors for the term of Council. Robert is an Executive Director of consultancy firm Postillion, providing guidance on technology and strategy to social impact focussed organisations. He was previously a Partner at Grant Thornton within with their business improvement and risk consulting practice having merged his jointly held technology practice Consult Point earlier. Robert holds a Bachelor of Commerce in Accounting and Finance from the business school at the University of NSW.

Cr Jam Xia

Jam Xia is one of two Councillor representatives on the Willoughby City ARIC elected to the position by his fellow Councillors for the term of Council. Jam is a Commercial Banker with CommBank, providing supervisions over due diligence, deal structuring and documentation on transactions. He was previously a Credit analyst within ANZ's Corporate & Commercial Banking. Jam brings across knowledge ranging from credit risk analysis skills covering both qualitative and quantitative analysis. Jam holds a Bachelor of Commerce, major in Finance and Accounting from Macquarie Business School at Macquarie University.

How the Committee is supported by Legislation

The Committee has been operating in its current format since November 2020. At the commencement of 2022 two new Councillor members were appointed, replacing the previous Councillor members Christine Tuon and Nic Wright.

The new Local Government (Planning and Governance) Amendment Act 2016 Section 428A mandates the requirement for an Audit, Risk and Improvement Committee and specifies its responsibilities. Councils were required to establish an Audit Risk and Improvement Committee by 4 June 2022.

Willoughby City Council took a proactive position to implement the charter of the ARIC and its operations early to support a sound governance framework and to provide greater assurance around Council's activities.

What the Committee is tasked to do

The Committee operates under the Audit, Risk and Improvement Committee Charter which reflects the current guidelines provided by the NSW Office of Local Government and industry best practice. The Charter was approved by Council in September 2017 and includes the responsibilities specified under Section 428A of the Local Government Amendment (Planning and Governance) 2016.

The objective of the Committee is contained in the Charter:

"The primary role of the Audit, Risk and Improvement Committee of the Willoughby City Council ... is to advise Council on Audit, Governance, Risk Management, and Business Improvement related matters, policy and strategies, within the Committee's capabilities and working to an Audit Plan which encourages good Governance, Internal and External Audit and attention to Business Improvement, also providing independent, objective assurance about the effectiveness of Council's risk mitigation controls.

This Committee is an advisory committee only and it has no authority to expend Council funds or make decisions that are binding on the Council"

The Charter contains a number of administrative requirements and also prescribes the main responsibilities of the Committee into broad categories as follows:

- Compliance
- Risk Management
- Fraud Control
- Financial Management
- Governance
- Implementation of the strategic plan, delivery program and strategies
- Service Reviews
- Collection of performance measurement data

The Committee annually adopts a forward responsibility meeting plan that ensures coverage of these responsibility areas over a twelve-month period.

Key achievements of the Committee

During 2022, the ARIC performed its functions and responsibilities, as outlined in the ARIC Charter. This was facilitated by the adoption of a Forward Responsibility Calendar, which reflects the requirements of the Charter and Legislation, allocating the varying responsibilities to nominated meetings across a 12-month period to ensure complete coverage.

The ARIC recognises that 2022 was a challenging year for Council as a result of the continuation of the COVID-19 pandemic and significant adverse weather events that put pressure on Council's resources requiring Council to significantly alter the way it operates and still have many staff working remotely. Coupled with this has been periods where there were recruitment challenges, resulting in vacancies in key roles, including Internal Audit, Risk and Business Improvement.

Despite this, Council has continued to develop its management of strategic and operational risks, financial and other internal controls and compliance obligations as well as adapt to changes in the Council's operations. Areas on which to focus and dedicate resources have been prioritised by Council using a risk based approach, and where appropriate, some of the internal audit work was outsourced as a temporary measure.

The ARIC believes that Council is adequately supporting its internal and external audit functions and meets its external accountability requirements.

The ARIC's overall assessment is that the arrangements in the areas of responsibility specified in the ARIC Charter were operating adequately during 2022.

Key achievements include:

- Monitoring and review of Council's response to the continuing COVID-19 pandemic and adverse weather events
- Oversight of the development of Risk Management, Compliance and Governance Frameworks and receiving regular updates on progress with these
- Oversight of implementation of the External Audit Management Letter recommendations
- Review and oversight of the implementation of recommendations from internal audits.
- Providing suggestions and feedback on the strategic risk-based 4 year Internal Audit Program.

- Review of Council's draft Financial Statements on 29 September 2022.
- Oversight of Council's long term financial plan, investment activities and quarterly budget reviews
- Oversight of project and risk management of Council's major projects being undertaken
- Receiving in depth presentations on:
 - Council's insurance arrangements
 - Out of School Hours Service Declared Business
 - Council's management of Child Safety, Vulnerable Persons and Volunteers
 - Oversight of Council's business improvement activities
- Noting that Council completed all actions recommended in Council's Fraud and Corruption Improvement Plan
- Receiving regular updates on Council's performance against its Integrated Planning and Reporting obligations and its Corporate Scorecard

Committee assessment of its key responsibility areas for January 2022 – December 2022

Responsibility	Assessment
Compliance	<p>Specific areas of compliance well established and monitored regularly including work health and safety and financial reporting.</p> <p>Comprehensive Council-wide compliance risk framework remains under development</p>
Risk Management	<p>Enterprise Risk Management embedded and maturing.</p> <p>Business Continuity Planning well established, tested and proven as a result of the Covid-19 Pandemic restrictions and adverse weather events experienced in 2022.</p> <p>Commitment by management to continue developing a strong risk culture is evident</p>
Fraud Control	<p>Fraud and Corruption Prevention Plan and Policy in place. Fraud and Corruption Control has been subject to a detailed review and all recommendations implemented to further enhance controls in this area</p>
Financial Management	<p>Annual budget was reviewed quarterly with key indicators reported and analysed. Council has prepared a Long-Term Financial Plan and is aware of the fiscal constraints it may face.</p>
Governance	<p>Governance processes in place. Overarching governance framework to integrate all elements developing.</p>

Responsibility	Assessment
Strategic Plan, Delivery Program and Strategies	Strategic plans, delivery program and strategies implemented. Reviews undertaken to ensure alignment between the plans and delivery programs and community feedback received to further enhance the planning and delivery programs.
Service Reviews	Service reviews impacted by staff vacancies, but business improvement opportunities continue to be identified and implemented.
Performance Measurement Data	Strong processes in place to gather data and measure performance by Council
Overall	<p>Council is working diligently to establish and enhance frameworks, but staff vacancies in some key areas during 2022 impacted progress. As the Risk Management and Internal Audit vacancies were filled in late 2022, the ARIC is confident that progress can be made in enhancing the Risk Management Framework, particularly with respect to the independent assurance that Council's Internal Audit Function can provide.</p> <p>Despite staff vacancies, the ARIC notes progress in development of robust governance systems and the commitment of Council to this activity. It expects there will be continued progress in 2023</p>

Committee Dashboard

Participation in meetings during 2022

The Committee has four (4) scheduled normal meetings during the calendar year and one special meeting for the review and endorsement of the draft financial statements (29 September 2022).

Attendance to the date of this report is as follows:

Name	Role	Eligible*	Attended
Elizabeth Gavey	Independent Chair	5	5
Chris Davies	Independent	5	5
Robert Lagaida	Independent	5	5
Robert Samuel	Councillor	5	4
Jam Xia	Councillor	5	4
Nic Wright**	Councillor (Alternate member)	1	1

Non-Committee Regular Attendees	Role	Eligible*	Attended
NSW Audit Office	NSW Audit Office	5	4
Grant Thornton	External Audit Contractor	5	5
Debra Just	Chief Executive Officer	5	4
Maxine Kenyon	Customer and Corporate Director	5	5
Stephen Naven	Chief Financial Officer	5	5
Lui Yparraguirre (from October 2022)	Internal Auditor	2	2
Poppy Mourgelas (from July 2022 to October 2022)	Acting Governance, Risk and Corporate Planning Manager	1	1
Samantha Connor (from November 2022)	Governance, Risk and Compliance Manager	1	1
Steve Ray (to July 2022)	Risk and Audit Team Leader	1	1
Adam Booth (from August 2022)	Council and Corporate Support Officer	4	3

*Attendance at the September 2022 meeting for the review and endorsement of the draft financial statements was limited to the ARIC members, the General Manager, the external auditors, the Customer and Corporate Director, the Chief Financial Officer and representatives from the Finance and Assets teams and the Committee Secretary.

**Councillor Nic Wright attended the ARIC meeting in October 2022 in his capacity as an Alternate Councillor member

In addition to the meetings above;

1. the ARIC had a confidential in camera meeting with the Audit Office of NSW in October 2022
2. the ARIC had a confidential in camera meeting with the Internal Auditor in November 2022.

ARIC Business Papers and Reports reviewed

Meeting Date	Number of Papers/Reports reviewed and discussed
23 March 2022	12
3 August 2022	13
29 September 2022	1*
12 October 2022	16
30 November 2022	15

*This meeting was focused on the review of the 2020/21 FY Draft Financial Statements and Council's Long Term Financial Position

Committee Actions Register

The Committee Actions Register includes items raised by ARIC members for action/re-submission

- Number of actions open as at 1 January 2022 – 8
- Number of Actions Raised in 2022 - 40
- Number of actions completed/implemented in 2022 - 43
- Number of actions due to next/future meeting – 5

Audit Reports/Reviews & Recommendations considered

Audit Name	Overall Assessment	No. of Recommendations	ARIC Meeting Date
Customer Service in Development Assessment Process	Needs Improvement	6	23 March 2022
WHS Management System	Mostly Effective	8	23 March 2022
Project Management Framework	Some Improvement Opportunity – Satisfactory	10	3 August 2022
Cyber Security Risk and Threat Assessment	*	*	3 August 2022
NSW Auditor General's "Local Government 2021" Report	**	**	3 August 2022

*The Cyber Security Risk and Threat and Risk Assessment constituted a broad "health check" of Council's cyber security against various industry standards and identified an action plan Council could follow to improve its cyber security standing.

**Council undertook an analysis of its performance against recommendations made by the NSW Auditor General in her report on Local Government for 2021. Council was generally acting in accordance with those recommendations.

Other activities included:

- Oversighting the governance, fraud control and risk management frameworks
- Monitoring the status of audit recommendations
- Providing input into the development of a 4-year Internal Audit Plan and Annual Audit Program
- Oversight of the interim 6 month internal audit plan for July to December 2021 (completed in March 2022)
- Oversighting the External Audit Management Letter and Engagement Plan
- Revisiting prior audits, reviews and investigations for status updates
- Reviewing complaints data to identify any trends
- Reviewing Workplace Health and Safety statistics to assess Council's management in this area
- Reviewing procurement statistics to identify any trends and opportunities for efficiency gains
- Reviewing GIPA and Office of Local Government reporting statistics
- Oversighting any significant investigations that could be relevant to Council.

Assessment of the ARIC's Performance

Clause 5.1 of the ARIC Charter requires the ARIC, through the Chairperson, to review the ARIC's performance, with an assessment of performance to be presented to Council.

This Assessment was conducted via a questionnaire issued to ARIC members and regular attendees to the ARIC meetings. The overall feedback received was very positive, with an increase in the assessment of the ARIC's overall contribution from a score of 4.6 to 4.9 (out of a possible top score of 5). A summary of the results set out below.

Criteria	Average Response (1 Strongly disagree – 5 Strongly agree)
Independent Assurance - I have confidence that the Committee provides independent assurance and assistance to Council in the effective discharge of its responsibilities in relation to the following areas	
Risk Management	4.1
Internal control	4.1
External Accounting Responsibilities	5
Governance	4.6
Financial Reporting	5
Compliance with Laws and Regulations	4.1
Promotion of Governance	
The Committee facilitates and promotes sound governance procedures throughout Council.	4.3
The roles/responsibilities of the Committee are clear and are carried out in accordance with the Audit, Risk and Improvement Committee Charter	5
Communication	
The Committee is an effective forum for communication between stakeholders i.e. Council, the Chief Executive Officer, Senior Management, and Internal and External Audit	4.3

Criteria	Average Response (1 Strongly disagree – 5 Strongly agree)
Meetings	
Committee agendas are consistent with the Committee's charter	4.7
Committee meetings are well structured	5
Committee decisions are made after appropriate discussion/consideration	5
Committee papers are generally sufficiently informative, succinct and timely	4
An appropriate amount of time is spent at meetings on Council's financial management risks	4.9
An appropriate amount of time is spent at meetings on Council's non-financial risks	4.1
The current frequency of meetings is appropriate	4.6
Committee Members' Contribution	
Committee Members come to meetings prepared and ready to contribute	5
Committee Members collectively have the expertise and skill set required to fulfil the goals and purpose of the Committee	5
Overall Contribution	
Overall, the Committee has made a positive contribution to the achievement of Council's objectives and greater assurance and/or improvements in governance	4.9 (last year 4.6)

Themes arising from the self-assessment survey free text comments were –

- There is a concern about staff vacancies, particularly in the Internal Audit, Risk and Service Review roles resulting in the ARIC having limited oversight in these areas. It is noted that the Internal Audit and Risk roles have recently been filled. Developing an overview of all

departments' risk measurement and policy oversight would contribute better to a more effective focus for the ARIC.

- Strong management commitment to the work of the ARIC is evident.
- The ARIC members have a complimentary and diverse set of skills. The ARIC members are respectful of staff and the relationship is a positive one with open dialogue.
- Recognition that the ARIC provides independent assurance, advice and better practice examples to Council and encourages continuous improvement rather than a punitive compliance approach.

Internal Audit

Review and Development of the Internal Audit Function

Council maintains a Risk Management Framework consistent with AS ISO 31000:2018 and its ongoing development is a key objective of the Council. The independent assurance provided by the Internal Audit function is integral to this process.

In 2021 Council engaged O'Connor Marsden to undertake an external review of Council's Internal Audit Function. The review was received in August 2021 and whilst it noted some positive findings, it identified a number of areas where changes would further embed the Internal Audit function in Council and deliver value adding Internal Audit Services to Council. Council is now implementing a program of work to address these areas and reports to the ARIC regularly on progress with this work.

Internal Audit Activities

Council's Internal Auditor resigned in September 2021 and a recruitment program commenced to engage a new internal auditor. The audit industry has experienced a very tight employment market over the past 18 months and it was not until October 2022 that a suitable candidate was identified and engaged. Between January 2022 and September 2022 internal audits were conducted by outsourced internal audit providers.

The engagement of a new Internal Auditor in October 2022 has provided an opportunity to "refresh" the internal audit function, commencing with implementing the recommendations from the O'Connor Marsden report, but also by the Internal Auditor meeting with key stakeholders to identify and discuss key areas of concern.

Internal Audit Plan

Given that a program of work is underway to implement the O'Connor Marsden report recommendations and a new Internal Auditor was being recruited, a 6 month interim Internal Audit Plan was endorsed by the ARIC at its July 2021 meeting, with the audit reports being presented to the ARIC in 2022.

The Internal Audit reports presented to the ARIC were -

- Customer Service in Development Assessment Process – although this review was limited to the Development Assessment Process, the recommendations made can be applied Council wide to inform business improvement activities involving Customer Service
- WHS Management System – this review focused on whether Council had adequate systems and controls in place to adequately manage WHS effectively, efficiently and in accordance with regulatory requirements.

- Project Management Framework – with Council undertaking a refresh of its Project Management Framework, this review provided an opportunity to assess the effectiveness of the proposed framework and make adjustments before it was implemented.

A new 4 year strategic Internal Audit Plan is currently being developed. Whilst this is underway, particular audits have been identified to keep up momentum in the internal audit space, with the first of these audits being a Wages and Remuneration Review. Work has commenced on this audit and it is expected to be reported to the ARIC in early 2023.

Next Year

New requirements affecting the Internal Audit function and Audit Risk and Improvement Committee.

In 2019 the Office of Local Government (OLG) commenced a process to review the Guidelines for Risk Management and Internal Audit for Local Government in NSW (the “Guidelines”). On 19th December 2022 the OLG advised that the Guidelines have been approved however, the OLG has advised that the amendments to the Local Government (General) Regulation 2021 giving statutory force to elements of the Guidelines will not be made until early 2023.

The approved Guidelines provide guidance for Councils as to how they can satisfy the requirements of the legislation, particularly by requiring councils to have a mandatory internal audit function and Audit, Risk and Improvement Committee. Notably, the Guidelines specify that there may only be one non-voting Councillor Member on an ARIC. The Guidelines must be complied with by 1 July 2024.

Willoughby City Council has already pre-empted many of the requirements in the Guidelines and is in a good position to adjust to others as required. A review of the ARIC and Internal Audit Charters will be undertaken in the first half of 2023 to ensure alignment with the Guidelines.

The NSW Audit Office

Since becoming the external auditor for local government in NSW in 2016, the NSW Audit Office is becoming more robust and targeted in the conduct of its financial and performance audits. The ARIC monitors reports issued by the NSW Audit Office that may not directly relate to Willoughby City Council to identify recommendations that may assist Council to improve its control environment and operations.

Council has worked cooperatively with the NSW Audit Office with their representative being a regular invitee to all ARIC meetings. It is anticipated that this cooperative relationship will continue into the future. The NSW Audit Office has advised Councils of their areas of focus for both financial audits and performance audits in financial year 2022/2023.

ARIC Activities for 2023

A rolling four-year and annual internal audit plan will be designed to take into consideration both Council’s strategic risks as well as emerging pressures and opportunities. The ARIC will continue to review the internal audit plan to ensure that it takes into account the changing environment and key aspects of Council’s operations.

Areas for the ARIC to focus on in 2023 include:

- with cyber risks remaining inherently high across the globe, the Committee will continue to monitor Council's uplift of its cyber security position
- the overall assurance plan incorporating the relationships between core assurance, risk and internal audit
- the progress of implementing recommendations from internal and external reviews on a timely basis
- the long term financial sustainability of Council
- continuing to drive incremental improvements in Enterprise Risk Management, Compliance and Governance Frameworks and Fraud and Corruption Prevention controls

Conclusion

The 2022 year was challenging with the continuation of the COVID-19 pandemic, extreme weather events and a tight labour market impacting Council's operations. Despite this, Council continued to serve the community and worked to strengthen its governance processes.

The Council and Committee are well placed to meet the expanded requirements set out in the Guidelines issued by the OLG for Internal Audit, Risk Management and Audit, Risk and Improvement Committees, with many of the requirements contained within them already in place.

The ARIC has fulfilled its responsibilities under the Audit Risk & Improvement Committee Charter for the period and has a plan to continue to do so, via the adoption of the rolling forward responsibility calendar. The Committee has operated cooperatively to provide feedback and assurance to management and Council.

I take this opportunity to thank the other Committee members both past and present; the Chief Executive Officer, management and staff for their valuable contribution and support; and the internal and external audit teams for their forthrightness.

All these people have contributed to the Committee's success. It is a privilege to serve on the Committee and work with my fellow Committee members and management and I look forward to continuing to do this in the coming year.

Elizabeth Gavey

Chair, Willoughby City Council Audit, Risk and Improvement Committee

January 2023



Willoughby City Council

AUDIT, RISK & IMPROVEMENT COMMITTEE MEETING

HELD ON 30 NOVEMBER 2022

MINUTES

TABLE OF CONTENTS

TABLE OF CONTENTS	2
PRE-MEETING – COMMITTEE MEMBERS IN CAMERA WITH INTERNAL AUDITOR	3
1 OPENING AND INTRODUCTIONS	3
2 ATTENDANCE AND APOLOGIES	3
3 DISCLOSURES OF INTEREST	4
4 EXTERNAL GUESTS	4
5 EXTERNAL ACCOUNTABILITY	5
5.1 FINANCE UPDATE 30 NOVEMBER 2022	5
6 CONFIRMATION OF MINUTES – ARIC MEETING 12 OCTOBER 2022	6
7 ACTION LOG	7
8 CHIEF EXECUTIVE OFFICER VERBAL UPDATE	7
9 RISK MANAGEMENT FRAMEWORK	8
9.1 QUARTERLY PROCUREMENT REPORT	8
9.2 RISK MANAGEMENT UPDATE	8
9.3 RISK MANAGEMENT - MAJOR PROJECTS NOVEMBER 2022	9
9.4 INSURANCE – ANNUAL RENEWALS	9
10 CONTROL FRAMEWORK	10
10.1 GOVERNANCE UPDATE	10
11 LEGISLATIVE COMPLIANCE	10
11.1 EXTERNAL COMPLIANCE UPDATE	10
12 GENERAL COMPLIANCE AND BUSINESS IMPROVEMENT	11
12.1 BUSINESS IMPROVEMENT AND SERVICE REVIEW UPDATE	11
13 INTERNAL AUDIT	11
13.1 INTERNAL AUDIT ACTIONS UPDATE	11
13.2 INTERNAL AUDIT PLAN	11
14 OUT OF SCHOOL HOURS CHILD CARE DECLARED BUSINESS REPORT	12
14.1 OUT OF SCHOOL HOURS SERVICE DECLARED BUSINESS REPORT	12
15 PRESENTATION: CHILD SAFETY, VOLUNTEERS AND VULNERABLE PERSONS	12
15.1 CHILD SAFETY, VOLUNTEERS AND VULNERABLE PERSONS	12
16 GENERAL BUSINESS	13
16.1 ANNUAL REPORT AND SURVEY	13
16.2 FORWARD PLANNER	13
17 CONCLUSION OF MEETING / NEXT MEETING	13

PRE-MEETING – COMMITTEE MEMBERS IN CAMERA WITH INTERNAL AUDITOR

At 8:15 am, before the commencement of the meeting between the Committee and Management, the Committee held an in camera session with Council's Internal Auditor, Ms B Yparraguirre. The session concluded by 8:30 am.

