

8.7. Corporate Policy Manual Review - Direction 3

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ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Compliance and Enforcement Policy 2022 [8.7.1 - 8 pages]
2. Design Panel Policy 2022 [8.7.2 - 4 pages]
3. Election and Referenda Signage Policy 2022 [8.7.3 - 3 pages]
4. Mobile Food Vending Vehicles Policy 2022 [8.7.4 - 19 pages]
5. Parking Management and Enforcement Policy 2022 [8.7.5 - 4 pages]
6. Placemaking Policy 2022 [8.7.6 - 4 pages]
7. Roosters Keeping Policy 2022 [8.7.7 - 2 pages]
8. Smoke Free Environment Declared Public Areas Policy 2022 [8.7.8 - 5 pages]
9. Voluntary Planning Agreements Policy 2022 [8.7.9 - 25 pages]

PURPOSE:

This report presents the corporate policies under Direction 3 (Our Innovative City) for re-adoption.

EXECUTIVE SUMMARY:

Council's corporate Policy Manual is being progressively presented to the Council for re-adoption between August and November 2022, with Direction 1 reported to Council on 22 August 2022 and Direction 2 reported to Council on 12 September 2022.

This long-standing practice occurs in line with Council's commitment to open government and ensures each term of Council is aware of the policies in operation. Corporate policies are grouped by the five Strategic Directions of the North Sydney Community Strategic Plan, demonstrating alignment between Council services and programs and the community vision.

All Direction 3 policies have been reviewed, requiring only correction of administrative or typographical errors and/or updating of legislative changes/Act references. Additionally, a new policy - *Electoral and Referenda Signage Policy* (attached) - is proposed regarding display of election posters on Council property or public spaces.

The *Electoral and Referenda Signage Policy* is categorised as 'operational' and as such public exhibition is not required. In accordance with Council's corporate policy framework, this was approved by the A/General Manager on 8 September 2022.

It is recommended that the existing Direction 3 policies be re-adopted and the *Electoral and Referenda Signs Policy* also be adopted by Council.

FINANCIAL IMPLICATIONS:

There are no financial implications arising from the review of Direction 3 corporate policies.

RECOMMENDATION:

1. THAT Council readopt the Direction 3 (Our Innovative City) corporate policies as attached to this report being the following:

- a) Compliance and Enforcement Policy
- b) Design Panel Policy
- c) Mobile Food Vending Vehicles and Temporary Food Stalls Policy
- d) Parking Management and Enforcement Policy
- e) Placemaking Policy
- f) Roosters Keeping Policy
- g) Smoke-Free Environment - Declared Public Areas Policy
- h) Voluntary Planning Agreements Policy

2. THAT the new Electoral and Referenda Signs Policy as attached be adopted.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

5. Our Civic Leadership

5.1 Lead North Sydney's strategic direction

5.2 Strong civic leadership and customer focussed services

BACKGROUND

Council's corporate Policy Manual will be presented to the Council for re-adoption between August and November 2022, with Direction 1 reported to the Council on 22 August 2022. This long-standing practice occurs in line with Council's commitment to open government and ensures each term of Council is aware of the policies in operation.

The Corporate Policy Framework (categorisation system), as reported to Council in May 2022, indicates whether a policy requires Council endorsement or not.

Category	Approval Authority
Statutory Policy - is a policy that Council is required to have due to law, or regulation.	<ul style="list-style-type: none">• Unless provided otherwise under the relevant legislation, these policies are required to be approved by Council.• Any significant amendments to these policies must be approved by Council.• These policies must be placed on public exhibition when created or significantly amended, either for a period of 42 days or as required by the relevant legislation.
Strategic Policy - is a policy that sets a strategic direction and identifies long-term or overall aims and interests for Council. It guides decision making.	<ul style="list-style-type: none">• These policies are required to be approved by Council.• Any significant amendments to these policies must be approved by Council.• These policies must be placed on public exhibition when created or significantly amended, for a minimum of 42 days.
Operational Policy - a policy that relates predominately to Council's operations; or a policy that Council is not mandated to have in place but represents best practice.	<ul style="list-style-type: none">• These policies may be approved by the General Manager. In some instances, the General Manager may determine to report the policy to Council.• Any amendments to these policies may be approved by the General Manager. In some instances, the General Manager may determine to report the amendment to the policy to Council.• These policies may or may not be required to be placed on public exhibition when created or amended - the Policy Owner will be responsible for making that recommendation to the General Manager.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Corporate policies are grouped by the five Strategic Directions of the North Sydney Community Strategic Plan, demonstrating alignment between Council services and programs and the community vision.

Existing Direction 3 Policies

The following table lists the existing Direction 3 (Our Innovative City) policies:

Policy	Category	Last Reviewed
Compliance and Enforcement Policy	Operational	25 Jun 2018
Design Panel Policy	Strategic	25 Jun 2018
Mobile Food Vending Vehicles and Temporary Food Stalls Policy	Operational	25 Jun 2018
Parking Management and Enforcement Policy	Operational	25 Jun 2018
Placemaking Policy	Strategic	22 Jul 2019
Roosters Keeping Policy	Operational	25 Jun 2018
Smoke-Free Environment - Declared Public Areas Policy	Strategic	22 Jul 2019
Voluntary Planning Agreements Policy	Strategic	25 Jun 2018

All Direction 3 policies have been reviewed, with the majority requiring only correction of administrative or typographical errors and/or updating of legislative changes/Act references.

The above listed existing Direction 3 policies are recommended for re-adoption.

Electoral and Referenda Signage Policy

A new 'operational' Policy has been prepared in response to the recent federal and local government elections and Council's Rangers attempt to manage the display of candidate posters within the North Sydney local government area (LGA). The *Electoral and Referenda Signage Policy* restates legislation outlining the ability for authorised Council staff to impound election posters found on Council property or public spaces as unapproved advertising clutter.

This Policy aims to address ambiguity and provide candidates and political parties with certainty by restating and ensuring compliance with legislation. It also provides Council's Rangers with the authority to remove candidate posters and all political posters displayed in public spaces within the North Sydney LGA.

In accordance with Council's corporate policy framework, this was approved by the A/General Manager on 8 September 2022.

It is recommended that the *Electoral and Referenda Signs Policy* be adopted by Council and that public exhibition is not required, as it is an 'operational' policy that restates legislation.

An awareness campaign will be undertaken ahead of each election, to ensure candidate awareness of the provisions within this policy, focusing on the distinction between public and private land.

Post Adoption Administration

Following readoption, the attached policies will be finalised inclusive of renumbering alphabetically, the version control and footers updated, and the final versions registered in Council's records system and replaced on the Council website.

Should policies require amendment during the Council term, the review will occur in accordance with the Corporate Policy Framework. Significant amendments to Statutory and Strategic policies must be approved by Council, where this occurs the proposed amendments will be reported to Council seeking endorsement to publicly exhibit. Policies categorised as Operational may be approved by the General Manager, who will determine whether to report the amendments to Council, including whether public exhibition (depending on their significance) is recommended.



COMPLIANCE AND ENFORCEMENT POLICY

D3-01

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Policy Owner: Director City Strategy

Category: Operational

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 This Policy aims to provide consistency in enforcement action in matters of food safety, public health, environmental and development non-compliance and ensures natural justice principles are respected. The enforcement action taken will be dependent upon the circumstances in each case and consideration will be given to the various questions, as specified within Section 4.5 of this Policy.
- 1.2 Council's core values relating to responsive and responsible regulation, and fairness and equity also apply to any action taken in accordance with this Policy.
- 1.3 Council acknowledges that it has an obligation under s.8 of the *Local Government Act 1993* to ensure that the exercise of its regulatory powers is carried out consistently and without bias.