1 OPENING AND INTRODUCTIONS

At 8:30 am, Ms Gavey opened the meeting, welcomed those present and delivered the following acknowledgement of country:

Willoughby City Council acknowledges the Traditional Owners of the lands on which we meet today, the Gamaragal People, and their connections to land, waters, and community. We pay our respects to their Elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander people, including those who may be in attendance today.

2 ATTENDANCE AND APOLOGIES

Committee Members Present:

Ms E Gavey (Chair)
Mr C Davies
Mr R Lagaida
Cr J Xia (apology from 8.50 am)

Council Officers Present:

Ms D Just (Chief Executive Officer)
Ms M Kenyon (Customer & Corporate Director)
Mr H Phemister (Planning & Infrastructure Director) (*online via Zoom*)
Ms Linda Perrine (Community Culture & Leisure Director)
Mr S Naven (Chief Financial Officer)
Ms B Yparraguirre (Internal Auditor)
Ms Samantha Connor (Governance, Risk & Compliance Manager)
Mr B Herring (Chief Information Officer) (*for Item 9.3*)
Mr D Wood (Design & Infrastructure Manager) (*for Item 9.3*)

External Attendees Present:

Mr J Winter, representing external auditors Grant Thornton Australia Limited (*online via Zoom*)

Apologies:

Committee Members:
Cr R Samuel
Council Officers:
Ms C Chiu (Risk Specialist)
External Guests:
Mr K Leung, the Audit Office of NSW

Observer:

Cr A Greco

3 DISCLOSURES OF INTEREST

Standing Declarations:

Ms Gavey declared a non-significant non-pecuniary interest by advising she holds the following positions:

- Chair/Independent Member - Camden Council Audit, Risk and Improvement Committee
- Chair/Independent Member - Penrith City Council Audit, Risk and Improvement Committee
- Chair/Independent Member - Waverley Council Audit, Risk and Improvement Committee
- Audit and Risk Committee Member - Electoral Commission of NSW
- Audit and Risk Committee Member - Office of Independent Review
- Audit and Risk Committee Member - Audit Office of NSW
- Audit and Risk Committee Member - Local Government NSW
- Chair/Director - Primary and Community Care Services Limited
- Independent Panel Member - Disciplinary Tribunal of Chartered Accountants Australia and New Zealand

Ms Gavey also declared:

“There is the potential for a conflict of interest to arise with my role on the Audit Office of NSW Audit and Risk Committee (as Council is its audit client); and Local Government NSW, of which Council is a member. Any potential conflict of interest will be managed on a case by case basis with appropriate mitigating action taken as required.”

Mr Davies declared he is employed with PricewaterhouseCoopers (PwC) and that he is a member of Council’s Audit, Risk and Improvement Committee in his personal capacity only and, as far as he is aware, Council receives no services from PwC.

Mr Lagaida declared he is an Independent Member of the Wollongong City Council Audit, Risk and Improvement Committee.

4 EXTERNAL GUESTS

DISCUSSION

Mr J Winter, representing external auditors Grant Thornton Australia Limited, noted:

- The Management Letter was presented to Council on 28 November 2022, reporting:
 - Council has addressed its systems around the review of assets.
 - Council’s bank signatories not updated by certain financial institutions. Staff have been in correspondence with financial institutions to have signatories updated and this has been an issue for a number of councils. Mr Winter noted if the financial institutions do not update the signatories in the next financial year it will remain a point in the corresponding Management Letter.
- He will liaise with staff at the end of the year in preparation for the future year, particularly around issues relating to indices and valuations, given inflationary pressures.
- He will meet with staff in February 2023 to assess current issues.
- The 2022/2023 financial year Engagement Letter likely to be issued in February or March 2023.

- There is momentum for the Office of Local Government to provide guidance for councils on the impacts of inflation. This would be useful to ensure a consistent approach for all councils.
- The ongoing dialogue with Management, and their professionalism, was appreciated.

The Chief Financial Officer, Mr S Naven, noted the strong relationship Council had developed with Grant Thornton and the Audit Office and thanked the teams for their professionalism.

The Chief Executive Officer, Ms D Just, noted that Council had the courage to make hard decisions in order to deliver the Financial Repair Strategy, and thanks must be given to the Councillors.

The Chair noted the professionalism of the Management team.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the comments made by Mr Winter, representing external auditors Grant Thornton Australia Limited and the Audit Office of NSW, commend Management for the excellent work in preparing the Financial Statements for the 2021/2022 financial year and thank the External Auditors.

5 EXTERNAL ACCOUNTABILITY

5.1 FINANCE UPDATE 30 NOVEMBER 2022

DISCUSSION

Mr Naven noted the September 2022 and October 2022 Investment Reports and the September Quarterly Budget Review 2022/2023 were presented to Council at the 31 October 2022 and 28 November 2022 Council meetings and resolved as recommended.

Mr Naven noted certain concerns looking forward:

- The Long Term Financial Plan was prepared in a benign interest rate environment, forecast to break even from 23/24 onwards, however this is now not the reality.
- The Independent Pricing and Regulatory Tribunal provided 3.7% rate cap for 2023/24; inflation reaching 7%, Award negotiations likely to result in a 4-5% increase, plus a 0.5% superannuation increase. Interest rates won't cover employee cost pressures.

The Committee asked for information regarding:

- The impact on rising energy costs on Council budgets?
Management advised that fuel alone seems to have doubled, energy forecast to go up by 50%. However, Council locked in recent pricing for an energy tender with dedicated amounts. Council is rolling out LED street lighting; however Ausgrid recently informed Council they won't be improving efficiency measures in the next 12 months.
- Is the Council prepared to look at breaking term deposits (if the break fee is less than an alternative interest rate earned), given what is in the market is higher?
Mr Naven will explore this issue.
- Reasoning for unrestricted cash of \$11m?

Management advised if all restricted assets and restricted liabilities are removed, the amount equates to 12 months working capital.

- The October 2022 Investment Report showed a Combined Bank Balance of \$5.8 m. The Unrestricted Cash and Investments (equating to Working Capital) is \$19.3 m. Is the cash at bank balance suitable?
Mr S Naven responded that Management like to keep approximately \$10 m liquid. The Combined Bank Balance is lower than expected and just a result of timing. However, conversations are being held with banks about higher yields.
- There is a reduction in capital projects in the Quarterly Budget Review - is this more related to timing and scope?
Management advised that there is an active program to reduce scope at budget and quarter reviews, given available resources, or resources Council can defer. The bulk of Q1 deferrals were due to delay in approvals from the State. Revenue will also be deferred. The Executive Leadership Team are exploring the cap on projects given the pressures on staff. Council need to continue maintenance and address issues caused by flooding.
- How can we find economies of scale (while also noting Infrastructure NSW's report being developed which will highlight spreading the load) given the risk in terms of solvency and capacity?
Management advised that, where there is capacity, staff will explore a single provider conducting multiple projects.

The Committee noted that the Quarterly Budget Review covers outstanding rates well. Management noted the resilient rate base and comparative data against other councils

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee receive and note the results for investments during September and October 2022 and the Quarterly Budget Review for quarter 1 of 2022/23.

Action:

The Chief Financial Officer report comparative results of outstanding rates in NSROC councils.

Note: Cr J Xia left the meeting at 8:50 am.

6 CONFIRMATION OF MINUTES – ARIC MEETING 12 OCTOBER 2022

DISCUSSION

The Committee noted the minutes of the Audit, Risk & Improvement Committee meeting held on 12 October 2022.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee receive and accept the minutes as a true and accurate record of the Audit, Risk and Improvement Committee meeting held on 12 October 2022

7 ACTION LOG

DISCUSSION

The Committee had no comments on the status of the Action Log.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the status report on the Action Log.

8 CHIEF EXECUTIVE OFFICER VERBAL UPDATE

DISCUSSION

Futures Summit

Councillor briefings will be held to orientate Councillors as to the Council's current operating environment:

1. Create a shared understanding of economic, environmental, social and political issues and the delivery program, recruitment, assets and finance.
2. Develop guiding principles.
3. Macro quantum for the Budget and Operational Plan.

Recruitment

- All businesses are facing challenges with recruitment. The Executive Leadership Team met last week and looked at key pressing issues and will embed a commercial recruiter and administrative resource in the new year to take the burden off People & Culture and Managers to source the skills needed.
- Pressure on planning teams continues, with many planners moving to State Government.

CONNECT

- Council is at a critical stage in terms of resourcing and seconding staff to deliver the modules. The Executive Leadership Team are discussing this and will confirm how to proceed, given challenges with service delivery delays and the need to implement CONNECT.

Pressures on staff

- Staff are tired which is consistent with other organisations. Staff are doing more than their own job with vacancies and the new Council. Staff wellbeing is an important factor.
- Council will close, apart from skeleton staff, over Christmas and provide a good opportunity to reduce excess leave, manage staff well-being and WHS and refresh staff.
- A staff survey will occur in 2023.
- A heat map exercise has been undertaken to identify pinch points where we can act now to reduce the burden. Some examples include changed delegations and simplified processes for staff and processes.

The Committee congratulated the Chief Executive Officer on her new contract and noted Council is lucky to have a strong leader in Debra Just.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the verbal report provided by the Chief Executive Officer

9 RISK MANAGEMENT FRAMEWORK

9.1 QUARTERLY PROCUREMENT REPORT

DISCUSSION

Management informed the Committee that Contract Management Module teething issues occurred after the module went live and these are being resolved to strengthen the system and encourage continued use by staff. These technical issues are business as usual challenges not CONNECT challenges.

A number of tenders going out to the market are currently using the roll over provisions. The waste collection contract ends June 2023, however it has been extended to provide sufficient time between now and the new tenderer commencing and to secure the appropriate plant.

Additional issues discussed included:

- Many upcoming expiring contracts are smaller contracts, typically 2 or 3 years with option periods.
- Modern slavery statements of ethics are included in tenders and contracts.
- Gifts and Benefits information will be emailed to all staff in the first week of December.
- Compliance with purchase order before invoice was at 83% for Quarter 1. While this is an excellent result compared to most Councils, the Procurement team look for opportunities for continued improvement.

The Committee noted that the Quarterly Procurement Report is consistently a good report.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the update on procurement activities.

9.2 RISK MANAGEMENT UPDATE

DISCUSSION

Management informed the Committee that Council's new Risk Specialist, Ms Celine Chiu, had commenced, however she was an apology to the meeting due to illness.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee receive and note the status of Council's risk management program.

9.3 RISK MANAGEMENT - MAJOR PROJECTS NOVEMBER 2022

DISCUSSION

Corporate Systems Replacement

The Committee was informed that technical issues which have delayed the implementation of the document management (ECM) upgrade, were not noted in the risk register or dependent systems. The risk register will be updated.

Gore Hill Indoor Sports Centre

The Committee was informed:

- The project will be a separate design and construct contract.
- The Quantity Surveyor estimate was based on rates received in the larger scheme. Currently the Quantity Surveyor is reviewing the smaller scheme.
- If Council progresses with the smaller scheme, it will be built to expand in future. The site is constrained and the expansion will link to car parking which will need to be provided from the outset. Therefore, it would likely be a limited expansion as it will be dependent on car parking.
- North Sydney Council are providing lessons learned Olympic Pool redevelopment - staff will take learnings from this and other projects. Staff are meeting with Members of Parliament in December regarding funding opportunities and are encouraging community associations to lobby Members for funding.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee receive the status report regarding major projects.

Action:

Willoughby Leisure Centre Upgrade updates be included in the Risk Management - Major Projects report in future meetings (from February 2023).

9.4 INSURANCE – ANNUAL RENEWALS

This item was discussed by the Committee in camera with the CEO, the Customer and Corporate Director and the CFO at the conclusion of the meeting.

DISCUSSION

The Committee discussed the Insurance – Annual Renewals report.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Insurance – Annual Renewals report.

10 CONTROL FRAMEWORK

10.1 GOVERNANCE UPDATE

DISCUSSION

The Committee were informed that the positive results in Lost Time Injury reporting were due to a change in culture where staff are increasing their reporting of incidents. The Committee discussed that some councils are noticing an increase in psychological claims and are utilising mental health first aiders. Staff advised the Committee that this is an option being explored.

The Committee queried Figure 2: Trends in Safety Reports Lodged – which contains more incidents reported than hazards. The Committee requested that staff check this figure to ensure it is correct (and not inverted). If the figure is correct, the Committee expressed concern about incidents being higher than hazards and an explanation will be required at the next meeting.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Governance Update report.

11 LEGISLATIVE COMPLIANCE

11.1 EXTERNAL COMPLIANCE UPDATE

DISCUSSION

The Committee discussed the NSW ICAC's investigations into:

- pork barrelling (Operation Jersey); and
- gifts and benefits and conflicts of interests in relation to Georges River Council (Operation Galley) and Canada Bay Council (Operation Tolosa).

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the External Compliance Update report.

Action:

Review and report on NSW ICAC's *Report on Investigation into Pork Barrelling in NSW* (Operation Jersey) to a future meeting of the Committee.

12 GENERAL COMPLIANCE AND BUSINESS IMPROVEMENT

12.1 BUSINESS IMPROVEMENT AND SERVICE REVIEW UPDATE

DISCUSSION

The Committee had no comments on the Business Improvement and Service Review Update report.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Business Improvement and Service Review Update report.

13 INTERNAL AUDIT

13.1 INTERNAL AUDIT ACTIONS UPDATE

DISCUSSION

The Committee noted many of the actions contained in the update are improvement opportunities. Staff should review the actions, determine what is achievable in light of resourcing, what will add benefit and if still relevant. Managers should be realistic regarding due dates.

The Committee suggested that future audit recommendations can be “chunked down” into separate components to provide flexibility and achievable targets.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Internal Audit Actions Update.

13.2 INTERNAL AUDIT PLAN

DISCUSSION

The Committee advised that staff need to look at capacity to resource audits – that there should ideally be 5-6 audits a year, dependent on scope and resourcing.

The Committee suggested the following elements to consider for the forward plan:

- Add a review of implementation of the Cyber Security Strategy in later years.
- Review the risk management audit timeframe.
- Delay Waste Management review, due to new contract pending.
- Review Audit Drives - 24 annually
- Consider grants allocation and acquittal; developer applications fees; deep dive on audit recommendations; planning process in later years.

The Committee expressed support for establishing foundations correctly and reducing the volume of audit reports in the first 6 months.

The Committee suggested liaising with the Local Government Internal Audit Network to obtain the results of the recent survey regarding trends on time and resource allocation to audits.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Internal Audit Plan.

14 OUT OF SCHOOL HOURS CHILD CARE DECLARED BUSINESS REPORT

14.1 OUT OF SCHOOL HOURS SERVICE DECLARED BUSINESS REPORT

DISCUSSION

The Committee commented that the report was detailed and comprehensive, the Councillor Briefing presentation was very impressive as was the stakeholder engagement and it did not look like more could have been done.

The Committee suggested that Council needs to consider what business it is in, particularly with financial challenges and the needs of community.

The Committee noted that often, during stakeholder engagement, the community can readily complain and it may be difficult to access positive comments. The stakeholder engagement in this instance was a good endorsement of the process and the decision.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Declared Business report on the Out of School Hours service.

15 PRESENTATION: CHILD SAFETY, VOLUNTEERS AND VULNERABLE PERSONS

15.1 CHILD SAFETY, VOLUNTEERS AND VULNERABLE PERSONS

DISCUSSION

The Committee commented that it was very impressed with breadth of work and the control measures in place and noted that targeted training is provided for higher risk areas.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the Child Safety, Volunteer and Vulnerable Persons report and that it is impressed with the breadth of services and quality assurance supporting the services that Council gives to the community.

Action:

Staff provide an outline to the Committee of how much funding Council contributes and contact the Commonwealth Government for additional funding to cover operational and administration costs.

16 GENERAL BUSINESS

16.1 ANNUAL REPORT AND SURVEY

DISCUSSION

The Chair emailed the Committee in the morning of the meeting with the overall results of the survey. The results were pleasing and overall contribution has improved.

Focus areas identified coincided with the areas where there have been position vacancies: Internal Audit, Compliance and Risk Management.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the verbal report provided by the Chair.

16.2 FORWARD PLANNER

DISCUSSION

The Committee had no comments on the Forward Planner report, other than noting the Chair will have an out of session discussion with the Committee secretary regarding the planner.

COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee note the 2023 Forward Planning Calendar and determine meetings dates for 2023 meetings as Wednesday 15 February, Wednesday 17 May, Wednesday 20 September and Wednesday 13 December 2023.

17 CONCLUSION OF MEETING / NEXT MEETING

The Committee noted that access to Councillor briefing presentations on key issues will be useful for the Committee in future reports.

The next Committee meeting will be held on Wednesday 15 February 2023 commencing at 8.30 am (with an in camera session with the Internal Auditor at the conclusion of the meeting).

The meeting concluded at 11:10 am.

PLANNING & INFRASTRUCTURE DIRECTORATE

**12.6 PUBLIC EXHIBITION – PLANNING AGREEMENT – 849-859 PACIFIC
HIGHWAY, CHATSWOOD**

Deed

849-859 Pacific Highway, 2 Wilson Street and Lot 1 O'Brien St, Chatswood Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Willoughby City Council

**853 Pacific Highway Pty Ltd as trustee for the 2017 PHC Unit
Trust**

Executed Date: _____

FOR PUBLIC EXHIBITION

Table of Contents

Summary Sheet.....	4
Regulatory Compliance Tables	5
Parties	8
Background	8
Operative provisions	8
Part 1 – Preliminary.....	8
1 Interpretation.....	8
2 Status of this Deed	12
3 Commencement	12
4 Application of this Deed	13
5 Warranties	13
6 Further agreements	13
7 Surrender of right of appeal, etc.	13
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development.....	13
9 Provision of Development Contributions	14
Part 2 – Provisions relating to monetary contributions	14
10 Payment of monetary Development Contributions	14
Part 3 – Provisions relating to dedication of land.....	15
11 Not used	15
12 Not used	15
13 Not used	15
Part 4 – Provisions relating to carrying out of Work.....	15
14 Not used	15
15 Not used	15
16 Not used	15
17 Not used	15
18 Not used	15
19 Not used	15
20 Not used	15
21 Not used	15
22 Not used	15
23 Not used	15
24 Not used	15
Part 5 – Dispute Resolution	15
25 Dispute resolution – expert determination	16
26 Dispute Resolution - mediation.....	16

Part 6 - Enforcement.....	17
27 Security for performance of obligations	17
28 Not used	18
29 Not used	18
30 Not used	18
31 Breach of obligations	18
32 Enforcement in a court of competent jurisdiction	19
Part 7 – Registration & Restriction on Dealings.....	19
33 Registration of this Deed	19
34 Restriction on dealings	19
Part 8 – Indemnities & Insurance.....	20
35 Risk.....	20
36 Release.....	20
37 Indemnity	20
38 Not used	21
Part 9 – Other Provisions.....	21
39 Confidentiality	21
40 Annual report by Developer	21
41 Review of Deed	21
42 Notices	22
43 Approvals and Consent.....	23
44 Costs.....	23
45 Entire Deed.....	23
46 Further Acts	23
47 Notations on section 10.7(2) Planning Certificates	23
48 Governing Law and Jurisdiction	23
49 Joint and Individual Liability and Benefits.....	24
50 No Fetter.....	24
51 Illegality.....	24
52 Severability	24
53 Amendment	24
54 Waiver.....	25
55 GST.....	25
56 Explanatory Note	26
57 Trustee Developer	26
Schedule 1	28
Schedule 2.....	30
Schedule 3.....	31

Schedule 4.....	32
Execution.....	33
Appendix	34

849-859 Pacific Hwy, 2 Wilson St & Lot 1 O'Brien St, Chatswood Planning Agreement

Summary Sheet

Council:

Name: Willoughby City Council

Address: Level 4, 31 Victor Street, Chatswood, New South Wales 2067

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: Chief Executive Officer (CEO)

Developer:

Name: 853 Pacific Highway Pty Ltd as trustee for the 2017 PHC Unit Trust

Address: PO Box 885, North Willoughby 2068

Telephone: 0405 450 258

Email: Nicholas@sanctuarypartners.com.au

Representative: Nicholas Andrijic

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4(1)	'Planning Authority'	Council
	'Developer'	Developer
	Development Contributions	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(1), (2)	Public Purpose	See column 2 of Schedule 2
S7.4(3)(a)	Land	See Definition of 'Land' in clause 1.1
S7.4(3)(b)(i)	Instrument Change	See definition of LEP Amendment in clause 1.1
S7.4(3)(b)(ii)	Development	See definition of 'Development' in clause 1.1
S7.4(3)(c)	Details of Developer's Provision	See clause 9, Part 2, and Schedule 2
S7.4(3)(d)	Whether s7.11, s7.12 and s7.24 of the Act Apply to the Development	See clause 8
S7.4(3)(e)	Whether Benefits under this Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development. See clause 8
S7.4(3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 5
S7.4(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 6
S7.4 (10)	Conformity of Agreement with Act, Environmental	Yes

	Planning Instruments, & Development Consents Applying to the Land	
S7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	No
Clause 48 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	Yes

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Clause 203(1)	Form & Subject-Matter	Yes
Clause 203(7)	Secretary's Practice Note	Yes
Clause 204	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 205	Explanatory Note	See Appendix
Clause 21 Environmental Planning and Assessment (Development	If the Development involves building work or subdivision work, does the Agreement specify	No

Certification and Fire Safety) Regulation 2021	requirements that are required to be complied with before a construction certificate for the work is issued?	
---	---	--

DRAFT FOR EXHIBITION

849-859 Pacific Hwy, 2 Wilson St & Lot 1 O'Brien St, Chatswood Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street,
Chatswood, New South Wales 2067 (Council)

and

853 Pacific Highway Pty Ltd ACN 620 640 413 ATF the 2017 PHC Unit Trust
of PO Box 885, North Willoughby 2068 (Developer)

Background

- A The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land.
- B The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- C The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development in accordance with the LEP Amendment.

Operative provisions

Part 1 – Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Certificate under Part 6 of the Act.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council on terms acceptable to the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Contribution Item means an item of Development Contribution specified in Column 1 of Schedule 2.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Dedication Land means a Contribution Item comprising land specified or described in Part C of Schedule 2 of this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period specified in Item 11 of Schedule 1.

Development means the development specified or described in Item 3 of Schedule 1.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any

other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Final Lot means:

- (a) any lot created in the Development for separate occupation and disposition, or
- (b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

Form of Novation Deed means the template deed attached at **Schedule 4**.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land specified or described in Item 1 of Schedule 1.

LEP means the *Willoughby Local Environmental Plan 2012*.

LEP Amendment means an amendment to the LEP to which the Planning Proposal relates.

Map means the map in Schedule 3.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Occupation Certificate has the same meaning as in the Act.

Part 6 Certificate means a certificate under Part 6 of the Act

Party means a party to this Deed.

Plan of Subdivision means:

- (a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

Planning Proposal means a planning proposal within the meaning of s3.33 of the Act as detailed in Item 2 of Schedule 1.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Subdivision Certificate has the same meaning as in the Act.

Sunset Date means 12 months from the date of execution of this Deed by both parties or such later date as may be agreed between the parties in writing.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word '*include*' or '*including*' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when:
- 3.1.1 the Parties have:
- (a) all executed the same copy of this Deed, or
 - (b) each executed separate counterparts of this Deed and exchanged the counterparts; ,
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

- 3.3 Despite clause 3.1, the provisions of clauses 8, 9, and 10 do not operate until the LEP Amendment is made.
- 3.4 If the LEP Amendment has not been made by the Sunset Date and the Parties are reasonably of the view that the LEP Amendment will not be made imminently, the Developer may give written notice to the Council that it does not wish to proceed with the LEP Amendment.
- 3.5 If the Developer gives the Council written notice that it does not wish to proceed with the LEP Amendment:
- 3.5.1 the Council is to, as soon as reasonably practicable after receiving the Developer's notice, make a request to the Minister pursuant to s3.35(4) of the Act that the Planning Proposal not proceed,
 - 3.5.2 this Deed terminates upon the Council making the request referred to in clause 3.5.1, and
 - 3.5.3 the Council must return the Security to the Developer within 10 business days of receipt of the Minister's confirmation that the Planning Proposal is not proceeding.

4 Application of this Deed

- 4.1 This Deed applies to the LEP Amendment, the Land and the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11, s7.12 and s7.24 of the Act to the Development, as provided for in Items 4, 5 and 6 in Schedule 1 respectively.

- 8.2 The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development, as provided for in Item 7 in Schedule 1.

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

- 10.1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
- 10.2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1.
- 10.3 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

Part 3 – Provisions relating to dedication of land

11 Not used

12 Not used

13 Not used

Part 4 – Provisions relating to carrying out of Work

14 Not used

15 Not used

16 Not used

17 Not used

18 Not used

19 Not used

20 Not used

21 Not used

22 Not used

23 Not used

24 Not used

Part 5 – Dispute Resolution

25 Dispute resolution – expert determination

- 25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 25.1.1 the Parties to the Dispute agree that it can be so determined, or
- 25.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

- 26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.
- 26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 26.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 26.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 - Enforcement

27 Security for performance of obligations

- 27.1 The Developer is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the Developer's obligations under this Deed as are specified or described in Item 13 of Schedule 1.
- 27.2 The Security is to be provided at the time specified in Item 14 of Schedule 1.
- 27.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.
- 27.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer of its obligations under this Deed to the reasonable satisfaction of the Council.
- 27.5 The Developer may at any time provide the Council with a replacement Security, including to, following payment of an instalment of the monetary Development Contributions and registration of this Deed on title, reduce the amount of the Security held by Council so that it is no less than 10% of the monetary Development Contributions owed by the Developer under this Deed.
- 27.6 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 27.7 The Council may call-up the Security if it reasonably considers that the Developer has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.
- 27.8 However, the Council is not to call-up the Security unless:
- 27.8.1 it has given the Developer not less than 30 days' notice of its intention to do so and particulars of why it intends to do so, and
- 27.8.2 the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 27.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 27.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 27.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 27.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 27.10 If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 27.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

28 Not used

29 Not used

30 Not used

31 Breach of obligations

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 31.1.1 specifying the nature and extent of the breach,
 - 31.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer, call-up the Security provided under this Deed and apply it to remedy the breach.
- 31.3 If the Developer fails to comply with a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
- 31.4.1 by calling-up and applying the Security provided under this Deed, or
 - 31.4.2 as a debt due in a court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- 31.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

32 Enforcement in a court of competent jurisdiction

- 32.1 Subject only to clauses 25 and 26, the Parties may enforce this Deed in any court of competent jurisdiction.
- 32.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 32.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 32.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 – Registration & Restriction on Dealings

33 Registration of this Deed

- 33.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 33.2 The Developer agrees to, within 120 Business Days of the LEP Amendment, deliver to the Council in registrable form:
 - 33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietors of the Land Developer and any other person required by the Registrar-General to execute such instrument, and
 - 33.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 33.3 The Developer at its cost is to:
 - 33.3.1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
 - 33.3.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.
- 33.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 33.4.1 in so far as the part of the Land concerned is a Final Lot,
- 33.5 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

34 Restriction on dealings

- 34.1 The Developer is not to:
 - 34.1.1 sell or transfer the Land, other than a Final Lot, or
 - 34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

- 34.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed substantially in the form of the Form of Novation Deed, and
 - 34.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 34.1.5 the Developer is not in breach of this Deed, and
 - 34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld or delayed.
- 34.2 Subject to clause 34.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 34.1.
- 34.3 Clause 34.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 8 – Indemnities & Insurance

35 Risk

- 35.1 The Developer performs this Deed at its own risk and its own cost.

36 Release

- 36.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

37 Indemnity

- 37.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

38 Not used

Part 9 – Other Provisions

39 Confidentiality

- 39.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
- 39.2 The Parties acknowledge that:
- 39.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 39.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 39.3 Subject to clause 39.4 and 39.5, each Party agrees:
- 39.3.1 not to disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
- 39.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access.
- 39.4 A Party may disclose Confidential Information in the following circumstances:
- 39.4.1 in order to comply with the Law, or
- 39.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- 39.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

40 Annual report by Developer

- 40.1 The Developer is to provide to the Council by no later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 40.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

41 Review of Deed

- 41.1 The Parties agree to review this Deed periodically as specified in Item 17 of Schedule 1, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

- 41.2 For the purposes of clause 41.1, the relevant changes include (but are not limited to):
- 41.2.1 any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development,
 - 41.2.2 where the additional Residential GFA allowed under the LEP Amendment differs by more than 20% (whether higher or lower) from the additional Residential GFA envisaged in the Planning Proposal.
 - 41.2.3 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,
 - 41.2.4 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.
- 41.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 41.1 the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 41.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 41.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 41.1 (but not 41.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

42 Notices

- 42.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 If a Party gives the other Party 3 business days' notice of a change of its address, or email, 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.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 42.3.1 delivered, when it is left at the relevant address,
 - 42.3.2 sent by post, 2 business days after it is posted, or
 - 42.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 42.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

43 Approvals and Consent

- 43.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 43.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

44 Costs

- 44.1 The Developer is to pay Council all reasonable costs of preparing, negotiating, executing, stamping and registering this Deed, and any charge, caveats or other documents related to this Deed within 7 days of a written demand by the Council for such payment.
- 44.2 The Developer is also to pay to the Council the Council's reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment. Council's claims for costs under this clause 44.2 in respect of implementing and monitoring this Deed are limited to circumstances in which the Developer has an outstanding obligation or a where a Dispute or requirement for review of this Deed arises under this Deed and Council seeks external legal or other consultants' advice or services in respect of the issue.

45 Entire Deed

- 45.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 45.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

46 Further Acts

- 46.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

47 Notations on section 10.7(2) Planning Certificates

- 47.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

48 Governing Law and Jurisdiction

- 48.1 This Deed is governed by the law of New South Wales.

- 48.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 48.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

49 Joint and Individual Liability and Benefits

- 49.1 Except as otherwise set out in this Deed:
- 49.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 49.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

50 No Fetter

- 50.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

51 Illegality

- 51.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

52 Severability

- 52.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 52.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

53 Amendment

- 53.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 203(5) of the Regulation.

54 Waiver

- 54.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 54.2 A waiver by a Party is only effective if it:
- 54.2.1 is in writing,
 - 54.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 54.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 54.2.4 is signed and dated by the Party giving the waiver.
- 54.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 54.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 54.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

55 GST

- 55.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 55.2 Subject to clause 55.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 55.3 Clause 55.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

- 55.4 No additional amount shall be payable by the Council under clause 55.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 55.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 55.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 55.5.2 that any amounts payable by the Parties in accordance with clause 55.2 (as limited by clause 55.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 55.6 No payment of any amount pursuant to this clause 55, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 55.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 55.8 This clause continues to apply after expiration or termination of this Deed.

56 Explanatory Note

- 56.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 56.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

57 Trustee Developer

- 57.1 The Developer enters into this deed in its capacity as trustee for the 2017 PHC Unit Trust (**Trust**) constituted by the trust deed (**Trust Deed**).
- 57.2 The Developer warrants as follows:
- 57.2.1 it is the sole trustee of the trust;
- 57.2.2 it has not been removed as trustee and no action has been taken to remove or replace it as trustee, or to terminate the Trust;
- 57.2.3 no release or revocation of its powers under the Trust Deed has occurred;
- 57.2.4 it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed;
- 57.2.5 it is not in breach of the Trust Deed;

- 57.2.6 it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed; and
- 57.2.7 it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed.
- 57.3 The Developer indemnifies the Council, and agrees to keep the Council indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 57.2;
- 57.4 If the Developer is to be replaced as trustee of the Trust then:
- 57.4.1 prior to the replacement, it must:
- (a) notify the Council in writing of the proposed replacement, and
 - (b) novate its obligations and liabilities under this Deed to the incoming trustee of the Trust on and from the date the Developer ceases to be a trustee of the Trust; and
- 57.4.2 the novation is to be on terms substantially in the form of the Form of Novation Deed.
- 57.5 Immediately upon the Developer becoming aware of a proposed termination of the Trust, the Developer is to notify the Council, and the Parties are to negotiate in good faith and without delay, any necessary changes to this Deed, or other arrangements arising from the proposed termination of the Trust, to secure the provision of the Developer's obligations under this Deed.
- 57.6 A liability arising under or in connection with this Deed is limited to and can be enforced against the Developer only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Developer is actually indemnified for the liability. Subject to clause 57.8, this limitation of the Developer's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Developer in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- 57.7 No party to this Deed may sue the Developer in any capacity other than as the trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Developer or proving in any liquidation, administration or arrangement of or affecting the Developer (except in relation to property of the Trust).
- 57.8 Clauses 57.6 and 57.7 shall not apply to any obligation or liability of the Developer to the extent that it is not satisfied because, under this Deed or by operation of law, there is a reduction in the extent of the Developer's indemnification out of the assets of the Trust as a result of the Developer's failure to properly perform its duties as trustee of the Trust.
- 57.9 The Developer is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless its liability is limited in the same manner as set out in clauses 57.6 to 57.8.
- 57.10 The warranties and representations in this clause 57 survive the execution of and any termination of this Deed and the novation and assignment of this Deed.

Schedule 1

(Clause 1.1)

Item 1	Land	<p>The land identified as such on the Map in Schedule 3</p> <p>The land which at the date of this Deed is identified as SP1496, SP60178 and SP10110 (known as 849-859 Pacific Highway, Chatswood); SP52947 (known as 2 Wilson St, Chatswood) and Lot 1, DP1189541 (known as Lot 1 O'Brien St, Chatswood) including any land created as a result of the termination of the strata scheme, or a subdivision or consolidation of that land.</p>
Item 2	Planning Proposal	<p>Planning Proposal (Council Ref: PP2021/7; ePlanning Portal Ref:PP2021-6560) which seeks to amend the LEP to provide the following on the Land:</p> <ul style="list-style-type: none"> Rezoning the Land to B4 Mixed Use (excluding that portion of the Land zoned SP2 which fronts the Pacific Highway and has been earmarked for road widening); Applying a maximum building height control of 90m; Applying a maximum floor space ratio (FSR) control of 6:1
Item 3	Development	<p>The development, within the meaning of the Act, of the Land being a mixed-use development authorised by Development Consent and permitted as a consequence of the LEP Amendment .</p>
Item 4	Application of S7.11	<p>Section 7.11 of the Act is not excluded</p>
Item 5	Application of S7.12	<p>Section 7.12 of the Act is not excluded</p>
Item 6	Application of S7.24	<p>Section 7.24 of the Act is not excluded</p>
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	<p>The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development.</p> <p>See clause 8</p>
Item 8	Indexation of Contribution Values	<p>N/A</p>

**849-859 Pacific Hwy, 2 Wilson St & Lot 1 O'Brien St, Chatswood -
Planning Agreement**

Willoughby City Council

853 Pacific Highway Pty Ltd ATF the 2017 PHC Unit Trust

Item 9	Indexation of Monetary Development Contributions	<p>The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date").</p> <p>This will be done in accordance with the following formula:</p> <p>Indexed monetary contribution =</p> $A \times B/C$ <p>Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date</p> <p>B is the CPI last published at the quarter ending immediately before the date of payment; and</p> <p>C is the CPI last published at the quarter ending immediately before the Indexation Date</p>
Item 10	Access to Council owned or controlled land	N/A
Item 11	Defects Liability Period	N/A
Item 12	Security	\$3,252,060.90
Item 13	Obligations to which Security Relates	Performance of the Developer's obligation to pay the Monetary Contributions in accordance with the terms of this Deed and registration of this Deed on title
Item 14	Timing of Security	Security to be provided within 10 business days following execution of this Deed by both parties.
Item 15	Indexation of Security	The Security specified in Item 12 will be indexed quarterly from the date of this Deed (the "Indexation Date") in the same way that monetary contributions are indexed are indexed in Item 9 of this schedule except that references to 'monetary Development Contributions' are replaced with a reference to 'Security'.
Item 16	Costs	See Clause 44
Item 17	Review of Deed	Every 2 years

Schedule 2

(Clause 9)

Development Contributions

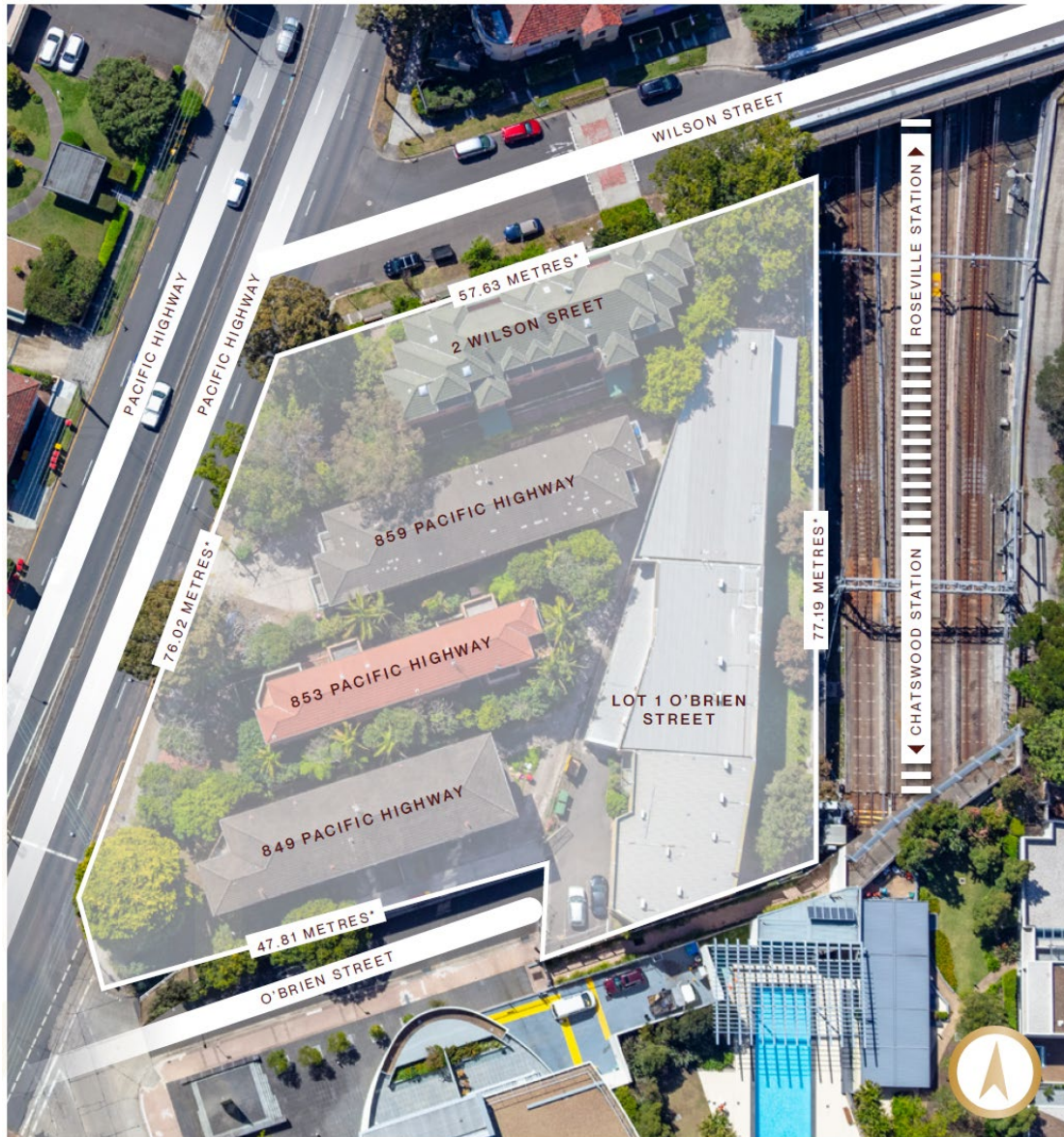
Table

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
A. Monetary Development Contributions			
Total of \$10,840,203 payable in the following three (3) instalments:			
1. \$1,084,000	Towards Community Infrastructure as identified in Appendix A to Council's Planning Agreement Policy and Procedures Manual.	Payable in lump sum instalments, as per Column 4	Amount to be paid to Council within 90 Business Days of the making of the LEP Amendment;
2. \$4,878,093	Towards Community Infrastructure as identified in Appendix A to Council's Planning Agreement Policy and Procedures Manual.	Payable in lump sum instalments, as per Column 4	To be provided to Council within 7 days prior to issue of the first Construction Certificate for the Development;
3. \$4,878,110	Towards Community Infrastructure as identified in Appendix A to Council's Planning Agreement Policy and Procedures Manual.	Payable in lump sum instalments, as per Column 4	To be provided to Council within 7 days prior to issue of the first Occupation Certificate for the Development or prior to registration of a Strata Plan for the Development, whichever is earlier.

Schedule 3

(Clause 1.1)

Map



Schedule 4

(Clause 1.1)

Novation Deed

DRAFT FOR EXHIBITION

Willoughby City Council

853 Pacific Highway Pty Ltd as trustee for the 2017
PHC Unit Trust

[New Developer]

Novation Deed for the 849-859 Pacific Highway and 2 and 8 Wilson Street, Chatswood Planning Agreement

Contents

1	Definitions	1
2	Novation	2
2.1	Original Agreement	2
2.2	Reference in Original Agreement	2
2.3	Address for notices	2
3	Affirmation of the Original Agreement	2
4	Indemnities	3
5	Warranties and representations	3
5.1	Warranties	3
5.2	Survival of warranties	3
6	GST	4
6.1	Construction	4
6.2	Consideration GST exclusive	5
6.3	Payment of GST	5
6.4	Timing of GST payment	5
6.5	Tax invoice	5
6.6	Adjustment event	5
6.7	Reimbursements	5
6.8	Calculations based on other amounts	6
6.9	No merger	6
7	Stamp duty and costs	6
8	Further acts	6
9	Amendment	6
10	Governing law and jurisdiction	6
11	Counterparts	7
12	General	7
12.1	Construction	7
12.2	Headings	7
	Execution	8

Date

Parties

Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, New South Wales 2067 (**Council**)

and

853 Pacific Highway Pty Ltd as trustee for the 2017 PHC Unit Trust ABN 12 390 679 581 of [insert] (**Original Developer**)

and

[New Developer] ACN [#] [Address] (**New Developer**)

Background

- A The Council and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land.
 - C [*The Original Developer proposes to transfer the whole of its interests in the Land to the New Developer and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer.]
 - D [*The Original Developer will be replaced by the New Developer as trustee of the Trust and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer]
 - E [Insert any other appropriate recitals]
-

Agreed terms

1 Definitions

In this deed these terms have the following meanings:

Effective Date	[Insert date of transfer of interests in the Land, or date of replacement of trustee]
Land	Has the meaning given to that term in the Original Agreement.

Original Agreement	The planning agreement dated [X] and made between the Council and the Original Developer.
Trust	means the 2017 PHC Unit Trust.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement, except in respect of any obligation, liability, claim or breach of the Original Agreement that arose prior to the Effective Date.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Council must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: [X]

Fax: [X]

Contact Person: [X]

Email: [X]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Council Satisfaction

- (a) For the purposes of clause 34.1 of the Original Agreement, the Council acknowledges that:
 - (i) this Deed is the deed referred to in clause 34.1.3 of the Original Agreement,
 - (ii) the Council is satisfied that the New Developer is reasonably capable of performing the obligations under the Original Agreement, and
 - (iii) as at the date of this Deed, the Original Developer is not in breach of the Planning Agreement, and
 - (iv) the Council consents to the novation.