2. ELIGIBILITY

- 2.1 Implementation of this Policy applies to all City Strategy Division Staff, including the Rangers and Parking Services Department where authorized, to enforce local government, planning and environmental and other legislation in accordance with Council's *Delegations Manual* and implementation of Delegated Authority documentation.
- 2.2 Council Officers and contractors carrying out works must do so in accordance with the law and this Policy. It is recognised Council has limited authority to take certain legislative enforcement action against its own employees or contractors. In such instances those issues may be best handled under contractual terms and performance agreements or by the appropriate regulatory authority.
- 2.3 This Policy applies to all persons and companies who are carrying out, or may have carried out, unlawful activities or works within the North Sydney local government area.

Re-adopted on [insert date]

3. DEFINITIONS

- 3.1 Unreasonable complainant conduct (UCC) - is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for Council staff, other service users and complainants or the complainant himself/herself. In accordance with Council's *Managing Unreasonable Complainant Conduct Policy* is grouped into five categories of conduct:
- a) Unreasonable persistence - is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council staff, services, time and/or resources;
 - b) Unreasonable demands - are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on Council staff, services, time and/or resources;
 - c) Unreasonable lack of cooperation - is an unwillingness and/or inability by a complainant to cooperate with our organisation, staff, or complaints system and processes that result in a disproportionate and unreasonable use of Council services, time and/or resources;
 - d) Unreasonable arguments - include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon Council staff, services, time, and/or resources; and
 - e) Unreasonable behaviours - is conduct that is unreasonable in all circumstances, regardless of how stressed, angry or frustrated that a complainant is, because it unreasonably compromises the health, safety and security of Council staff, other service users or the complainant.
- 3.2 Unlawful activity - is any activity or work that has been or is being carried out:
- a) contrary to the terms or conditions of a development consent, approval, permission or license;
 - b) contrary to the *North Sydney Local Environmental Plan*, as amended, that regulates the activities or work that can be carried out on particular land;
 - c) contrary to a legislative provision regulating a particular activity or work;
 - d) without a development consent, approval, permission or license; and includes unauthorised works and uses; and
 - e) contrary to the laws of New South Wales in which Council is the regulatory authority.
- 3.3 Delegations Manual and/or Implementation of Delegated Authority - means the Delegations Manual adopted by Council from time to time and any Implementation of Delegations adopted by Council from time to time.

4. PROVISIONS

4.1 General Principles

- a) Proportionality - taking action that is reasonable and relates directly to the actual breach.
- b) Consistency - ensuring that similar issues are dealt with in the same way.
- c) Transparency - ensuring that Council's intentions and actions are easily understood.
- d) Customer Service - working with the business or individual to achieve compliance with the law by being approachable, courteous and efficient.
- e) Prioritising - making sure that resources are targeted primarily on those whose activities give rise to the most serious risk.

4.2 Responding to complaints of alleged unlawful activity - all complaints or notifications to Council relating to alleged unlawful activity should be acknowledged to the complainant within five working days and in accordance with Council's *Complaints Handling Policy*. Action should be instigated within the following time frames:

- a) Urgent and life-threatening matters should be actioned as soon as possible following receipt of the complaint. This means either on the day received or the day immediately following e.g. unsafe building works, collapsed buildings, surcharging drains, serious incidents where public health or the environment is at risk and unauthorised demolition of heritage items or contributory items;
- b) General compliance matters within five working days e.g. include, works not in accordance with consent or constructed without consent, illegal uses, noise affecting several persons, food complaints;
- c) Nuisance matters actioned within 10 working days e.g. domestic noise, minor non-compliances such as overgrown land or matters where there are no immediate adverse health or safety impacts; and
- d) Out of hours action requests are dealt with by the Rangers and Parking Services Department in the first instance, followed by a more formal investigation by the Environment and Building Compliance Department, if required e.g. out of hours works and noise matters.

All complainants should receive communication from the Council Officer handling the complaint within 21 days detailing the action taken by Council or the action that Council plans to take.

Timeframes may vary depending on staff and other resources. In such instances, complainant acknowledgement communications may include temporarily revised investigation times.

4.3 Investigating unlawful activity

4.3.1 All complaints and matters regarding unlawful activity will be investigated, unless:

- a) the matter has already been actioned and resolved;
- b) a private principal certifying authority (PCA) is responsible for monitoring compliance with the conditions of development consent;
- c) Council has no jurisdiction (e.g. NSW WorkCover issues on building sites or some internal matters within strata buildings etc);
- d) the activity is determined to be lawful without an investigation; or
- e) the complaint is vexatious in nature.