5 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

6 Warranties and representations

6.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed;
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this deed do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

6.2 Trustee Developer

- (a) If the New Developer enters into this deed as trustee of a trust, the New Developer and its successors as trustee of the trust will be liable under this deed in their own right and as trustee of the trust.

- (b) Nothing releases the New Developer and its successors from any liability in their personal capacity.
- (c) The New Developer warrants that at the date of this Deed and as at the Effective Date:
 - (i) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by it as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
 - (ii) the New Developer is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this deed on behalf of the trust and that this deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
 - (iii) no restriction on the New Developer's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

6.3 Survival of warranties

The warranties and representations in **clause 6.1** and **6.2** survive the execution of this deed and the novation of the Original Agreement.

7 GST

7.1 Construction

In this **clause 7**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

7.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under this deed is exclusive of GST (**GST-exclusive consideration**).

7.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under this deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

7.4 Timing of GST payment

The amount referred to in **clause 7.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

7.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 7.3**.

7.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under this deed, any amount that is payable under **clause 7.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

7.7 Reimbursements

- (a) Where a party is required under this deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.

- (b) This **clause 7.7** does not limit the application of **clause 7.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 7.7(a)**.

7.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under this deed is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

7.9 No merger

This **clause 7** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

8 Stamp duty and costs

- (a) The New Developer will pay all stamp duty arising directly or indirectly from this deed.
- (b) The [Original Developer/New Developer] will pay the Council's costs related to the negotiation, preparation and execution of this deed *and replacement of trustee of the Trust.

9 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

10 Amendment

This deed may only be varied or replaced by a deed executed by the parties.

11 Governing law and jurisdiction

- (a) This deed and the transactions contemplated by this deed are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those

courts and waives any right to object to any proceedings being brought in those courts.

12 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

13 General

13.1 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

13.2 Headings

Headings do not affect the interpretation of this deed.

Execution

Executed as a deed.

Executed on behalf of the **Willoughby**)
City Council in the presence of:)
)

.....
Chief Executive Officer (CEO)

.....
Witness

.....
Position

.....
Name (print)

Executed by 53 Pacific Highway Pty Ltd)
as trustee for the 2017 PHC Unit Trust)
(ABN [insert]) in accordance with section
127 of the Corporations Act 2001 (Cth) in
the presence of:

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by [New Developer] ACN [X] in)
accordance with s127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary / Director

.....
Director

.....
Name of Company Secretary / Director
(print)

.....
Name of Director (print)

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Chief Executive Officer (CEO)

(Name:)

Witness

Position:
(Name:)

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Position:

(Name:)

Position:

(Name:)

Appendix

(Clause 56)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, New South Wales 2067 (**Council**)

853 Pacific Highway Pty Ltd ACN 620 640 413 ATF the 2017 PHC Unit Trust of PO Box 885, North Willoughby 2068 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The Planning Agreement will apply to the following land.

- 849 Pacific Highway, Chatswood, being Strata Plan SP1496;
- 853 Pacific Highway, Chatswood, being Strata Plan SP60178;
- 859 Pacific Highway, Chatswood, being Strata Plan SP10110;
- 2 Wilson Street, Chatswood, being Strata Plan SP52947; and
- Lot 1 O'Brien Street (also known as 8 Wilson Street), Chatswood, being Lot 1 in DP1189541, and

includes any land created as a result of the termination of the strata scheme, or a subdivision or consolidation of that land.

Description of Proposed Development

The Draft Planning Agreement applies to an amendment of the Willoughby Local Environmental Plan 2012 (LEP) in accordance with a Planning Proposal (Council Ref:

PP2021/7; ePlanning Portal Ref:PP2021-6560) which seeks to amend the LEP to facilitate the development of a mixed use development on the Land, by:

- rezoning the Land to B4 Mixed Use (excluding that portion of the Land zoned SP2 which fronts the Pacific Highway and has been earmarked for road widening);
- applying a maximum building height control of 90m; and
- applying a maximum floor space ratio (FSR) control of 6:1;

The Draft Planning Agreement also applies to development of a mixed-use development on the Land as authorised by the future Development Consent granted as a result of the LEP Amendment to Willoughby Local Environmental Plan 2012.

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

Objectives of Draft Planning Agreement

Provide for a monetary contribution of \$10,840,203 (to be paid in 3 instalments) to be applied towards community infrastructure in accordance with the Council's Planning Agreements Policy and Procedures Manual as in force and effect.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4(1) of the *Environmental Planning and Assessment Act 1979*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Planning Proposal and the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer,
- does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,

- provides for additional monetary contributions by a developer to the Council to be used for public purposes, additional to other development contributions under s7.11 or s7.12 and s7.24 required for a proposed Development on the land to which it applies.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(a), (b), (c), (d), (g) and (j) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,

Providing adequate, equitable and appropriate service and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively. ***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Yes

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes

12.7 COUNCIL RELATED DEVELOPMENT APPLICATIONS POLICY



New policy required by 3 April 2023

COUNCIL-RELATED DEVELOPMENT APPLICATION CONFLICT OF INTEREST POLICY

Date Adopted / Approved	(Approval date)
Next Review Date	(Review date)
Version	1.0
Responsible Position	CEO
Administration Reference	(ECM reference number)

1. PURPOSE

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

2. CITY STRATEGY OUTCOME

5.1 - Be honest, transparent and accountable in all that we do.

3. APPLICATION

This policy applies to council-related development. It does not apply to:

- Development Applications that were lodged but not finally determined before 3 April 2023, or
- development on public roads managed by Council, such as driveway for a dwelling house across a footpath or other minor works.

4. POLICY PRINCIPLES

This policy is guided by the following principles:

- Probity and transparency – stakeholders should be able to see Council's role in relation to assessing, determining, and regulation of Development Applications in which Council has an interest, and how it is managing any conflicts.
- Legislative compliance – Council decisions on Development Applications must be consistent with relevant legislation and guidelines to mitigate risks associated with conflicts of interest.
- Fair and unbiased decision making – the decisions Council makes on Development Applications will not be affected by self-interest, commercial arrangements, or its dual role as developer and regulator.

5. PROCEDURE

Council related development applications will be assessed in accordance with the *Council-Related Development Application Conflict of Interest Procedure*.

6. RESPONSIBLE OFFICER

The CEO is the responsible officer for this policy.

7. MONITORING AND REVIEWS

This policy will be reviewed within 12 months of the date of approval.

8. SUPPORTING INFORMATION

Governing laws and standards	<i>Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022</i>
Related policies and other documents	<ul style="list-style-type: none"> ▪ Council-Related Development Application Conflict of Interest Procedure ▪ <i>State Environmental Planning Policy (Planning Systems) 2021</i> ▪ <i>Local Government Act 1993</i> ▪ <i>Roads Act 1993</i>
Document History	<ul style="list-style-type: none"> ▪ (Date adopted) ▪ (Date amended) ▪ (Date ratified)

9. DEFINITIONS

Application	Means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent it does not include an application for a complying development certificate.
Council	Means Willoughby City Council
Council-related development	Means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority
Development process	Means application, assessment, determination, and enforcement.
Policy	A statement/s of principles and intent that guide decisions to help achieve outcomes and community priorities.
Procedure	A statement or instruction that set out how policies will be implemented and by whom.
The Act	<p>Means the <i>Environmental Planning and Assessment Act 1979</i></p> <ul style="list-style-type: none"> ▪ A word or expression used in this policy has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this policy.

Notes included in this policy do not form part of the policy.



COUNCIL-RELATED DEVELOPMENT APPLICATION CONFLICT OF INTEREST PROCEDURE

Date Adopted / Approved	(Approval date)
Next Review Date	(Review date)
Version	1.0
Responsible Position	Head of Planning
Administration Reference	(ECM reference number)

1. PURPOSE

This procedure aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development. It sets out how the *Council-Related Development Application Conflict of Interest Policy* is to be implemented.

2. PROCEDURE FOR IDENTIFYING AND MANAGING POTENTIAL CONFLICTS OF INTEREST

A. Management controls and strategies

1. The following management controls may be applied to:
 - a) the assessment of an application for council-related development:
 - The application shall only be assessed by Council staff or independent consultant/s that have not been involved in preparing or lodging the Development Application.
 - The development assessment staff or independent consultant will remain separate from the team or individual that lodged the Development Applications documented and registered in Council's electronic file management system.
 - A conflict of interest management statement will be prepared and exhibited with the Development Application, unless it is of the kind referred to in Part (2)(A)(2) of this procedure.
 - b) the determination of an application for council-related development:
 - Development Applications will be referred to the Willoughby Local Planning Panel or Sydney North Planning Panel for determination unless it is of the kind referred to in Part (2)(A)(2) of this procedure.
 - c) the regulation and enforcement of approved council-related development:
 - A private certifier will be engaged to undertake the certification of the development.
 - Publication of certificates issued under Part 6 of the *Environmental Planning and Assessment Act 1979* on the NSW Planning Portal.
 - Key project milestones following the development consent will be reported to a public Council meeting.
2. The management strategy for the following kinds of development is that no management controls need to be applied:
 - a) commercial fit outs and minor changes to the building façade
 - b) internal alterations or additions to buildings that are not a heritage item
 - c) advertising signage
 - d) minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services). Development where the council might receive a small fee for the use of their land.

B. Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls

1. Development Applications lodged with the council that are council-related development are to be referred to the CEO (or a delegate) for a conflict-of-interest risk assessment.
2. The CEO is to:
 - a) assess whether the application is one in which a potential conflict of interest exists,
 - b) identify the phase(s) of the development process at which the identified conflict of interest arises,
 - c) assess the level of risk involved at each phase of the development process,

- d) determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in Part (2)(A) of the procedure and the outcome of the CEO's assessment of the level of risk involved as set out Part (2)(B)(2)(c) of the procedure,

Note: The CEO could determine that no management controls are necessary in the circumstances.

- e) document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

3. RESPONSIBLE OFFICER

The Head of Planning is the responsible officer for this procedure, with support from the relevant assessment officer. Functions include identifying potential conflicts of interest, establishing management controls and strategies and record keeping as required. Approval from the CEO is to be sought for any amendments to this procedure.

4. MONITORING AND REVIEWS

This procedure will be reviewed within 12 months of the date of approval.

5. SUPPORTING INFORMATION

Governing laws and standards	<i>Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022</i>
Related policies and other documents	<ul style="list-style-type: none"> ▪ <i>Council-related Development Applications Conflict of Interest Policy</i> ▪ <i>State Environmental Planning Policy (Planning Systems) 2021</i> ▪ <i>Local Government Act 1993</i> ▪ <i>Roads Act 1993</i>
Document History	<ul style="list-style-type: none"> ▪ (Date adopted) ▪ (Date amended) ▪ (Date ratified)

Definitions


Application	Means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent it does not include an application for a complying development certificate.
Council	Means Willoughby City Council
Council-related development	Means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority.
Development process	Means application, assessment, determination, and enforcement.
Policy	A statement/s of principles and intent that guide decisions to help achieve outcomes and community priorities.

Procedure	A statement or instruction that set out how policies will be implemented and by whom.
The Act	Means the <i>Environmental Planning and Assessment Act 1979</i> <ul style="list-style-type: none"> A word or expression used in this procedure has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this procedure.

Notes included in this procedure do not form part of the procedure.

6. EXAMPLE CONFLICT OF INTEREST MANAGEMENT STATEMENT

The following template is provided for use in relevant Development Applications and can be adapted as required.

 Council Conflict of Interest Management Statement	
Project Name & Description	{Enter project name and brief description}
DA Name	DA-2023/##
Potential Conflict	<ul style="list-style-type: none"> The land owner and applicant is Willoughby City Council Willoughby City Council is also responsible for assessment of the development application. The cost of works for the project is \$#,###,###.##
Management Strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ol style="list-style-type: none"> The assessment of an application for council-related development: <ul style="list-style-type: none"> An independent consultant that has not been involved in preparing or lodging the development application shall assess the application. The independent consultant will remain separate from the team that lodged the development application. The determination of an application for council-related development: <ul style="list-style-type: none"> Development applications will be referred to the Willoughby Local Planning Panel or Sydney North Planning Panel for determination The regulation and enforcement of approved council-related development: <ul style="list-style-type: none"> A private certifier will be engaged to undertake the certification of the development. Publication of certificates issued under Part 6 of the <i>Environmental Planning and Assessment Act 1979</i> on the NSW Planning Portal. Key project milestones following the development consent will be reported at a public council meeting.

AMENDMENT TO WILLOUGHBY COMMUNITY PARTICIPATION PLAN

Table 5: Minimum mandatory exhibition timeframes

Environmental Planning and Assessment Act, Schedule 1	Minimum community participation requirement
Draft Community participation plan	28 days
Draft local strategic planning statements. Our 20 year vision for land use in Willoughby City.	28 days or as specified by our elected Council
Planning proposals for local environmental plans subject to a Gateway determination. To make changes to Willoughby Local Environmental Plan (WLEP) such as: <ul style="list-style-type: none"> • Rezone / change of permissible land use. • Change to height or floor space controls. 	28 days or: <ul style="list-style-type: none"> (a) a different period of public exhibition as specified in the NSW Government's Gateway determination for the proposal (b) no public exhibition if the Gateway determination specifies this due to the minor nature of the proposal
Draft Willoughby Development Control Plan (WDGP) amendments. Provides detailed planning and design guidelines that support the Willoughby Local Environment Plan (WLEP).	28 days
Draft local infrastructure contributions policy and plans. Process to gain financial contributions from new development to accommodate new and upgraded public amenities and/or services.	28 days
Application for development consent (other than for complying development certificate, for designated development or for state significant development). Examples include development applications for new dwellings, commercial, retail and industrial development and modifications to these.	See Part E in this plan for development consent notification
Application for development consent for designated development. Higher impact developments as detailed in Schedule 3 of the EP&A Regulation 2000 for activities such as aquaculture, coalmines, chemical storage facilities, extractive industries, electricity generating stations and marinas. These developments need to be supported by an Environmental Impact Statement.	28 days
Modification application as per Section 4.55 of EP&A Act. Application for a modification of development consent where it is not listed in Category D (No notification required)	The period (if any) determined by the consent authority in accordance with the relevant community participation plan.
Environmental impact statement (EIS) obtained under Division 5.1 of the Act. Prepared for development under Part 5 of the EP&A Act for certain development such as state significant development.	28 days
Reclassification of public land. A legal requirement to change the status of how public land is used under the Local Government Act, with the majority being either 'community' or 'operational'. <ul style="list-style-type: none"> • Community land is generally open to the public, for example parks, reserves or sportsgrounds. • Operational land is public land used for other purposes such as work depots, car parks or investment properties held by Council. The primary purpose is to provide flexibility in the management or future use including commercial leasing or potential future sale.	28 days
Draft planning agreements. Agreements between Council and a developer to allow contributions for land dedication, recreation, community and transport facilities in lieu of development contributions.	28 days

This table is adapted from the State of New South Wales and Department of Planning, Industry and Environment 2019.

Add the following to Table 5:

Council related development applications. As outlined in the Council-related Development Application Conflict of Interest Policy.	28 days
--	---------

EXISTING POLICY



Willoughby City Council
Policy Register

Short Title	Assessment of Development Applications
Division	Environmental Services
Category	Development
Date adopted by Council	23 June 1997
Date amended by Council:	7 April 2008 4 June 2012
Date ratified by Council:	7 April 2008 4 June 2012
Resolution No 97/664	Additional Resol No

POLICY

Guidelines for assessment of Council Development Applications:

1. That for all development applications lodged where Council is the applicant (and objections have been received following notification of the application), an external town planning consultant be engaged to:
 - a) assess the application in accordance with the requirements of Section 79C of the Environmental Planning & Assessment Act 1979; and have regard to any plan of management that applies to the land.
 - b) consider any submissions received following notification of the application in accordance with the Council's policy as to notification;
 - c) prepare and submit directly to the Council a report on the assessment and consideration of submissions, including a recommendation for the consideration of the Council.
2. Where no objections have been received and the proposal is consistent with any plan of management that applies to the land then the application may be assessed and reported to Council by a Council officer.

Council-related Development Application Conflict of Interest Guidelines

Introduction

Councils are development regulators. But they also can be the developer, landowner or hold a commercial interest in the land they regulate. Where councils have this dual role, an inherent conflict can arise between their interests in the development and their duty as regulator.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows councils to strengthen their relationship with communities and build and enhance trust.

The following requirements have been introduced into the *Environmental Planning and Assessment Regulation 2021* to address conflicts of interest in council related development:

- Councils must adopt and have a policy that specifies how conflicts of interest in connection with council-related development applications will be handled. The policy must comply with the requirements in these Guidelines (section 66A).
- Council-related development applications must now be accompanied by either a management strategy statement, which explains how the council will manage potential conflicts of interest, or a statement that the council has no management strategy for the application (section 36A).
- Councils must record conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in their existing DA register (section 242A).
- Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process (*Environmental Planning and Assessment Act 1979*, schedule 1, clause 9B).

While the regulation changes do not mandate the use of the framework once a development consent is issued, it is best practice when developing their policies for councils to also address conflicts that may occur after development consent has been granted. This could be as simple as stating in the policy that the council will seek to enter a shared services arrangement with a neighbouring council about this phase of the development process, for any development that is the subject of the policy.

Purpose of these Guidelines

These Guidelines are intended to:

- set out the requirements for the council conflict of interest policy required under section 66A,

- assist councils in meeting these requirements by providing a sample policy and management strategy statement that can be used as a template when developing their policies
- provide general information and guidance about the policy.

Flexibility

In some circumstances, council may determine the risks associated with a council-related development are sufficiently low and no specific controls are warranted. Where this is the case, council should still publicly communicate that fact to ensure transparency.

Where a council determines for a particular class of development that the risks of a conflict of interest are very low, it may decide to not have any management controls for a specified type of development unless there is some direct involvement of a councillor or a council staff member in their private capacity.

This can happen, for instance, where the council is the owner of a large commercial building that has a range of shops within it, for which it receives many development applications for commercial fit outs and minor changes to the building facade. In those circumstances, the council's policy could outline that its management strategy for this class of development does not apply additional controls for conflicts of interest.

Other examples where this approach might be appropriate include development for internal alterations or additions to buildings that are not a heritage item, advertising signage, minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services), and development where the council might receive a small fee for the use of their land.

Sample policy

The sample policy below is to help councils develop their conflict of interest policies for council-related development. It provides practical solutions for developing and implementing ways to manage potential conflicts at all stages of the development process.

For councils that have local planning panels, the council's policy only needs to deal with a subset of this development, as a range of development to which the policy would otherwise apply will already be referred to local planning panels.

Using the sample policy is optional. Each council and local government area is different and has unique local settings, therefore, councils should decide what is appropriate in their circumstances and develop a policy for managing conflicts of interest about council-related development that is suitable for their local area.

An example management strategy statement is also included below.

Requirements for conflict-of-interest policies

Any policy prepared and adopted by a council must:

- establish management controls and/or a management strategy to address potential conflicts of interest at the different phases of the development process for the types of council-related development that the council could be involved in,
- outline the process through which potential conflicts of interest will be identified, the risks assessed and appropriate management controls determined, and
- outline the process that will be followed to publicly communicate the management approaches for each development subject to the policy.

Sample policy

Part 1 Preliminary

(1) Name of policy

This policy is the [insert name of policy].

Note: For example, Conflicts of interest policy – dealing with council-related development throughout the development process.

(2) Aim of policy

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

(3) Scope

This policy applies to council-related development.

(4) Definitions

(1) In this policy:

application means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent it does not include an application for a complying development certificate.

council means [insert name of the council]

council-related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority

development process means application, assessment, determination, and enforcement

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) A word or expression used in this policy has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this policy.

(3) Notes included in this policy do not form part of the policy.

Note: Other definitions can be inserted.

Part 2 Process for identifying and managing potential conflicts of interest

(5) Management controls and strategies

(1) The following management controls may be applied to:

- a. the **assessment** of an application for council-related development
 - *insert control(s)*
- b. the **determination** of an application for council-related development
 - *insert control(s)*
- c. the **regulation and enforcement** of approved council-related development
 - *insert control(s).*

Note: For example, council will enter into a shared services arrangement with a neighbouring council.

(2) The management strategy for the following kinds of development is that no management controls need to be applied:

- a. commercial fit outs and minor changes to the building façade
- b. internal alterations or additions to buildings that are not a heritage item
- c. advertising signage
- d. minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e. development where the council might receive a small fee for the use of their land.

Notes:

1. *While councils must have a policy that sets out how they propose to deal with potential conflicts of interest for council-related development, it could implement different controls for dealing with them based on the level of risk. For example, councils could set their controls based on:*
 - a. *risk category – low, moderate, high, very high*
 - b. *types of development – non-controversial small-scale development, development of a certain value with/without a commercial interest, controversial development, or even*
 - c. *capital investment value of the proposed development.*
2. *There is a range of management controls that could be applied in particular circumstances. The following are some examples that councils could use. Note that councils are not limited to one approach and could specify more than one approach if appropriate in their local settings:*
 - a. *Assessment and determination*
 - i. *The assessment and/or determination of an application are to be undertaken by council staff under delegation – this might be appropriate if the proposal is considered to be a low-level risk or non-controversial. For more controversial projects, this might only be effective if strict role separation controls are imposed.*
 - ii. *The application could also be referred for external assessment and/or determination to either:*

1. another council
2. a local planning panel if one is in place
3. a regional planning panel (may require negotiation – RPPs are not required to accept referrals)
4. a consultant.

The involvement of an external third party might be appropriate for development where council has a commercial interest in the land, or the development is seen to be a political priority for the council.

b. *Regulation and enforcement*

- i. *Engagement of a private certifier*
- ii. *Publication of certificates issued under Part 6 of the Act on the NSW Planning Portal*
- iii. *Peer review by a neighbouring council and/or entering into a shared services arrangement with a neighbouring council*
- iv. *Reporting of key milestones to the full council.*

3. *Councils may also wish to take advantage of their audit and risk committee to provide guidance for the types of controls that could be applied in specific circumstances.*

(6) Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls

- (1) Development applications lodged with the council that are council-related development are to be referred to the general manager (or a delegate) for a conflict-of-interest risk assessment.

Note: Council-related development is defined in section 4.

- (2) The general manager is to:

- a. assess whether the application is one in which a potential conflict of interest exists,
- b. identify the phase(s) of the development process at which the identified conflict of interest arises,
- c. assess the level of risk involved at each phase of the development process,
- d. determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in clause 5 of the policy and the outcome of the general manager's assessment of the level of risk involved as set out clause 6(2)(c) of the policy,

Note: The general manager could determine that no management controls are necessary in the circumstances.

- e. document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

Note: The following is an example of a statement that could be published by councils to document its proposed management approach in a particular circumstance.

Scenario

BlueStar Council is upgrading one of their assets, 'Blue River Civic Place'. Council is the landowner and the applicant and is proposing to redevelop the site into a mixed-use development with a total capital investment value (CIV) of \$4.9 million. The development application seeks approval for the construction and use of an additional 2 storeys on an existing 3 storey building comprising a childcare centre, commercial office spaces and partial use of the building for council's public administration.

Example management statement

Council conflict of interest management statement	
Project name	Blue River Civic Place
DA number	DA21/0001
Potential conflict	BlueStar Council is the applicant. Blue River Civic Place has an estimated capital investment value of \$4.9 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the local planning panel to determine the development application. • Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team. • A private certifier will be engaged to undertake the certification for the development. • Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made. • Key project milestones following the development consent will be reported at a public council meeting.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.

12.8 MINUTES – TRAFFIC COMMITTEE MEETING HELD ON 23 FEBRUARY 2023
--



Willoughby City Council

MINUTES

TRAFFIC COMMITTEE MEETING NO 1

23 February 2023

Traffic Committee Meeting
held in the Banksia Room
Willoughby City Council
Level 6, 31 Victor Street, Chatswood
AND Microsoft Teams
commenced 9:30am



WILLOUGHBY CITY COUNCIL TRAFFIC COMMITTEE

The following information is provided so that you may be aware of the structure and operation of the Willoughby City Traffic Committee.

The Willoughby Traffic Committee is a Technical Committee of Willoughby City Council mandated by Transport for NSW.

Council has been delegated certain powers, from Transport for NSW, with regard to traffic matters upon its Regional and Local roads. A condition of this delegation is that Council must take into account the Traffic Committee recommendations.

There are four permanent members of the Traffic Committee, *each of whom has a single vote only*.

- The members are the **NSW Police Service, Transport for NSW (TfNSW), the Local State Member of Parliament (for the location of the issue to be voted upon), and Willoughby City Council.**
- Willoughby City Council operates its Traffic Committee such that the single Council vote, upon any issue is held by the Chair of the Meeting.
- Generally the Traffic Committee meetings are chaired by a staff member of Council's Traffic and Transport Team.
- Willoughby City Council allows the public to attend and speak at its Traffic Committee on issues of concern for a maximum of five minutes.
- If either the NSW Police or TfNSW representative on the Traffic Committee disagrees with any Traffic Committee recommendation, or Council resolution on any Traffic Committee recommendation, that member may lodge an appeal with the Sydney Regional Traffic Committee for determination. The appeal must be lodged in writing within 14 days of Council's resolution. Any action relative to any issue under appeal must cease until the matter is determined.
- The Sydney Regional Traffic Committee is chaired by an independent chairperson and submissions and representations are welcomed from all interested parties.
- Information is available on Council's website use the below link:
[Traffic Committee | Willoughby City Council \(nsw.gov.au\)](https://www.willoughby.nsw.gov.au/traffic-committee)

ACKNOWLEDGEMENT OF COUNTRY

On behalf of Willoughby City Council, I wish to acknowledge the traditional inhabitants of the land on which we stand, the Aboriginal people, their spirits and ancestors. We acknowledge the vital contribution that indigenous people and cultures have made and still make to the nation we share, Australia.

MEETING PROTOCOLS

MOBILE TELEPHONES

Please ensure all mobile phones are turned off.

RECORDING OF THE MEETING

Mobile phones or any other recording device are not to be used to record any part of a meeting.

GUIDELINES FOR SPEAKERS

When addressing the committee, please remember to be courteous.

Comments made by participants in any Council meeting, which are derogatory or damaging to any person's character or reputation, including any Councillor, employee of the Council, or member of the public, may be defamatory and may subject the participant to an action for defamation and expulsion from the meeting.

Comments made during the course of a meeting are not protected by the defence of absolute privilege under the *Defamation Act 2005*, and may not attract any other defences available under that Act of the common law.

1	PRESENT	3
2	APOLOGIES.....	3
3	DISCLOSURES OF INTERESTS.....	3
4	MATTERS ARISING FROM THE MINUTES OR FROM COUNCIL RESOLUTION	4
4.1	COUNCIL ADOPTION OF THE LOCAL TRAFFIC COMMITTEE MINUTES	4
5	FORMAL ITEMS FOR CONSIDERATION	8
5.1	BELLAMBI ST NORTHBRIDGE (TEMPORARY ROAD CLOSURE) - EXTENSION OF ROAD CLOSURE PERIOD.....	8
5.2	NAREMBURN LOCAL CENTRE TRAFFIC AND PARKING MANAGEMENT PLAN	10
5.3	CLARENDON ST ARTARMON - TRUCK ZONE	12
5.4	DELEGATED ITEMS - 23 FEB	13
6	LATE ITEMS.....	14
7	INFORMAL ITEMS	14
8	GENERAL BUSINESS	14
8.1	SAILORS BAY ROAD, NORTHBRIDGE – TRUCK ZONE RELOCATION ...	14
8.2	WALTER STREET, WILLOUGHBY – RIGHT TURN BAN FROM WALTER STREET ON WILLOUGHBY ROAD	15

1 PRESENT

Voting members present:

Shivani Karan
Samantha Sholkie
Daniel Sui

Transport for NSW
NSW Police
Willoughby City Council

Other representatives:

Darren Wood
Sri Sritharan
John Gill
Ryan Penfold
John Elliott
Thomas Gough
Moones Sotoodeh
Kerrie Edwards

Willoughby City Council
Willoughby City Council
Willoughby City Council
Willoughby City Council
Willoughby City Council
Willoughby City Council
Willoughby City Council
Willoughby City Council

Councillors present:

Tanya Taylor
Roy McCullagh
Robert Samuel

Mayor - Willoughby City Council
Councillor - Willoughby City Council
Councillor - Willoughby City Council

Members of the public:

Ben Midgley

PDC Traffic Consultants

Mr John Hooper, representative for Local State MP for Willoughby was unable to attend the meeting. The Chair spoke with Mr Hooper on 16 February 2023. Mr Hooper advised that he concurred with the officer's recommendations for all items. The Committee was informed of Mr Hooper's position at the start of the Committee meeting.

2 APOLOGIES

Ben Cantor
Richard Goulston
Kate Drysdale
John Hooper
Zorica Kaye-Smith

Busways
Willoughby City Council
Willoughby City Council
Local State MP's Representative for Willoughby
Local State MP's Representative for Lane Cove

Craig Campbell
Hugh Eriksson
John Moratelli

Councillor - Willoughby City Council
Councillor - Willoughby City Council
Councillor - Willoughby City Council

3 DISCLOSURES OF INTERESTS

Refer: Willoughby City Council Code of Conduct 2019
[Willoughby City Council Code of Conduct 2019](#)

Nil

4 MATTERS ARISING FROM THE MINUTES OR FROM COUNCIL RESOLUTION

That the Minutes of the Ordinary Meeting of the Local Traffic Committee held 24 October 2022, copies of which have been circulated to each member of the Local Traffic Committee, be confirmed.

4.1 COUNCIL ADOPTION OF THE LOCAL TRAFFIC COMMITTEE MINUTES

That the Resolution of the Ordinary Meeting of Council held 28 November 2022 provided below, be noted.

TRAFFIC COMMITTEE RECOMMENDATION

That the information be received and noted.

12.16 MINUTES - TRAFFIC COMMITTEE MEETING HELD ON 24 OCTOBER 2022

ATTACHMENTS:	1. IMPLICATIONS 2. TRAFFIC COMMITTEE MINUTES OF 24 OCTOBER 2022 (2 INCLUDED IN ATTACHMENT BOOKLET 2)
RESPONSIBLE OFFICER:	HUGH PHEMISTER - PLANNING & INFRASTRUCTURE DIRECTOR
AUTHOR:	GORDON FARRELLY – TRAFFIC & TRANSPORT TEAM LEADER
CITY STRATEGY OUTCOME:	2.1 – ENHANCE TRANSPORT CHOICES AND CONNECTIONS THROUGHOUT THE CITY 2.4 – REDUCE PARKING AND TRAFFIC CONGESTION 3.1 – FOSTER FEELINGS OF SAFETY, SECURITY AND CLEANLINESS 5.1 – BE HONEST, TRANSPARENT AND ACCOUNTABLE IN ALL THAT WE DO
MEETING DATE:	28 NOVEMBER 2022

1. PURPOSE OF REPORT

To advise Council of the outcome of the Traffic Committee Meeting held on 24 October 2022.

2. OFFICER'S RECOMMENDATION

That Council receive and adopt the recommendations, excluding Item 5.1, arising from the Traffic Committee Meeting held on 24 October 2022.

3. BACKGROUND

The Traffic Committee (the Committee) is a technical committee of Council which comprises NSW Police, TfNSW, Council and the local State Members of Lane Cove and Willoughby as voting representatives. Council may exercise its traffic control and management functions only after consideration by the Traffic Committee.

The Committee met on 24 October 2022 and considered 5 formal items, there were no late items, and no informal items, and one general business matter.

The reports relating to each item in the minutes can be viewed in the Traffic Committee agenda papers on Council's website at [Willoughby City Council - Traffic Committee](#). The agenda papers include the background and motivation for each item and the community consultation timing and outcomes.

The voting members of the Committee have reviewed and accepted the Minutes (**Attachment 2**).

4. DISCUSSION

The attention of Councillors is drawn to the following matters which were discussed:

Item 5.1 - Edward Street, Willoughby - Pedestrian, Bicycle and Traffic Calming Improvement Plan

Community feedback on the Pedestrian, Bicycle and Traffic Calming Improvement Plan (Plan) continued following the Traffic Committee Meeting on 24 October 2022.

In response, it has been determined to not proceed with the Plan at this time. New options will be investigated for Edward Street. Following assessment of the options, a decision will be made whether to proceed with the Plan as is, modified or not at all. A new proposal may also replace the Plan. Stakeholder and community engagement will be undertaken on any new proposal in Edward Street.

It is recommended that a decision on item 5.1 Pedestrian, Bicycle and Traffic Calming Improvement Plan be deferred.

It is recommended that Council adopt the Traffic Committee recommendations, excluding item 5.1.

5. CONCLUSION

The Minutes do not bind Council to any additional resource commitment. It is recommended that Council adopt the recommendations of the Traffic Committee.

TRAFFIC COMMITTEE RECOMMENDATION

That the information be received and noted.

5 FORMAL ITEMS FOR CONSIDERATION

5.1 BELLAMBI ST NORTHBRIDGE (TEMPORARY ROAD CLOSURE) - EXTENSION OF ROAD CLOSURE PERIOD

ATTACHMENTS:	NIL
WARD:	SAILORS BAY WARD
RESPONSIBLE OFFICER:	DANIEL SUI – TRAFFIC & TRANSPORT ACTING TEAM LEADER
AUTHOR:	JOHN ELLIOTT – ECONOMIC DEVELOPMENT MANAGER
CITY STRATEGY OUTCOME:	3.6 – ACTIVATE LOCAL SPACES IN CREATIVE WAYS 4.6 – FACILITATE THE VIABILITY AND VIBRANCY OF OUR VILLAGE CENTRES
MEETING DATE:	23 FEBRUARY 2023

1. PURPOSE OF REPORT

To seek approval for an extension of an additional six-months to the closure of Bellambi Street at its junction with Sailors Bay Road, Northbridge. It is currently closed as a trial to establish a local public space in the heart of the business centre that will become a focal space for events and community activities, provide a community gathering area and add additional outdoor dining space.

2. OFFICER'S RECOMMENDATION

That Council:

- **Approve the extension of the closure of Bellambi Street at its junction with Sailors Bay Road, Northbridge for an additional six months from 28 March 2023, to enable community consultation and reporting back to the Traffic Committee.**

3. TRAFFIC COMMITTEE DISCUSSION

The Committee members discussed the wording of the recommendation should better reflect that the extension is for a maximum of 6 months. It was noted that, should the community consultation result in reopening of the road to its original use, this may occur sooner than end-September 2023.

4. TRAFFIC COMMITTEE CONCLUSION

The Committee agreed with the amended Officer's recommendation, as follows:

That Council:

Approve the extension of the closure of Bellambi Street at its junction with Sailors Bay Road, Northbridge for an additional six months (maximum) from 28 March 2023, to enable community consultation and reporting back to the Traffic Committee.

5.2 Naremburn LOCAL CENTRE Traffic and Parking Management Plan

ATTACHMENTS:	1. ENGAGEMENT OUTCOMES REPORT – NAREMBURN 2022 COMMUNITY CONSULTATION 2. TRAFFIC REPORT 3. NAREMBURN LOCAL CENTRE STREETSCAPE UPGRADE CONCEPT PACKAGE 4. WILLOUGHBY LOCAL CENTRES STRATEGY 2023 5. NAREMBURN LOCAL CENTRE PARKING AND VEHICLE CIRCULATION PLAN
WARD:	NAREMBURN WARD
RESPONSIBLE OFFICER:	DANIEL SUI – TRAFFIC AND TRANSPORT ACTING TEAM LEADER
AUTHOR:	THOMAS GOUGH – SENIOR PROJECT MANAGER
CITY STRATEGY OUTCOME:	2.1 – ENHANCE TRANSPORT CHOICES AND CONNECTIONS THROUGHOUT THE CITY 2.4 – REDUCE PARKING AND TRAFFIC CONGESTION 3.1 – FOSTER FEELINGS OF SAFETY, SECURITY AND CLEANLINESS
MEETING DATE:	23 FEBRUARY 2023

1. PURPOSE OF REPORT

To seek approval for the implementation of the proposed Naremburn Local Centre Parking and Vehicle Circulation Plan, subject to TfNSW approval of the Traffic Management Plan (TMP) for the traffic conversion of Quiamong Street to one-way.

2. OFFICER'S RECOMMENDATION

That Council:

Approve the proposed Naremburn Local Centre Parking and Vehicle Circulation Plan, subject to TfNSW approval of the Traffic Management Plan (TMP) for the traffic conversion of Quiamong Street to one-way.

3. TRAFFIC COMMITTEE DISCUSSION

Tanya Taylor (Mayor) noted access to the Disability parking from Willoughby Road southbound into the Local centre car park may be resolved through future long term planning process to signalise the intersection and/or a new roundabout at Rohan Street intersection.

Shivani Karan advised that TfNSW have comments on the proposed design. It was agreed Council and TfNSW work through these comments outside of the Traffic Committee meeting.

Following discussions with TfNSW, proposed changes to the proposed Naremburn Local Centre Parking and Vehicle Circulation Plan and Traffic Management Plan (TMP) are:

- removal of the zebra crossing at the entrance of the car park, adjacent to the Willoughby Road traffic signal site (to improve safe access for pedestrians and reduce potential traffic congestion at the signalised intersection)
- additional bicycle logo/directional markings & signage for the new dedicated southbound cycle lane
- additional ONE WAY signs will be installed on Quiamong Street (north of the car park)
- widen the new kerb median (from 0.4m to 0.9m) on Quiamong Street to separate traffic and cyclists' movements
- complete swept path analysis for MRV to maintain and ensure safe access at the car park entrance (swept path analysis is attached in the TMP)
- retain the existing Rohan Street parallel parking (west of the mid-block speed hump)
- relocate/retain the existing three motorbike parking spaces (at Rohan St & car park area)

Detailed explanation of the above changes are documented in the Traffic Management Plan (TMP) for Quiamong Street Traffic Conversion.

TfNSW and NSW Police raised concerns about the possibility of errant vehicles entering the proposed shaded seating and dining area adjacent to Willoughby Road without adequate barriers to protect patron safety.

A crash data analysis of the precedent has been conducted. The data shows a total of 12 crashes recorded during the five-year period. Six (6) were rear end crashes on the Gore Hill Freeway and are outside the concerned area. The remaining six (6) crashes occurred between 2016 and 2019. This is a relatively low incident rate. All six (6) accidents were generally isolated individual crashes spread across various locations within the study area. There is no discernible trend between those crashes and the proposed shaded seating and dining area adjacent to Willoughby Road. None of the recorded crashes have impacted on the pedestrian space.

Currently the design provides two to three vehicle barriers in the form of a kerb & gutter, low retaining walls and landscaping and trees. This is considered a low safety risk and no further actions and design changes are proposed at this stage.

Bike North sent an email to Council requesting a late submission on the proposed bicycle paths changes. Council met with Bike North's representatives and considered the submission. The suggested changes relating to signage, bike racks and a bike pump are considered feasible, will be incorporated into the detailed design.

An extension of the bicycle lane through the car park is not feasible due to the conflicting vehicle and cyclist movements within the limited road space, including pedestrians walking to/from the parking spaces. There is an existing dedicated cycle lanes/ramp (north & south bound) on the eastern side of the car park for cyclists traveling through the local centre. All cyclists visiting the local centre are expected to dismount at the end of the proposed bicycle lane (southbound). Additional bicycle racks will be provided at the Local Centre.

All design issues raised have been considered and proposed changes incorporated in the revised Naremburn Local Centre Parking and Vehicle Circulation Plan and Traffic Management Plan (TMP) for the traffic conversion of Quiamong Street to one-way to allow the progression of the detailed design. A detailed design submission to the Local Traffic Committee is not required.

4. TRAFFIC COMMITTEE CONCLUSION

The Committee agreed with the Officer's recommendation.

5.3 CLARENDON ST ARTARMON - TRUCK ZONE

ATTACHMENT:	1. TRUCK ZONE AT 12-18 CLARENDON STREET, ARTARMON
WARD:	NAREMBURN WARD
RESPONSIBLE OFFICER:	DANIEL SUI - TRAFFIC & TRANSPORT ACTING TEAM LEADER
AUTHOR:	SRI SRITHARAN – SENIOR TRANSPORT ENGINEER
CITY STRATEGY OUTCOME:	2.4 – REDUCE PARKING AND TRAFFIC CONGESTION
MEETING DATE:	23 FEBRUARY 2023

1. PURPOSE OF REPORT

To seek Council approval for the installation of a Truck Zone on the west side of Clarendon Street, Artarmon, between Carlotta Street and Dickson Avenue.

2. OFFICER'S RECOMMENDATION

That Council approve the installation of a Truck Zone on the west side of Clarendon Street, Artarmon, between Carlotta Street and Dickson Avenue.

3. TRAFFIC COMMITTEE DISCUSSION

The Committee noted that this parking would be for trucks only. Vans/utes would not be allowed to park in this area as they are restricted to Loading Zones.

4. TRAFFIC COMMITTEE CONCLUSION

The Committee agreed with the Officer's recommendation.

That Council

Approve the installation of a Truck Zone on the west side of Clarendon Street, Artarmon, between Carlotta Street and Dickson Avenue, as provided in Attachment 1.

5.4 DELEGATED ITEMS - 23 FEB

ATTACHMENTS:	1. DIAGRAMS OF SIGNPOSTING, PAVEMENT MARKING AND LINE MARKING CHANGES
WARD:	ALL WARDS
RESPONSIBLE OFFICER:	DANIEL SUI - TRAFFIC & TRANSPORT TEAM LEADER
AUTHOR:	MOONES SOTOODEH – TRAFFIC ENGINEER
CITY STRATEGY OUTCOME:	2.1 – ENHANCE TRANSPORT CHOICES AND CONNECTIONS THROUGHOUT THE CITY 2.4 – REDUCE PARKING AND TRAFFIC CONGESTION 3.1 – FOSTER FEELINGS OF SAFETY, SECURITY AND CLEANLINESS
MEETING DATE:	23 FEBRUARY 2023

1. PURPOSE OF REPORT

To seek Council approval to implement regulatory signposting and line marking changes at various locations in Willoughby City Council.

2. OFFICER'S RECOMMENDATION

That Council approve the implementation of regulatory signposting and line marking changes at various locations in the Willoughby Local Government Area in Table 1.

3. TRAFFIC COMMITTEE DISCUSSION

The Committee discussed safety concerns for school children in relation to the suggested times for 23/03 - 5 Centennial Ave, Chatswood - Installation of Work Zone. The Committee agreed that Council and Police will meet the developer and School (P&C) regarding the Work Zone operation times. Council to report back outcomes of the meeting at the next Traffic Committee meeting.

4. TRAFFIC COMMITTEE CONCLUSION

Traffic Committee noted that item 23/02 Work Zone has been installed on Macmahon Street instead of High Street, as a last minute change to improve safe access for the works site.