4.3.2 Council will investigate matters where:

- a) The PCA fails or is unable to appropriately action a matter or where it is in the public interest;
- b) The PCA has taken all the action available under the legislation, but the offence continues or re-occurs despite that action;
- c) Where the complaint relates to Council property; and/or
- d) Where the complaint relates to an environmental pollution incident.

4.3.3 If a decision is made not to investigate a complaint, the decision must be recorded with clear reasons why it was not investigated. The complainant must then be notified.

4.4 Options for action in confirmed cases of unlawful activity - Council will consider a range of matters before taking regulatory action.

Regulatory action is any formal and informal action taken to prevent or rectify infringements of the legislation. The regulatory options will differ where different pieces of legislation are used, but the principles of application should remain constant.

Approaches to be considered without taking formal regulatory action include:

- a) Taking no action on the basis of no reliable evidence or other appropriate reason.
- b) Counselling the person who carried out an unlawful activity to educate them on the relevant requirements. Council acknowledges the role of educational initiatives to achieve compliance in some situations.
- c) Negotiating with the person who carried out the unlawful activity to obtain an undertaking from them to address the issues of concern

Re-adopted on [insert date]

COMPLIANCE AND ENFORCEMENT POLICY

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- arising from an investigation. For example, cease current unauthorised works and submit appropriate application for the remaining works to be completed.
- d) Referring parties for mediation with the Community Justice Centre or alternatively for mediation in accordance with Council's *Mediation Policy*.
 - e) A letter requiring works to be carried out or works to cease in lieu of more formal action i.e. a Warning Notice and letter.

Such action may be all that is required in minor breaches where no serious impacts have occurred.

Whilst these approaches recognise that Council may use discretion in the process, Council is also obliged to uphold the law, including compliance with relevant administrative law principles e.g. acting fairly and equitably, and to act in the public interest.

Where appropriate, a staged approach may be taken. This is to ensure compliance will be adopted by giving businesses and individuals the opportunity to discuss and remedy the breach before action is taken, unless immediate action is required.

- 4.5 Enforcement Action - will be taken with a minimal tolerance approach. Enforcement action includes:

- a) Issuing of Directions, Notices and Orders requiring compliance with legislative requirements or those of an environmental planning instrument;
- b) Commencement of criminal proceedings for an offence under legislation or alternatively issuing Penalty Infringement Notice (PIN);
- c) Commencement of civil proceedings in a Court to either remedy or restrain unlawful activity.

However, before any enforcement action is taken, the action officer, management or the Council must acknowledge the circumstances in each case and consider the following questions:

- a) Could the unlawful activity be carried out lawfully if development consent or an exemption from development consent was sought? In these circumstances, Council will be less inclined to proceed with legal action especially if an owner actively and positively attempts to regularise the situation.
- b) Are the breaches technical or inconsequential in nature with no aggravating circumstances? Consideration will be given to the material implications that the breach might have on the interests of any party, as well as any detrimental affect on the amenity of the area or environment in general.