In relation to Item 23/03, Council can confirm the Chatswood Public School Principal supports the use of the Work Zone at 5 Centennial Avenue (letter **attached**). A site meeting has been organised between the Police, School, School P&C, Council and the developer, to discuss Police's concerns.

The Committee agreed with the Officer's recommendation.

6 LATE ITEMS

Nil

7 INFORMAL ITEMS

Nil

8 GENERAL BUSINESS

8.1 SAILORS BAY ROAD, NORTHBRIDGE – TRUCK ZONE RELOCATION

A resident of Northbridge contacted the Member for Willoughby, Tim James MP, regarding with a concern about increasing traffic congestion exiting Northbridge in the mornings, especially on Saturdays and during after school finishing times from 3pm-4pm. The resident's concerns were:

- The location of the 'Truck Zone' on the southern side of Sailors bay Road approaching the Strathallen Avenue signalised intersection.
- A request to move the Truck Zone further from the intersection to allow for a longer exclusive 'Left Turn Only' lane. It is currently about 20m.

Comments from John Hooper, a representative for the Member for Willoughby, Tim James MP, were:

- Supportive of the exclusive 'Left Turn Only' lane but prefers the 'Truck Zone' not be moved further back because of the needs of the retail shoppers and the location of the existing 'Truck Zone' with parking generally along the street.

Actions proposed by Council:

Council has initiated a traffic study to investigate the implications of the 'Left Turn Only' lane on the operation of the signalised intersection at Sailors Bay Road and Strathallen Avenue.

In particular,

- The optimum length of the 'Left Turn Only' lane and hence whether it is necessary to move the 'Truck Zone' further back.
- Whether westbound vehicles are using the kerb lane to avoid being caught behind the right turn lanes from Sailors Bay Road to Harden Avenue.
- The change to vehicle delays and queues at the intersection if all through vehicles are forced to use the centre through lane.
- Investigate the intersection safety and efficiency performance (Level of Service)
- Potential risks of through vehicles changing lanes between Strathallen Avenue and Harden Avenue, to avoid being stuck behind vehicles turning right onto Harden Avenue.

8.2 WALTER STREET, WILLOUGHBY – RIGHT TURN BAN FROM WALTER STREET ON WILLOUGHBY ROAD

The Member for Willoughby Tim James received a submission from a local resident in Walter Street, Willoughby, objecting to the approved 'No Right Turn' from Walter Street onto Willoughby Road.

At Ordinary Council Meeting, 19 September 2022, Council adopted the recommendations arising from the Traffic Committee Meeting held on 5 September 2022, in particular Item 5.6, 'Walter Street, Willoughby – Pedestrian, Bicyclists and Traffic Calming Improvement Plan'.

Walter Street is a Local Road and Willoughby Road is a State Road managed by TfNSW. An extensive traffic study and modelling of traffic volumes and movements along Willoughby Road, taking into account all future proposed developments in the area. TfNSW imposed a full-time 'No Right Turn' from Walter Street because of 'potentially road safety issues and may lead to an increase in crashes, particularly associated with uncontrolled turning movements in and out of Walter Street'.

A new time of day restrictions Right Turn movements from Willoughby Road onto Walter Street will be introduced No Right Turn 6am – 10am & 3pm – 7pm Monday to Friday restriction in Willoughby Road, southbound, at Walter Street.

These right turn bans formed part of the development consents (Notice of Determination of a Development Application) issued on 2 February 2022 under the Environment Planning and Assessment Act.

Council support TfNSW's position to ban the right turn movements to ensure maximum public safety and intersection performance.

COMMUNITY, CULTURE & LEISURE DIRECTORATE

**12.11 OUTCOME OF PUBLIC EXHIBITION OF THE REVIEW OF THE SYNTHETIC
SPORTSGROUND MANAGEMENT PLAN AND THE COMMUNITY USE OF
SPORTS FACILITIES POLICY**

Engagement Outcomes Report for Community Use of Sports Facilities Policy & Synthetic Sportsground Management Plan Update

March 2023

Executive summary

On 28 November 2022, Willoughby City Council resolved to place on public exhibition Council's amended *Community Use of Sports Facilities Policy* and *Synthetic Sportsground Management Plan* following an external review.

Public exhibition was undertaken between Thursday, 8 December 2022 and Monday 20 February 2023 with feedback collected via:

- Online Survey via Have Your Say
- Email Submissions
- Face-to-face at 4x community drop-in sessions held at Northbridge Oval, Thomson Oval, Chatswood High School & Gore Hill Oval.

In total 114 formal submissions were made throughout the public exhibition period via the Have Your Say project page and email submissions with a further 19 attendees providing general feedback across the four community drop-in sessions.

Council officers have analysed the feedback provided and have determined the following themes raised by respondents in response to the proposed changes to both the *Community Use of Sports Facilities Policy* and *Synthetic Sportsground Management Plan*.

Community Use of Sports Facilities Policy

- 80% support for the inclusion of Social Justice principles from the *Our Future Willoughby 2032* Community Strategic Plan to reinforce: "*That we ensure fairness and gender balance in the provision and allocation of community sport facilities*".
- 49% support for the addition of a new policy statement that: "*Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies*".

Synthetic Sports Management Plan

- Support for the removal of the one Sunday per month rest day on Council's synthetic sportsgrounds with the rest day to be re-purposed to ensure access at least one Sunday per month for women/ girls' sport exclusively played at local and district level. As Gore Hill Oval does not currently have a rest day, feedback was sought only on the allocation of one Sunday per month exclusively for women/ girls' sport.

Location	Support	Unsure	Against
Northbridge Oval	54%	7%	39%
Thomson Oval	59%	7%	34%
Chatswood High School Oval	64%	9%	27%
Gore Hill Oval	67%	9%	24%

- 59% support for the reduction in booking hours on Sundays at Thomson Park Oval from 9am – 6pm (current), to 9am – 1pm (new).
- 63% support for the extension of weekend booking hours at Northbridge Oval on Saturdays from 8am – 7pm (current) to 8am – 9pm (new) and Sundays from 9am – 6pm (current) to 8am – 7pm (new).

Below is a detailed summary of the community engagement undertaken and an analysis of key feedback received.

Engagement Approach

The Community Engagement Objectives were to:

- To assess the perspectives of a range of stakeholders and the general community on the updated *Community Use of Sports Facilities Policy* and *Synthetic Sportsground Management Plan*.
- Understand their perspectives on the potential benefits and impacts of the changes proposed regarding booking hours for synthetic sport fields identified within the *Synthetic Sportsground Management Plan*.
- Provide a safe and conflict-free environment for everyone to give feedback

Officers notified occupiers of 1060 properties surrounding Northbridge Oval (424 properties), Thomson Oval (444) and Chatswood HS Oval (192) at the commencement of the public exhibition. Letters were not posted around Gore Hill Oval due to the nature of surrounding land use (commercial / hospital / school / cemetery). A copy of the notification letter is at Appendix One.

Officers also notified a database of key stakeholders including:

- 33 Sports Clubs/Associations/Organisations
- 9 Progress Associations
- All previous respondents to the Northbridge Oval Trial extension of weekend booking hours (103 respondents)

Four community drop-in sessions were held at Northbridge Oval, Thomson Oval, Chatswood High School & Gore Hill Oval with each session promoted via the Have Your Say page, resident notification letters and site signage. A copy of the site signage is at Appendix Two.

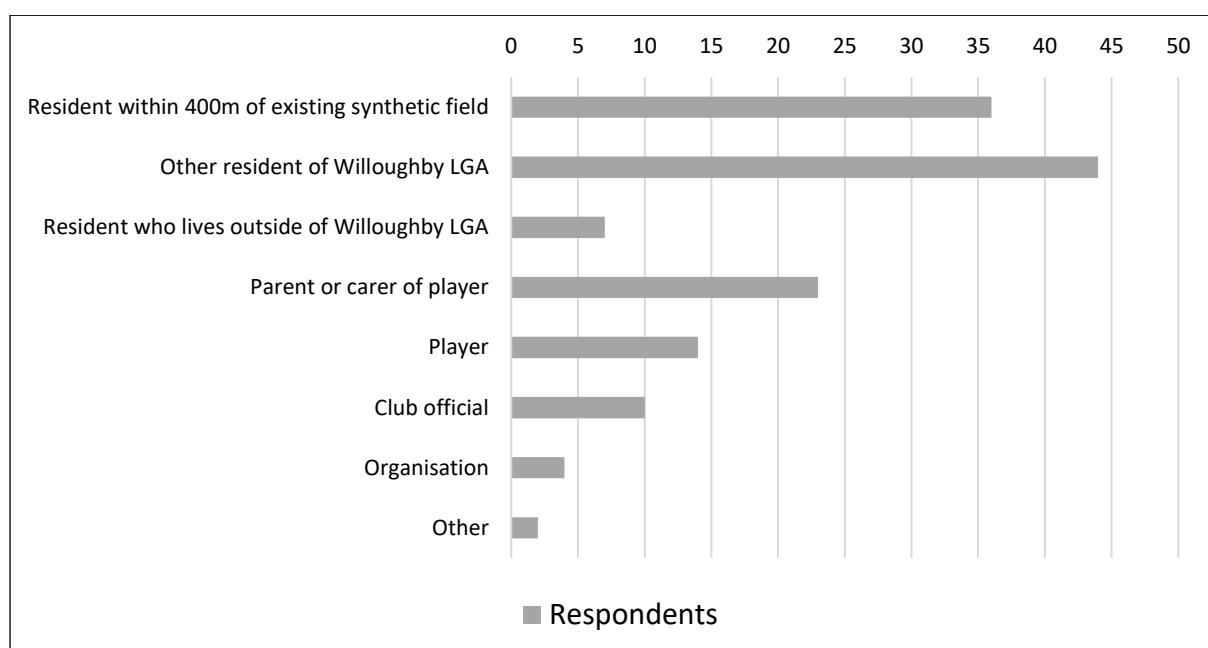
Additional notifications were also undertaken via a media release on 20 January and a social media post on 24 January. Interested residents and stakeholders were encouraged to provide feedback on the trial via a submission to a Council online engagement page: www.haveyoursaywilloughby.com.au/managing-our-sports-facilities

Detailed survey analysis

There were 114 formal submissions received throughout the engagement process with 97 participants who each uploaded a submission to the Have Your Say project page and a further 17 direct submissions made via either letter or email.

Figure 1 illustrates the capacity in which participants lodged a submission via the Have Your Say project page. Participants could choose more than one answer. The majority of people who lodged a submission were residents throughout the Willoughby LGA, with residents who live within 400m of an existing synthetic sports field the next most popular capacity.

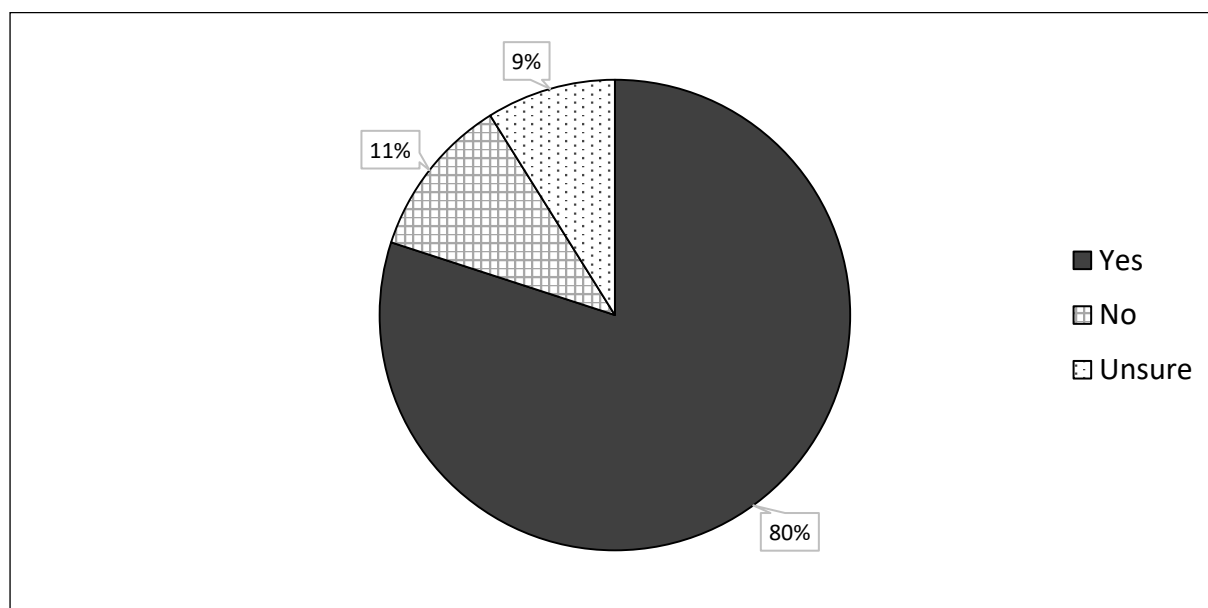
Figure 1: Capacity in which participants lodged a submission



COMMUNITY USE OF SPORTS FACILITIES POLICY – SURVEY FEEDBACK

Figure 2 summarises the feedback for the inclusion of Social Justice principles from the *Our Future Willoughby 2032* Community Strategic Plan to reinforce: “*That we ensure fairness and gender balance in the provision and allocation of community sport facilities*”. Over three-quarters (80%) of survey respondents indicated their support for the inclusion on social justice principles that reinforce fairness and gender balance with Willoughby’s community sport facilities.

Figure 2: Feedback on the inclusion of principles to reinforce “*That we ensure fairness and gender balance in the provision and allocation of community sport facilities*”.



Reasons identified from those in support of the inclusion of this Social Justice principle:

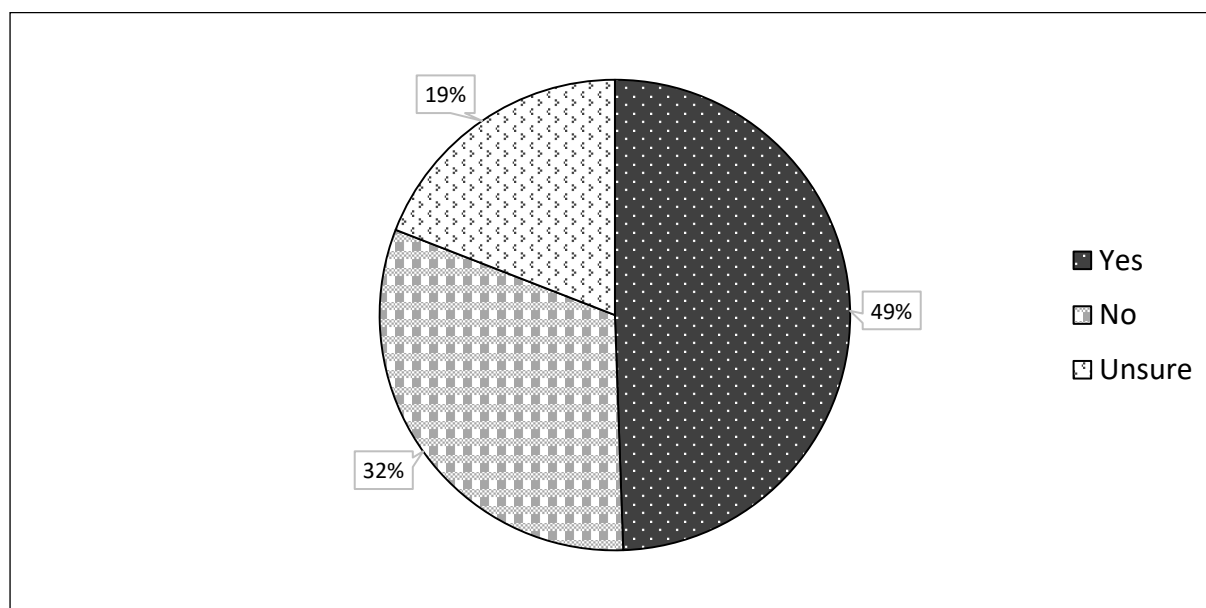
- That it helps meet the rising demand for facilities for female players
- It helps female players get a fair share of sport facilities
- That it is consistent with Council's Community Strategic Plan
- That it helps achieve the principle of equity for existing sport facilities.

Reasons identified from those against the inclusion of this Social Justice principle:

- That there are not enough facilities available to implement such a policy
- Allocation by gender does not account for individual sport need/demand
- That mandating the allocation and use of a sportsground by a single gender is discriminatory

Figure 3 summarises the feedback for the inclusion of the requirement that “*Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies.*” Just under half of survey respondents indicated support with just under one third opposed to the inclusion of a new requirement regarding funding of regional level improvements for Council sport facilities by non-Council sources.

Figure 3: Feedback on the inclusion of the requirement that “*Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies.*”



Further to the Have Your Say survey respondents, 2 individual submissions received provided direct feedback on this proposed inclusion with both submissions opposed to the inclusion of the requirement that “*Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies.*”

Figure 4 illustrates the reasons given by participants who were supportive of the inclusion of the requirement that “*Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies.*” The survey provided the following options for respondents to choose from to explain their support:

- Council has limited funds for sport facilities and these funds are best spent supporting local community sports
- It is right that other organisations should assist Councils with funding for regional sports facilities
- Local councils should be backing local sports
- Other (please specify)

Figure 4: Reasons for supporting the inclusion of a requirement for external funding sources for regional level improvements at Council sport facilities

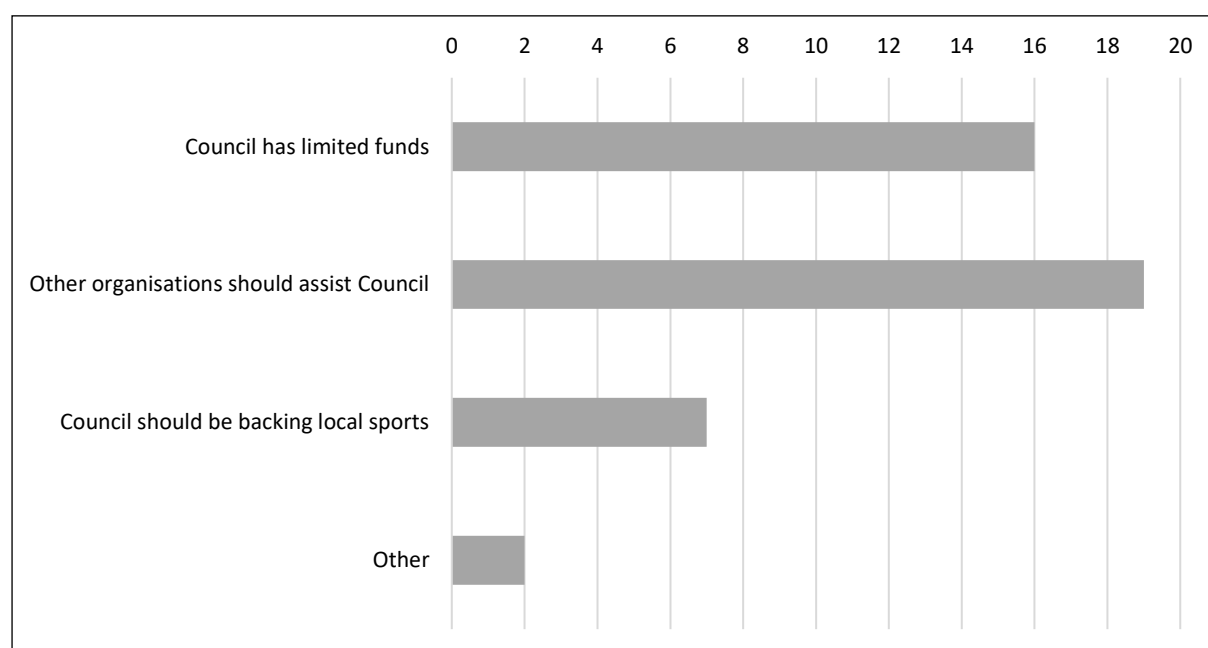
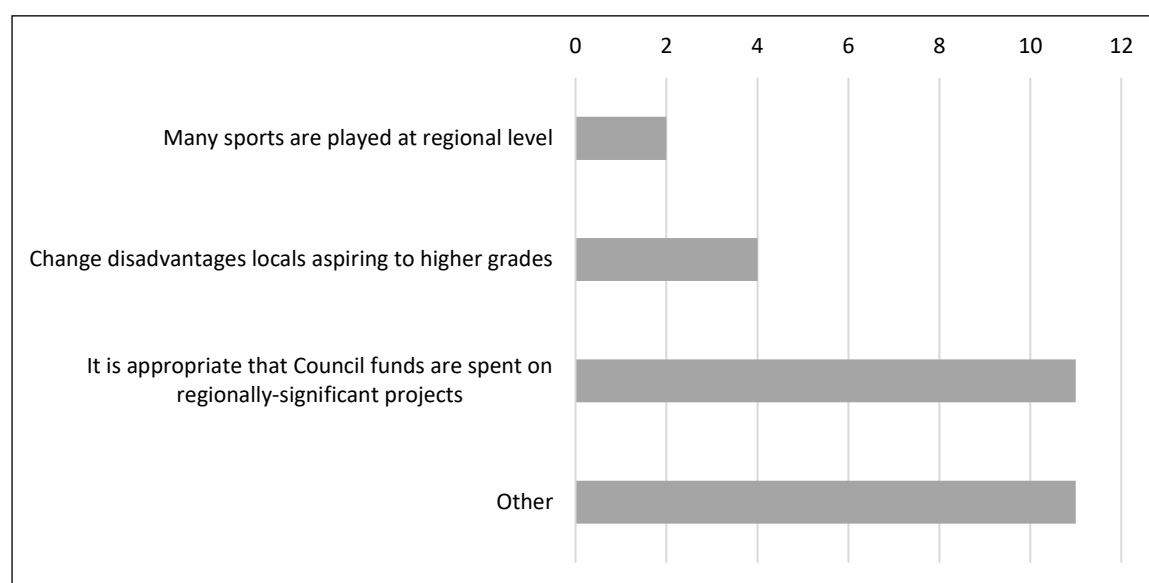


Figure 5 illustrates the reasons given by participants who were opposed to the inclusion of the requirement that “*Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies.*” The survey provided the following options for respondents to choose from to explain their opposition:

- Many sports are played at regional level
- This proposed change disadvantages local players aspiring to higher sport grades
- It is appropriate that Council funds are channelled into projects which are regionally-significant
- Other (please specify)

Figure 5: Reasons for opposing the inclusion of a requirement for external funding sources for regional level improvements at Council sport facilities



11 survey responses indicated other reasons to oppose the inclusion of a requirement for external funding sources for regional improvements at Council sport facilities. Additional comments received that reflect this opposition are summarised in **Figure 6**.

Figure 6: Survey respondents opposing the requirement for external funding sources for regional level improvements – summarised additional comments

Summarised community comments: Opposition to external funding for regional improvements	Number of responses
Will result preferential treatment to financially strong sports	4
All three reasons supplied as survey options	2
Council will benefit from regional facilities and should share the associated expenses	2
Concern it will lead to out of area groups gaining access to facilities	1
Concern Council will reduce the maintenance expenditure on regional facilities due to lack of responsibility to renew/upgrade	1
Feedback that definitions used should be altered as some regional level associations should be reclassified as district	1

Removal of rest days – Synthetic Sportsgrounds

Figure 7 summaries the feedback from survey respondents regarding the removal of the one Sunday per month rest day on Council’s synthetic sportsgrounds with the rest day to be re-purposed to ensure access at least one Sunday per month for women/ girls’ sport exclusively played at local and district level. As Gore Hill Oval does not currently have a rest day, feedback was sought only on the allocation of one Sunday per month exclusively for women/ girls’ sport at a local and district level.

Figure 7: Feedback on the removal of the rest day on Council’s synthetic sportsgrounds to be repurposed to provide exclusive access for female sport at a local/district level

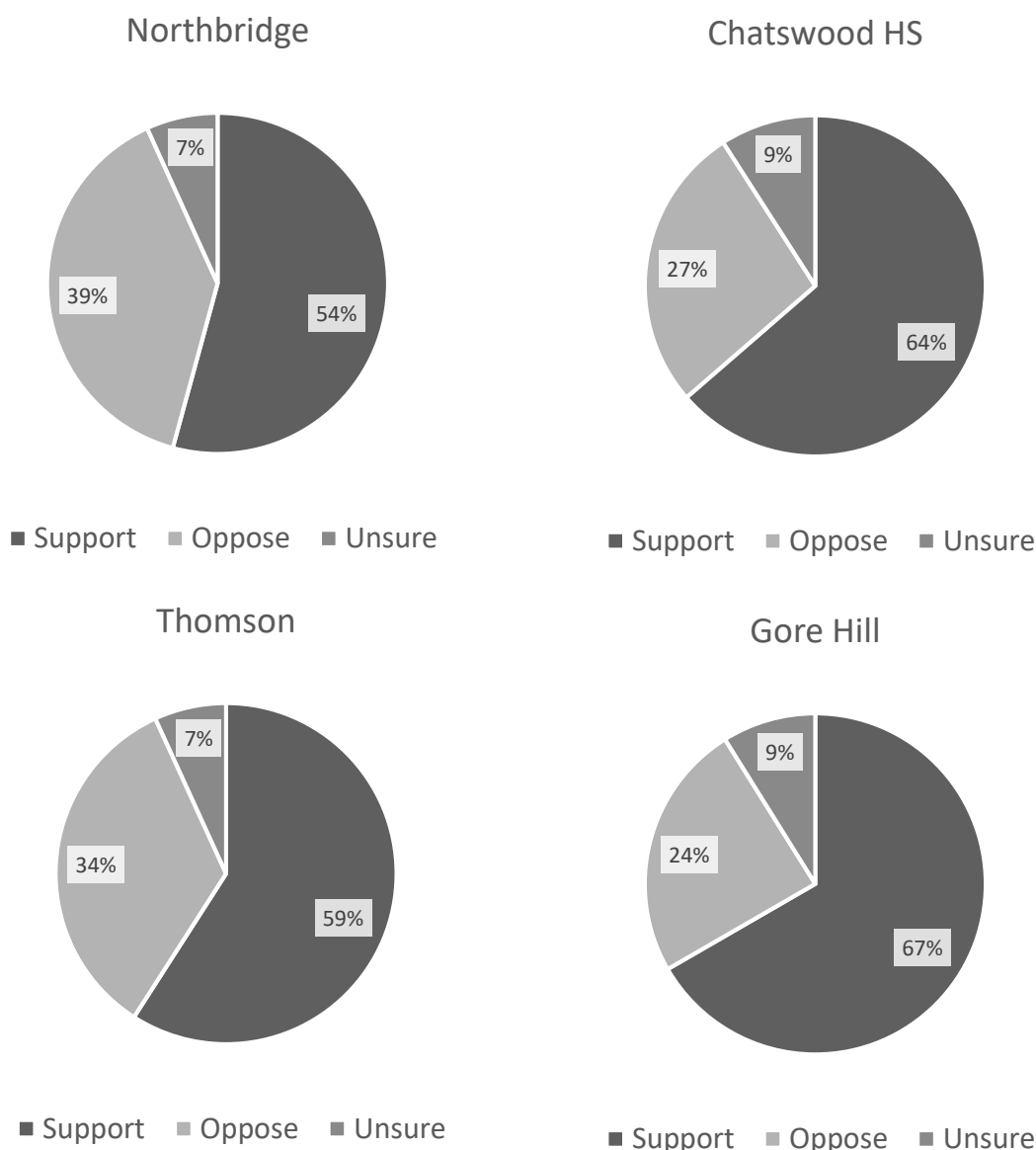
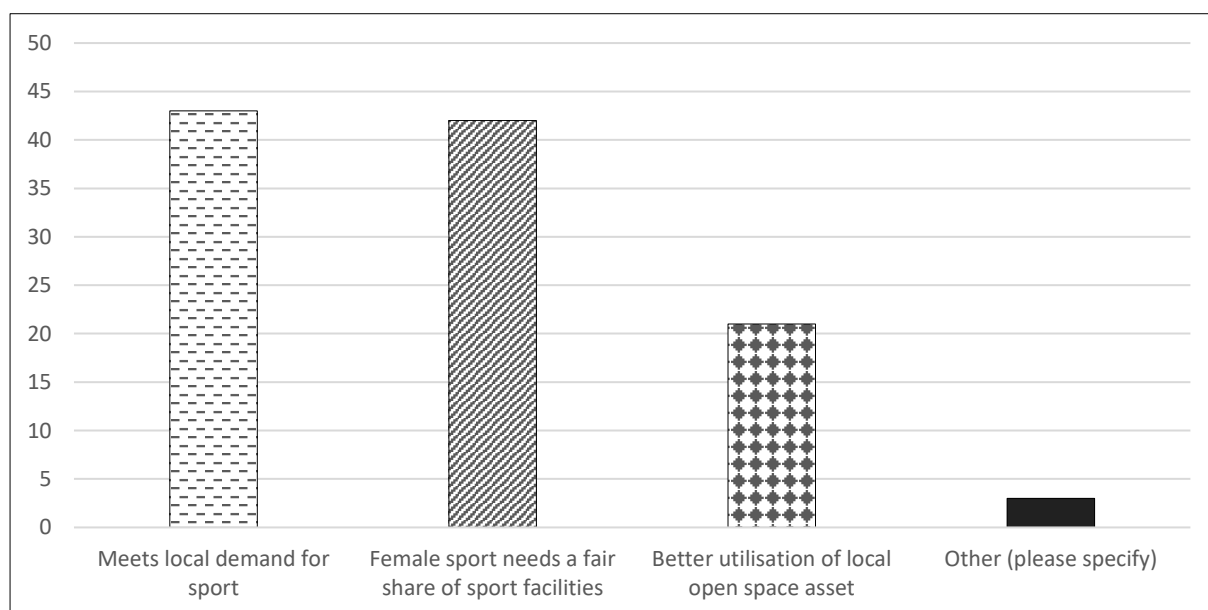


Figure 8 illustrates the reasons given by respondents who supported the removal of the rest day at one of the four locations with this rest day to be repurposed to provide exclusive access for female sport at a local or district level. The survey provided the following options for respondents to choose from to explain their support:

- Meets local demand for sport
- Female sport needs a fair share of sport facilities
- Better utilisation of local open space asset
- Other (please specify)

Figure 8: Reasons for supporting the removal of the rest day on Council’s synthetic sportsgrounds to be repurposed to provide exclusive access for female sport at a local/district level (All sites combined)

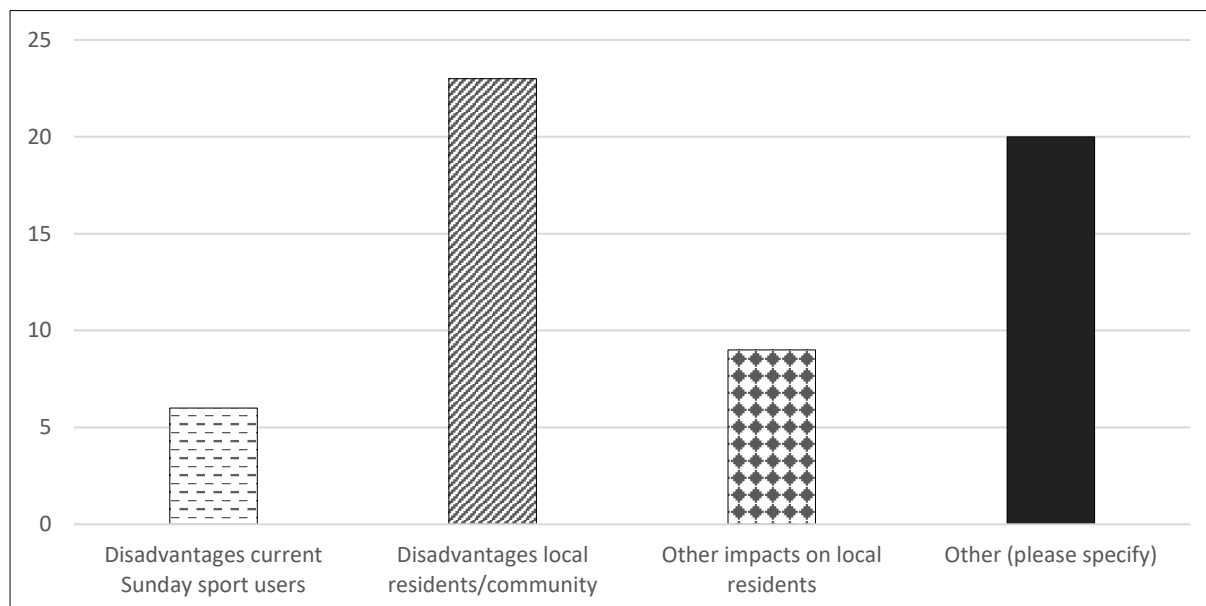


Of the options provided within the survey the most common reason provided by survey respondents for supporting the removal of the rest day and repurposing of this day for women and girls sport at a local or district level was that “*Meets the demand for local sport*” with a similar number of respondents (43 vs. 42) supporting the removal of the rest day because “*Female sport needs a fair share of sport facilities*”.

Figure 9 illustrates the reasons given by respondents who opposed the removal of the rest day at one of the four locations with this rest day to be repurposed to provide exclusive access for female sport at a local or district level. The survey provided the following options for respondents to choose from to explain their opposition:

- Disadvantages current Sunday sport use
- Disadvantages local residents and community use of the facility one Sunday per month
- Other impacts on local residents incl. parking/traffic/noise
- Other (please specify)

Figure 9: Reasons for opposing the removal of the rest day on Council's synthetic sportsgrounds to be repurposed to provide exclusive access for female sport at a local/district level (All sites combined)



Of the options provided within the survey the most common reason provided by survey respondents for opposing the removal of the rest day and repurposing of this day for women and girls sport at a local or district level was that “*Disadvantages local residents and community use of the facility one Sunday per month*” with 23 respondents providing this feedback. Of the 23 respondents who provided this feedback over half (12 respondents) provided this feedback in relation to removal of the rest day at Northbridge Oval. In part, this feedback is in response to a previous survey conduct in July/August 2022 which sought feedback on the extension of booking hours at Northbridge Oval on a trial basis. Those against extended hours cited reasons of noise impacts, traffic and parking impacts with a further nine respondents providing these same concerns regarding the proposed removal of the rest day across Council's synthetic sportsgrounds as part of this survey.

20 survey responses indicated other reasons to oppose the removal of the rest day on Council's synthetic sportsgrounds to be repurposed to provide exclusive access for female sport at a local/district level. Additional comments received that reflect this opposition are summarised in **Figure 10**.

Figure 10: Survey respondents opposing the removal of the rest day and repurposing for female sport at a local/district level – summarised additional comments

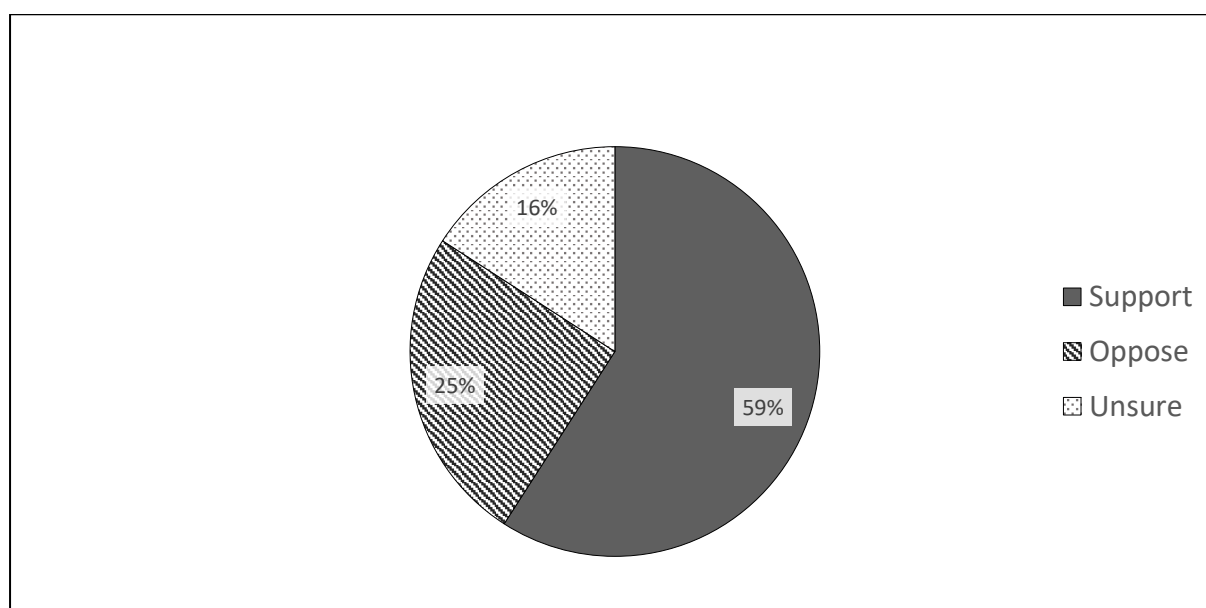
Summarised community comments: Opposition to removal of rest day and repurposing for female sport at a local/district level	Number of responses
Concern that mandating access for a specific gender would be discriminatory	9
Feedback on survey design/options	4
Reiteration of support for the retainment of the 'rest day'	4
Feedback on how AFL would be impacted by implementation of 'female only' days at Gore Hill	2
Concern over use of synthetic grass surfaces	1

Nearly half of respondents (nine of 20) who provided '*Other*' reasons for opposing the removal of the rest day and repurposing this for women and girls sport at a local and district level expressed their concern that the proposal may be discriminatory against either individual sports or clubs as it would prevent either their existing or desired access to Council's synthetic sportsgrounds on the basis of either the gender or competition level of their participants. This response does not necessarily indicate opposition to the removal of the rest day for organised sport but simply opposition to the manner in which it has been proposed.

Reduction in booking hours – Thomson Park Oval

Figure 11 summaries the feedback from survey respondents regarding a proposed reduction in booking hours on Sundays at Thomson Park Oval from 9am – 6pm (current) to 9am – 1pm (new).

Figure 11: Feedback on the reduction in bookable hours at Thomson Park Oval from 9am – 6pm (current) to 9am – 1pm (proposed) on Sundays.



Figures 12 illustrates the reasons given by respondents who support the reduction in bookable hours on Sundays at Thomson Park Oval from 9am – 6pm (current) to 9am – 1pm (proposed). The survey provided the following options for respondents to choose from to explain their support:

- Allows more community access
- Children need more space for informal recreation
- Other (please specify)

Figure 12: Reasons for supporting the reduction in bookable hours at Thomson Park Oval from 9am – 6pm (current) to 9am – 1pm (proposed) on Sundays.

Summarised community comments: Support for reduction in booking hours on Sundays at Thomson Park Oval	Number of responses
Allows more community access	17
Children need more space for informal recreation	11

Figures 13 illustrates the reasons given by respondents who oppose the reduction in bookable hours on Sundays at Thomson Park Oval from 9am – 6pm (current) to 9am – 1pm (proposed). The survey provided the following options for respondents to choose from to explain their support:

- Sport should have priority on sportsgrounds
- Shortage of sportsgrounds in the LGA
- Other (please specify)

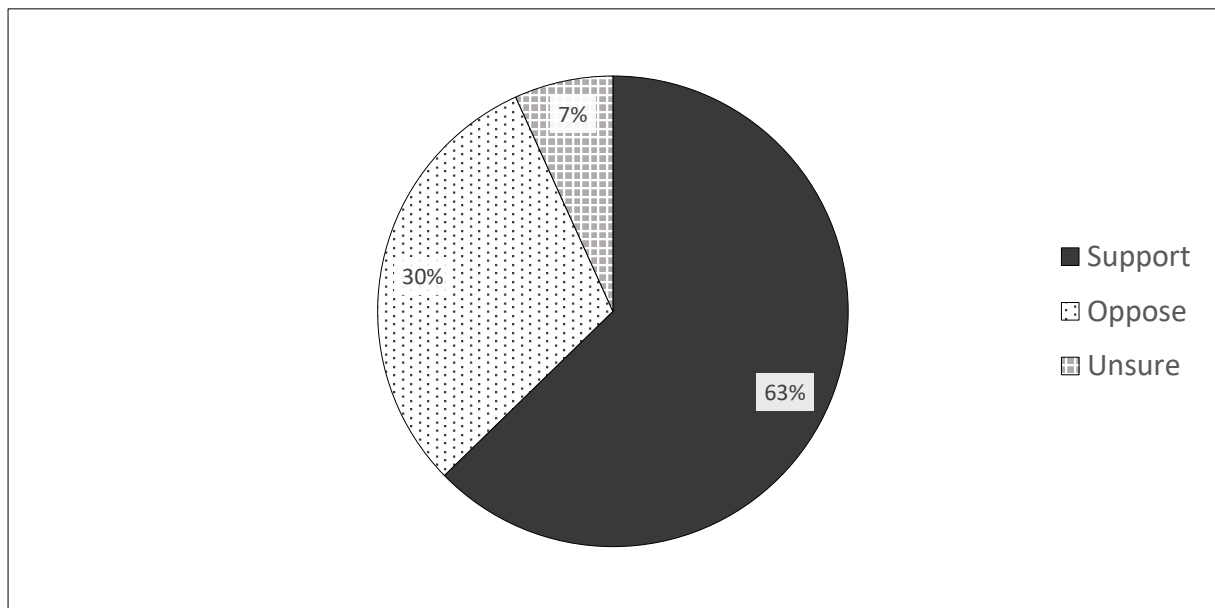
Figure 13: Reasons for opposing the reduction in bookable hours at Thomson Park Oval from 9am – 6pm (current) to 9am – 1pm (proposed) on Sundays.

Summarised community comments: Opposition to the reduction in booking hours on Sundays at Thomson Park Oval	Number of responses
There is a shortage of sportsgrounds for organised sport	7
Sport should have priority of access	3
Thomson's booking hours should accommodate the extra demand for Northbridge Oval	1

Extension in booking hours – Northbridge Oval

Figure 14 summaries the feedback from survey respondents regarding the extension of weekend booking hours at Northbridge Oval in accordance with the trial held in July-August 2022. The proposed increase in booking hours at Northbridge Oval aligns the *Synthetic Sports Management Plan* to the outcomes of this trial namely the extension of booking hours on Saturdays from 8am – 7pm (current) to 8am – 9pm (new) and Sundays from 9am – 6pm (current) to 8am – 7pm (new).

Figure 14: Feedback on the extension of weekend booking hours at Northbridge Oval in accordance with the trial held in July-August 2022.



Reasons identified from those who support the increase in booking hours on weekends at Northbridge Oval:

- Helps meet demand and requirements of sporting user groups

Reasons identified from those who are against the increase in booking hours on weekends at Northbridge Oval:

- Concerns of the additional traffic, parking and noise impacts on local residents
- That it will lead to an imbalance between residential access to public facilities and access by sporting user groups

General issues raised from the Community Engagement

The Have Your Say survey raised a variety of issues regarding community use of sport facilities and the management of synthetic sportsgrounds. Responses provided have been analysed and grouped into themes listed in **Figure 15** below with an accompanying response.