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- c) Could the non-compliance be easily remedied by some action on the part of the person responsible? In general Council will attempt to ensure compliance by informal means however there is a need to balance the public interest in enforcing the law with whether it is possible to remedy a breach and at what cost.
 - d) Has the unlawful activity created a health, safety or environmental hazard? Consideration should be given to the degree of detriment or risk to the environment.
 - e) Are the unlawful activities or works carried out on a heritage item and did they adversely affect the heritage significance? In most cases, Council's Conservation Planner will be consulted in assessing the detriment to the natural or built environment and whether formal action is warranted.
 - f) Would it be in the public interest? Some of the issues that should be considered are: Has the unlawful activity affected a significant number of people; would enforcement action impact unreasonably on certain population groups, particularly disadvantaged or marginalised groups; are there any circumstances of hardship affecting both the complainant and the person or corporation subject to the complaint?
 - g) How long has the unlawful activity been occurring and is enforcement action statute barred? A time limit or existing use rights might apply that prevents Council from taking legal action.
 - h) Have previous warnings been issued? If the investigation reveals that a previous warning has been issued and the unlawful activity is not resolved, a more formal approach would be appropriate.
 - i) Has the person responsible been educated about Council policy and unlawful activity? (That is, did the person know their actions were unlawful?) When deciding whether to take an educative approach, consideration will be given to issues such as the level of contrition shown by the wrongdoer, whether they have previously been warned as a result of this or similar behaviour, and the level of intent shown.
 - j) Are the costs of enforcing likely to be prohibitive for the nature of the offence? Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action. Council's action should commensurate with the seriousness of the 'breach'.
 - k) Is the condition of development consent not being complied with, unreasonable, or ambiguous? A condition of consent that is unreasonable or ambiguous can be unenforceable.
 - l) Would a draft local environmental plan or amendment make the unlawful activity or work legal in future? If there is a draft LEP that would make the unauthorised use legal, consideration should be given to deferring any enforcement action.
 - m) Is there any doubt over the evidence or the offence? Consideration should be given to whether the collected evidence clearly identifies an actual breach. Council should not take untimely or unwarranted action.

COMPLIANCE AND ENFORCEMENT POLICY

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- n) What are the chances of a success if challenged? Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.
- o) Does the person or corporation exhibit contrition for an offence? In some cases it will be appropriate to have regard to the attitude of the offender and their willingness to prevent a recurrence of the problem.
- p) Has the person or company who carried out the unlawful activity had an opportunity to provide representations or submissions on the matters? Council should consider all elements pertaining to the circumstances of the case leading to the non-compliance.

If the process is being used as a delaying action or there has been a blatant attempt to flout the law, appropriate enforcement action will be instigated without delay.

If it is considered that enforcement action is required, it will be taken in accordance with existing procedures and legislative processes.

In taking enforcement action, Council must recognise that the statutory process also provides avenues for representation and appeal and thereby natural justice principles will still be observed.

- 4.6 Importance of Follow-up Action - Council staff will follow up matters reasonably required to be followed up to determine compliance. This includes conducting follow up inspections or re-inspections and resubmitting documents in Council's electronic document management system on expiry of compliance periods for warnings, Directions, Notices and Orders issued.
- 4.7 Building Certificate Applications under section 149D of the *Environmental Planning and Assessment Act 1979* - Council recognises that persons who may have carried out unlawful works may apply for a Building Certificate under section 149D of the Act to regularise or formalise such unlawful works. However, it is Council's policy that such applications should not be encouraged to justify unlawful works.
- 4.8 Community Education - Council will ensure adequate information is available to raise awareness and educate the community about compliance and enforcement. This may involve awareness programs and publication of information on Council's website.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Development Compliance Officers, Building Surveyors, Environmental Health and Protection Officers and Development Assessment Officers will ensure this Policy is implemented and associated procedures are followed and maintained.

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COMPLIANCE AND ENFORCEMENT POLICY

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- 5.2 Council's Rangers must ensure activities where they investigate and take enforcement action are in accordance with this Policy in areas of development compliance and environmental pollution matters.
- 5.3 Council's Manager People and Culture and Manager Environment and Building Compliance will ensure staff are provided with access to training to ensure this Policy is implemented.
- 5.4 Council's Manager Environment and Building Compliance will review this Policy every two years or as required by Council or senior management.
- 5.5 Council's Environment and Building Compliance Department will prepare educational information regarding this policy, in hard copy and electronic format for residents, developers and the like.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Complaints Handling Policy
- Customer Service Policy
- Delegations Manual
- Managing Unreasonable Complainant Conduct Policy
- Mediation Policy
- Planning and Development Services Division Procedures (Internal)

The Policy should be read in conjunction with the following documents/legislation:

- Local Government Act 1993
- Enforcement Guidelines for Councils, NSW Ombudsman (June 2002)
- Environmental Planning and Assessment Act 1979