Figure 15: General issues raised throughout the Community Engagement

Community comments grouped by theme	Number of comments	Response
Reinforcing support/opposition for survey responses	18	All feedback has been noted and considered.
Feedback on organised sport conduct issues in particular traffic and noise	7	Most of Council's sportsgrounds are located in residential areas, with limited off-street parking- hence the impact of on-street parking for local residents. Sports hirers are strongly encouraged to car-pool and minimise parking impacts.
Support for increased use of synthetic fields including conversion of additional fields	5	Council is focused on the renewals of existing sports surfaces – both natural and artificial – to meet community recreation needs. There are no current plans to convert another Council sportsground to a synthetic surface.
Opposition/concern over synthetic sports fields	3	
Reduce organised sport use of sportsgrounds	4	Sportsgrounds have been developed specifically for sport in response to the community needs. Sport plays an important role in social engagement, inclusion and community health.
Feedback on condition of sport pavilions around the LGA	2	Council is currently undertaking a study of sports pavilions across the LGA. The results will inform a rolling program of pavilion upgrades.
Feedback on the Bicentennial Park Netball Courts	2	Re-sheeting of the upper netball courts has been listed in the draft Projects and Capital Works Program for 2023/24. Subject to Council approval, the works can be scheduled for the netball season break in Summer 2023.
Objection to Council mandating type of use by sports groups	1	Council's primary role with sport is to provide the facility and to keep it safe for play. In the case of the synthetic grounds, there is a higher level of use by sports groups with teams in regional competitions. The new wording in the SSMP attempts to correct this imbalance
Always provide an unallocated space for general community use at sportsgrounds	1	Council will continually investigate management strategies and design opportunities to facilitate effective use of sportsgrounds for the wider community whilst managing organised sport demand.

Written submissions during Community Engagement

Throughout the community engagement period a total of 17 written submissions were received providing feedback on either the *Community Use of Sport Facilities Policy* or the *Synthetic Sportsground Management Plan*.

Feedback from the written submissions have been analysed and where appropriate grouped into themes listed in **Figure 16 and 17** below with an accompanying response.

Figure 16: Written Submission feedback received grouped by theme (CUSFP)

Community Use of Sport Facilities Policy Written Submissions		
Submission comments grouped by theme	Number of submissions	Response
Council should aspire to deliver/fund the best possible sport facilities incl. regional sport facilities due to broader community benefits	2	Council has limited funding and needs to prioritise the delivery and upkeep of facilities which meet the broader needs of community. The proposed changes to the <i>CUSFP</i> reflect this need to prioritise funding.
Additional synthetic field conversions should be considered	1	There are no current plans to convert another Council sportsground to a synthetic surface.
<i>CUSFP</i> needs to be flexible so as not to limit accessibility between sports groups where needed	1	The proposed <i>CUSFP</i> includes a policy principle which identifies the need for Council to enable access to sports facilities by the whole of community across the region. Through the implementation of this principal Council has flexibility to provide access to facilities to as wide of sports users as possible.
Council should partner with external organisations and participate in grant programs to invest in sport facilities	1	Council is continually investigating opportunities for external funding sources and will partner with other organisations when appropriate to deliver sport facilities

Figure 17: Written Submission feedback received grouped by theme (SSMP)

Synthetic Sportsground Management Plan Written Submissions		
Submission comments grouped by theme	Number of submissions	Response
Support for removal of rest days at all sportsgrounds	9	Feedback noted for consideration
Opposition to removal of rest days at sportsgrounds	6	Feedback noted for consideration
Proposed changes to Gore Hill Oval would negatively impact AFL in particular female AFL players within the LGA	5	Feedback regrading current structure and utilisation of Gore Hill Oval for female sport noted for consideration.
Opposition to extension of hours at Northbridge Oval	5	Feedback noted for consideration
Support for extension of hours at Northbridge Oval	3	Feedback noted for consideration
Opposition to allocation of former rest day to be exclusively for women/girls sport at a local or district level	1	Council's primary role with sport is to provide the facility and to keep it safe for play. In the case of the synthetic grounds, there is a higher level of use by sports groups with teams in regional competitions. The new wording in the <i>SSMP</i> attempts to correct this imbalance
Thomson Oval is insufficient size to support women's cricket	1	Feedback regarding current use and participation rates within cricket noted for consideration.

Conclusion

Over 90 people responded to the engagement survey seeking feedback on the revised Community Use of Sport Facilities Policy and Synthetic Sportsground Management Plan. A further 17 individuals or organisations also provided feedback on the revised documents through a written submission to Council.

Over 80 per cent of respondents support the principles of gender balance and equity in the provision and allocation of community sport facilities. 49 per cent of respondents also support the inclusion of the new principle within the Community Use of Sport Facilities policy that *“Regional level improvements for Council sport facilities should be funded by non-Council sources, the relevant sport codes and their peak State bodies.”*

An average of 58 per cent of respondents support the removal of rest days at Northbridge Oval, Thomson Park Oval and Chatswood High School oval for the purpose of providing exclusive access to female sport at a local or district level primarily due to the existing demand of local sport and lack of access for women and girls at the local and district level to these types of facilities. Opposition against the removal of rest days for exclusive access for female sport users was split between respondents who stated the proposed change disadvantages local residents and community and respondents who opposed the exclusive nature of the proposed allocation to women and girls sport at a local or district level.

Only 25 per cent of respondents opposed the reduction in booking hours on Sunday's at Thomson Park Oval with increased access for informal community recreation the most common reason identified for supporting the reduction in booking hours.

Over 60 per cent of survey respondents supported the extension of weekend booking hours at Northbridge Oval in accordance with the trial held in July-August 2022. This response is in alignment with the previous engagement undertaken on this proposal reported to Council in September 2022 which reported over 90 per cent support for the extension of hours for the reason that it helps meet local demand for sport and allows the playing of more games.

APPENDIX ONE: Resident notification letter

Dear Artarmon Resident

Proposed changes to Thomson Park Oval – invitation for your feedback

Willoughby City Council is proposing a series of changes to better manage the Council's sporting facilities, including supporting community sport.

These changes are proposed to be effected through amendments to *Community Use of Sports Facilities Policy* (2021) and *Synthetic Sportsgrounds Management Plan* (2018)

Proposed changes for Thomson Park Oval are:

- No longer having a monthly rest day, and instead using the former rest day for women and girls sport played at a local and district level.
- A decrease in sport booking times for Sundays- to allow more community use

The Council Have Your Say survey is available on the following link:

<https://www.haveyoursaywilloughby.com.au/managing-our-sports-facilities>

A drop in information session with Council staff will be held at Thomson Park Oval Pavilion from 4pm – 6.30pm on 2 February 2023.

We look forward to seeing you on site – and receiving your survey answers.

Regards



Julie Whitfield- Open Space Planner

Julie.whitfield@willoughby.nsw.gov.au



A drop in information session with Council staff will be held at Northbridge Oval Pavilion from 4pm – 6.30pm on Wednesday 1st February 2023.

Proposed changes to Northbridge Oval – invitation for your feedback

Willoughby City Council is proposing a series of changes to better manage the Council's sporting facilities, including supporting community sport.

These changes are proposed to be effected through amendments to *Community Use of Sports Facilities Policy* (2021) and *Synthetic Sportsgrounds Management Plan* (2018)

Proposed changes for Northbridge Oval are:

- **No longer having a monthly rest day, and instead using the former rest day for women and girls sport played at a local and district level.**
- **An increase in weekend booking times to reflect a trial of these hours held in July-August 2022.**

The Council Have Your Say survey is available on the following link:

<https://www.haveyoursaywilloughby.com.au/managing-our-sports-facilities>

We look forward to seeing you on site.

Willoughby City Council- ph 9777 1000 Julie.Whitfield@willoughby.nsw.gov.au



Community Use of Sports Facilities

Date Adopted	27 March 2023
Next Review Date	27 March 2027
Version	Final
Responsible Position	Culture and Leisure Manager
Administration Reference	

1. PURPOSE

The policy emphasises that Council is focused on community sport at a local and district level. This policy guides Council decisions for the provision and level of public sporting facilities and their use by the community.

2. CITY STRATEGY OUTCOME: A City that is Liveable

3.2 - Create recreation spaces for all

3.3 - Promote an active and healthy lifestyle

3.4 - Balance population growth and development with quality of life

3. APPLICATION

The policy applies to sports facilities- both indoor and outdoor - in the Willoughby Local Government Area that are either owned or managed by Council. This includes sport facilities that are located on Council owned land, Crown reserves managed by Council and land owned by the Department of Education.

4. POLICY PRINCIPLES

This policy is directed by the broad principles of sustainability, equity and social justice outlined in the Community Strategic Plan:

- Sustainability - that we meet the sporting needs of the present community without compromising the sporting needs of future generations.
- Social justice:
 - Equity - that we ensure fairness in the provision of community sports facilities.
 - Access - that we enable better access to sports facilities by the region's community.
 - Participation - that we consult with our sports users, residents and ratepayers in decisions affecting current and future community sports facilities.
 - Rights - that we recognise the community has a just claim to access and use land and facilities designated for recreation for the playing of sports.

5. POLICY STATEMENT

- The principle regulatory document for the management of community sport facilities in the Willoughby City Council area is the *Sports Facilities Plan of Management 2020* (SFPOM).
- Sports facilities should be provided in line with projected demographic changes and community need where possible.
- The quantity, capacity and functionality of all sports facilities should meet the sporting needs of the community across a wide range of sports wherever possible.
- Sports facilities should be administered to ensure their equitable and sustainable use.
- Sports infrastructure should be provided to meet the needs of the community without burdening future generations, in accordance with Council's Projects and Capital Works prioritisation process.

6. COUNCIL FUNCTIONS, ACTIVITIES AND RESPONSIBILITIES

The functions, activities and responsibilities of Willoughby City Council in relation to this policy Community Use of Sport Facilities are outlined below.

Leadership	<ul style="list-style-type: none">• Creating and supporting opportunities for individuals and groups to participate in community life• Responding to community needs through the ongoing review of policy, plans of management, resource allocation and services
Owner/Custodian	<ul style="list-style-type: none">• Planning, protecting and making the best use of community assets in a sustainable manner to ensure the greatest possible benefit to our communities.
Regulator	<ul style="list-style-type: none">• Maintaining compliance with legislative requirements
Information Provider	<ul style="list-style-type: none">• Provide information in relation to availability and use of sporting facilities
Facilitation	<ul style="list-style-type: none">• Bring together and connect stakeholders to discuss issues and opportunities in order to determine appropriate actions• To engage in partnerships that allow efficient and effective use of resources• Providing the community the opportunity to participate in decision making processes
Advocacy	<ul style="list-style-type: none">• Advocate on behalf of our communities to relevant bodies in relation to issues and opportunities which impact on future sporting facilities and the community
Service Provider	<ul style="list-style-type: none">• Provide effective and needed facilities being mindful of demographic, social, cultural and economic attributes of our communities

7. Monitoring and Review

Managers / Executive

The Culture and Leisure Manager is responsible for:

- Reviewing this policy every 4 years or as needed.

8. Supporting Information

The *Willoughby City Sports Facilities Plan of Management 2020* and individual plans of managements direct the management of sport facilities in the Willoughby Council area. They ensure Council meets its legislative obligations in respect to public land management and minimise impact from activities while optimising recreational opportunities. They provide a framework for the sustainable management of facilities that meet the objectives of the *Local Government Act 1993*.

Governing laws and standards	<ul style="list-style-type: none"> ▪ <i>Local Government Act 1993 (LGA)</i> ▪ <i>Native Title Act 1993</i> ▪ <i>Crown Land Management Act 2016</i>
Related policies and other documents	<ul style="list-style-type: none"> ▪ <i>Sports Facilities Plan of Management 2020</i> ▪ <i>Bicentennial Reserve Plan of Management 2021</i> ▪ <i>Gore Hill Park Plan of Management 2016</i> ▪ <i>Willoughby Open Space and Recreation Plan 2013</i> ▪ <i>NSROC Regional Sportsground Strategy Review 2017</i> ▪ <i>Sportsgrounds Asset Management Plan (annual)</i> ▪ <i>NSROC Regional Plan for Synthetic Sportsfields 2014</i> ▪ <i>Synthetic Sportsgrounds Management Plan 2018</i> ▪ <i>Disability Inclusion Action Plan 2017-2021</i>
Document History	<p>This policy replaces</p> <ul style="list-style-type: none"> ▪ <i>Sporting Fields- Sunday Use for Competition 2012</i> ▪ <i>Sporting Ovals- Provision of Lighting 2012</i> ▪ <i>Sportsgrounds Allocation Policy 2013</i> ▪ <i>Line Marking of Sports Fields 2012</i>

Appendix

Definitions	
Community	The residents, visitors and workers of the Willoughby Local Government Area
Community Land	Land which must be kept for the general use of the community. Council has no power to sell, exchange or otherwise dispose of community land, except for the purpose of enabling that land to become, or be added to, a Crown Reserve or land reserved or dedicated under the <i>National Parks and Wildlife Act 1974</i> .
Community sport	Organised sport activities that cater to local and district sport clubs and associations- as opposed to premier league and state level sport activities.
Demographics	The statistical data of a population, a single vital or social statistic of a population, especially those showing average age, income, education, etc. Demographics are used to assist in determining the potential needs of a population.

Infrastructure	The fundamental facilities and systems serving WCC area sports facilities
Leases & Licences	<p>Are a way of formalising the use of community land and may be held by groups or by private/commercial organisations or people providing facilities and/or services for public use.</p> <p>A lease is typically required where exclusive use or control of all or part of community land is desirable for effective management.</p> <p>Licenses allow multiple and non-exclusive use of an area.</p> <p>Community land may only be leased or licensed for a period or more than 5 years if public notice is given according to the requirements of Sections 47 and 47A of the <i>LGA 1993</i>.</p>
Local level	Primary catchment area of single local government area or multiple suburb areas - as per the definition in the NSW Government Office of Sport - <i>Sport Facility Hierarchy 2019</i> .
District level	Primary catchment area includes large local government areas, but often covers various Councils due to the nature of the competition or sport – as per the definitions in the NSW Government Office of Sport - <i>Sport Facility Hierarchy 2019</i> .
Regional level	Primary catchment of local users with extended catchment across multiple local council areas, primarily for competition and events – as per the definition in the NSW Government Office of Sport – <i>Sport Facility Hierarchy 2019</i>
Maintenance	The care, upkeep or support required to be provided by Council to maintain a facility.
Policy	A statement/s of principles and intent that guide decisions to help achieve outcomes and community priorities.
Plan of Management	Set out how public land is intended to be used, managed, maintained, and enhanced in the future. Plans of Management are required to be prepared for public land which is classified as community land under the <i>LGA 1993</i> , and for Crown Land.
Prohibited use agreements	Plans of Management cannot authorise leases, licenses and other estates being granted which permit uses prohibited by the zoning of the land unless enabled through the Local Environmental Plan, or not in accordance with the aims and objectives of Plans of Management.
Service Standards	Define what a customer can expect and what Councils obligations are. They are usually defined in terms of timelines, accuracy and appropriateness.
Sports facilities and activities	An area providing for structured or unstructured active recreation. This includes training and competition, which may be undertaken individually or as a team, as well as social recreational pursuits. Sport facilities range from large regional facilities that support a range of activities to smaller sports facilities that have a more local appeal.



WILLOUGHBY CITY COUNCIL

SYNTHETIC SPORTSGROUNDS MANAGEMENT PLAN 2023

Background

This Management Plan has been prepared to satisfy Council's requirement for a Plan to manage use of all synthetic sportsgrounds within the City of Willoughby.

Use of all sportsgrounds is governed by Conditions of Hire in the Licence Agreement. Where this Plan is in conflict with the Conditions of Hire, this Management Plan will prevail.

Land to which the Plan applies

This Plan applies to the synthetic sportsgrounds located within the City of Willoughby. To date these are:

Northbridge Oval, Sailors Bay Road, Northbridge - built 2012& renewed 2020
 Thomson Oval, Reserve Road, Artarmon - built 2014
 Chatswood High School Oval, Eddy Road, Chatswood - built 2018
 Gore Hill Oval, Pacific Highway, St Leonards - built 2021

There are no current plans to convert another Council sportsground to a synthetic surface.

Basis for management

The Council's Community Strategic Plan - Our Future Willoughby 2032 is the guiding document that describes what the community aspires the City to be as a result of collective efforts. The Strategy's Vision and Principles are:

Vision: Willoughby is a City of Diversity: diverse landscapes, people and businesses

Principles: - Council's overarching principles, which underpin its actions, are:

- Sustainability
- Social Justice (Equity, Access, Participation and Rights)
- Ethical Government

Sustainability

• Maintenance of grounds

Synthetic sportsgrounds require maintenance to keep the grass fibres and infill safe and even for play, and to withstand daily sports use.

Cleaning and maintenance is scheduled for weekday mornings from 7am:

- Normal fortnightly service which is up to 4-5 hours in one day.
- Twice yearly deep clean which is up to 6 hours in one day.

- **Minimisation of traffic and parking**

Hirers of synthetic sportsgrounds will undertake to inform and encourage all clubs, players and members to use alternative transport options to get to their designated sportsground and to car pool wherever possible.

Other options are walking, cycling, and public transport. Council website under Environment & Sustainability/ Transport provides maps and guides to assist in minimising car use/ 'sport miles'.

- **Litter / Rubbish**

Hirers will ensure that synthetic sportsgrounds and the amenity buildings are left clean of all litter after completion of their hiring period/s. Spot checks of the site will be carried out by Council staff after hiring periods.

Social justice: equity, access, participation & rights

Equity

- At least one Willoughby LGA based team must participate in each Competition Match booked for any synthetic ground.
- Willoughby LGA based teams have priority for training allocations on any synthetic ground.
- Womens/girls sport competitions are to have equal access to synthetic sportsground bookings as men's/ boys competitions on weekends.
- On at least one Sunday per month in the Winter sports season, Northbridge Oval and Chatswood High School Oval must be used exclusively for womens/girls sport.

Access

- **Hours of use**

	Gore Hill Oval	Chatswood High School Oval	Thomson Oval	Northbridge Oval
Mon – Fri	6am – 10pm	4.30pm – 9.30pm	7.30am – 9.30pm	7.30am – 9.30pm
Saturday	8am – 9pm	8am – 7pm	8am – 7pm	8am – 9pm
Sunday	8am – 6pm	9am – 6pm	9am – 1pm	8am - 7pm
Public Holidays	Not available for sport booking; community use only.	Not available for sport booking; community use only.	Not available for sport booking; community use only.	Not available for sport booking; community use only.

Note: with night bookings, there is an additional 15-minute lighting period for the last booking, so that there is a safe exit for players from the field.

- **Public holidays**

The synthetic grounds are not available for competition match hire on any of the following ten (10) public holidays:

- New Year's Day
- Australia Day
- Good Friday
- Easter Sunday

- Easter Monday
- Anzac Day
- Queen's Birthday Holiday
- Labour Day
- Christmas Day
- Boxing Day

- **Public access during sports hire**

Sportsgrounds hired for Competition Matches have a minimum curtilage/ run-off of 4 metres around the marked playing surface; this is required to ensure the safety of players, game officials and the community.

The areas outside this curtilage can be accessed by the community who are not to be alienated nor actively discouraged by hirers, game officials and players.

Participation

- **Community Liaison Contact**

During all periods of competitive play, the hirer shall ensure that a Community Liaison contact is present at the site at all times.

The Community Liaison contact or their agent will during periods of competitive play:

- Be available and visible in a fluoro vest to local residents and users to discuss any concerns.
- Regularly visit the designated car-park and surrounding streets to encourage compliance with parking restrictions.
- Identify if cars have parked illegally and attempt to locate vehicle owners to move vehicles so parked if the driver is associated with the use of the sportsground.
- Act as a conduit to Council Rangers as appropriate.
- Communicate and attempt to resolve matters with local residents in an amicable basis.
- Encourage users to consider local residents after games and when leaving the sportsground.
- Provide a means to dispense information to visitors to the sportsground.

Rights

- **Neighbourhood parking restrictions**

Hirers will reinforce to all clubs, players and members the need to respect the authorised parking signs in roadways around each designated synthetic sportsground, and ensure that driveways at all times remain clear of parked vehicles.

Council Rangers will patrol the areas around these grounds if required.

- **Noise and alcohol**

Whilst it is acknowledged that many recreational activities do result in noise, hirers undertake to:

- Manage the noise level at all times and in particular encourage users to promptly leave the site within thirty (30) minutes after the conclusion of training and competition.
- Actively prevent the introduction of alcohol to the site and actively discourage alcohol consumption, particularly post-game.
- Reinforce to visiting teams the need to be considerate of neighbours.
- Note the future potential of sanctions if users, visitors and players do not make reasonable attempts to manage noise for local residents.

Council during each sports season will investigate any noise issues arising from use of the grounds and consider management measures, if appropriate.

• **Player and Spectator Code of Conduct**

All sports codes have a Player Code of Conduct. These are to be available on the respective sport code/ club websites. The hirer's Community Liaison person will be able to inform members of the community the process of how to make a formal complaint under the respective code.

For the purposes of this Plan, players, game officials, visitors and spectators are required to behave in accordance with their Code of Conduct in dealings with local residents and other users of the respective sportsground.

• **Review of this Plan**

The community may make recommendations to Council concerning the use of synthetic sportsgrounds. Council may determine to make changes to the Plan to improve the management of these sites. Future reviews of this Plan will be undertaken on an 'as needs' basis.

Contact Numbers

Council and Rangers - all enquiries - 9777 1000 - 24 hours a day - 7 days per week

Chatswood Police - 9414 8499

Date Adopted	27 March 2023
Next Review Date	N/A
Version	Final 5
Responsible Position	Culture and Leisure Manager
Administration Reference	