Version	Date Approved	Approved by	Resolution No.	Review Date
1	2 August 2004	Council	794	2008/09
2	16 February 2009	Council	61	2012/13
3	18 February 2013	Council	61	2016/17
4	25 June 2018	Council	214	2020/21
5	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted on [insert date]



DESIGN PANEL POLICY

D3-02

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Policy Owner: Director City Strategy

Category: Strategic

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 North Sydney Council encourages high quality urban design in the North Sydney local government area. This process will be enhanced by seeking the independent advice of a Design Panel.
- 1.2 Council may appoint more than one Design Panel. The functions of the Design Panel(s) shall include but not be limited to comment on:
 - a) the design quality of major proposals in the local government area; and
 - b) draft statutory and non-statutory planning documents where they impact upon quality design outcomes.

2. ELIGIBILITY

- 2.1 Design Panel - is an advisory body that may inform the planning and assessment processes undertaken by Council staff.
- 2.2 A Design Panel will be appointed by Council. In appointing a panel, a Charter will be prepared that establishes the membership, functions and terms and conditions of membership.

3. DEFINITIONS

- 3.1 Design - concerns the form and function of a building or public space. High quality design brings a range of economic, social and environmental benefits to a range of stakeholders.

4. PROVISIONS

- 4.1 Membership
 - 4.1.1 To receive the support of both the community and the development industry, the panel needs to be recognised as an expert body capable of providing high quality design advice. Accordingly, the panel will be

Re-adopted by Council [insert date]

DESIGN PANEL POLICY

comprised of well-known and respected professionals who are involved in the design of major projects and have extensive expertise architecture, urban design or urban planning. The inclusion of at least three professionals on the panel with a range of expertise will encourage debate and develop creative design solutions.

To bring a local perspective, the panel should also have a community representative with a demonstrated understanding and experience in architecture, urban design, urban planning or related field.

4.1.2 Membership should normally be for a two year term.

4.1.3 To ensure the panel's independence, a panel member:

- a) cannot be a Council Officer or elected member i.e. Councillor of North Sydney Council;
- b) must disclose any conflict of interest on any matter being considered by the panel; and
- c) may temporarily withdraw from the discussion on any matter for which there is a conflict of interest.

4.1.4 Relevant Council officers may attend panel meetings to assist the consideration of any matter being discussed by the panel. Council staff may chair or take minutes of the meeting.

4.2 Meeting Frequency

4.2.1 The frequency of meetings will be determined by the number of matters referred to the panel.

4.3 Financial Considerations

4.3.1 Panel members will be remunerated for attending the meetings and for their design advice.

4.4 Operation of the Panel

4.4.1 The Chair will set the meeting date and prepare and circulate the agenda.

4.4.2 A site visit may be undertaken by the panel prior to, or during a meeting.

DESIGN PANEL POLICY

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- 4.4.3 The meetings will not be public, however each applicant will be invited to attend the meeting and participate in the discussion in respect of their application.
 - 4.4.4 The panel will consider the design issues relating to each application, according to the functions of their charter. The views of the panel are one part of the assessment process and achieving a satisfactory design outcome may not in itself result in a recommendation for approval.
 - 4.4.5 A single, majority view should be presented to Council, however alternative views may be made available to Council if necessary.
 - 4.4.6 Minutes of the meeting will be taken and forwarded to each panel member and relevant Council staff for comment. Once settled, the minutes will be forwarded to the applicant.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Director City Strategy is responsible for ensuring that appropriate matters are forwarded to the panel for comment.
- 5.2 At any time, the General Manager, Mayor, or Council may request that a matter be referred to the panel for comment.
- 5.3 Membership of the panel will follow published expressions of interest and nominations.
- 5.4 Should a member of the panel resign or a position become vacant for another purpose, the procedure outlined in Section 5.3 should be followed.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Community Strategic Plan
- Design Panel Charter
- Development Control Plan
- Local Environment Plan

The Policy should be read in conjunction with the following documents/legislation:

- Local Government Act 1993
- State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

Re-adopted by Council [insert date]

DESIGN PANEL POLICY

Version	Date Approved	Approved by	Resolution No.	Review Date
1	16 February 2009	Council	61	2012/13
2	18 February 2013	Council	61	2016/17
3	13 May 2013	Council	267	2016/17
4	25 June 2018	Council	214	2020/21
5	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted by Council [insert date]



ELECTORAL AND REFERENDA SIGNS POLICY

[REF]

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Policy Owner: Director City Strategy

Category: Operational

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 North Sydney Council acknowledges its obligation to our community to keep our local government area free of unapproved advertising clutter, that occasionally results in litter.
- 1.2 This Policy outlines Council's intention to implement the prohibitions applied under the *State Environmental Planning Policy (Industry and Employment) 2021* and the *Public Spaces (Unattended Property) Act 2021* with regards to advertising and restates the prohibitions on electoral advertising posters in public spaces as stated in the *NSW Electoral Act 2017*.
- 1.3 This Policy will be applied consistently to all electoral and referenda signage in public spaces and on Council property within the North Sydney local government area.
- 1.4 This Policy will provide guidance to Authorised Persons on the management of signs and signage for elections and referenda and the actions to be taken.

2. ELIGIBILITY

- 2.1 This Policy applies to the placement, erection, and display of election and/or referenda signs and signage erected in the North Sydney local government area for any Commonwealth, State or Local Government election or referenda.

3. DEFINITIONS

- 3.1 **Authorised Persons** - Council Rangers and Parking Officers, NSW Police Officers.
- 3.2 **Council property** - refers to any premises occupied or used by, or under the control or management of North Sydney Council.
- 3.3 **Election** - is taken to include Commonwealth, State and Local Government periodic and general elections, by-elections and supplementary elections, referenda, polls and/or plebiscites.

Adopted 8 September 2022

ELECTION AND REFERENDA SIGNS POLICY

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- 3.4 **Public space** - is land either owned by North Sydney Council or Crown land under the care, control and management of Council or land that is being leased by Council.
- 3.5 **Signs** - For the purposes of this Policy, signs means signs or articles that are promoting candidature for an election, making a political statement or a position for a referenda that can be erected or otherwise displayed in public spaces include the following:
- a) posters
 - b) sandwich boards or A-frames
 - c) variable message signs (VMS) trailers
 - d) electronic message boards
 - e) digital posters
 - f) static vehicle mounted signs
 - g) moveable signs on vehicles
 - h) pamphlets, leaflets or brochures
 - i) any future methods that comprise of an announcement/information for a candidate or party for an election or an opinion or point of view for a referenda or poll.

4. PROVISIONS

- 4.1 A sign as defined above, must not be displayed in a public space within the North Sydney local government area or on any Council property without the prior approval in writing of North Sydney Council.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council Authorised Officers will impound any election posters found on Council property or public spaces within the North Sydney local government area.
- 5.2 Impounded posters will be stored in Council's impound bay.
- 5.3 Impounded posters may be released to an appropriate person upon proof of identity and payment of the impounding fee as stated in Council's *Fees and Charges Schedule*.
- 5.4 After the expiry of 28 days held in impound, the posters will be destroyed by Council in accordance with the *Public Spaces (Unattended Property) Act 2021*.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following documents/legislation:

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ELECTION AND REFERENDA SIGNS POLICY

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- NSW Electoral Act 2017 (Section 184 Display of posters)
 - State Environmental Planning Policy (Industry and Employment) 2021
 - Public Spaces (Unattended Property) Act 2021

Version	Date Approved	Approved by	Resolution No.	Review Date
1	8 September 2022	General Manager	-	2024/25

Adopted 8 September 2022



MOBILE FOOD VENDING VEHICLES AND TEMPORARY FOOD STALLS POLICY

D3-03

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Policy Owner: Director City Strategy

Category: Operational

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

The aims of this Policy are:

- 1.1 To supplement the provisions of the *Local Government Act 1993*, the *Local Government (General) Regulation 2021*, the *Food Act 2003*, the *Food Regulation 2015* and Standards of the *Australia New Zealand Food Standard Code* (3.1.1, 3.2.2 and 3.2.3), by providing a framework for North Sydney Council to assess applications for the operation of food vending vehicles and temporary food stalls within the North Sydney local government area (LGA).
- 1.2 To assist persons wishing to make applications for approval to operate mobile food vending vehicles and temporary food stalls by setting out the information required by Council to assess applications.
- 1.3 To ensure that, in a public place, food sold to the public from a mobile food vending vehicle and temporary food stalls, is safe for human consumption and that the construction, fitting out and facilities for cleaning utensils, articles, hands, fittings and appliances in vehicles and stalls are adequate.
- 1.4 To ensure that trading, when undertaken in areas, does not place the public at risk.
- 1.5 To ensure that trading complements and does not compete with commercial centres.
- 1.6 Approval will not be given to an application for a road side or street stalls under this Policy¹.

¹ A road side stall located on private property is subject to a separate development application for assessment in line with the *Environmental Planning and Assessment Act 1979*.

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2. ELIGIBILITY

- 2.1 This Policy applies to all members of the public/groups requiring a mobile food vending vehicle or temporary food stall within in the North Sydney LGA.
- 2.2 This is a Local Approvals Policy (LAP) prepared and adopted under Chapter 7, Division 1, Section 68, Part F of the *Local Government Act 1993*².
- 2.3 There are no exemptions under this policy for mobile food vending or temporary food stalls that are used for the sale of food in a public place³.
- 2.4 This policy is not applicable to⁴:
- a) vendors who operate under an existing approval issued by North Sydney Council; such at the markets
 - b) mobile food carts within a shopping centre;
 - c) a fixed kiosk within a shopping centre;
 - d) a temporary vehicle/kiosk located on private land;
 - e) a mobile food (road registered) vehicle permanently located on private land.
 - f) a temp food stall with an approved market or vehicle.

3. DEFINITIONS

The following definitions assist in the understanding of this policy and also to assist persons preparing an application for approval. *Note: the final source for definitions, and others not listed is the Local Government Act 1993, Section 4 of the Food Act 2003 and Clause 3 of the Food Regulation 2015:*

- 3.1 Appliance - means the whole or part of:
- a) any utensil, machinery, instrument, device, apparatus or article which is used, or designed or intended for use, in or in connection with the sale, manufacture, handling or consumption of food; or
 - b) any utensil, machinery, instrument, device, apparatus or article which is used or designed or suitable or intended for use, in cleaning anything which is an appliance by virtue of paragraph (a).
- 3.2 Approval - means an approval that is in force under the *Local Government Act 1993*.

² Namely applies to No. 7 in Part F (Other Activities) "Use a standing vehicle or any article for the purpose of selling any article in a public place".

³ Section 158 of the Local Government Act 1993 requires that Local Approvals Policies specify the circumstances (if any) in which a person would be exempt from the necessity to obtain a particular approval of Council.

⁴ Both b) and c) are subject to a Development Application under the Environmental Planning and Assessment Act 1979.

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- 3.3 Approved fee - means:
- a) the fee prescribed by the regulations for the purposes of the provision in relation to which the expression is used or determined by Council in accordance with any such regulations; or
 - b) if no such regulations are in force, the fee (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used; or
 - c) if no such regulations are in force and no fee is determined by the Director-General, the fee (if any) determined by Council for the purposes of the provision in relation to which the expressions is used (as outlined in Council's *Fees and Charges Schedule*).
- 3.4 Approved standards - means:
- a) the standards prescribed by the regulations for the purposes of the provision in relation to which the expression is used; or
 - b) if no such standards are prescribed, the standards (if any) approved by the Director-General for the purposes of the provision in relation to which the expression is used; or
 - c) if no such standards are prescribed or determined by the Director-General, the standards (if any) determined by the Council⁵ for the purposes of the provision in relation to which the expression is used.
- 3.5 Area - an area as constituted under Division 1 of Part 1 of Chapter 9 of the *Local Government Act 1993*. *Note: For the purpose of this Policy, the area to which it applies is as constituted under the Local Government Act 1993.*
- 3.6 Authorised person - means:
- a) an employee of a Council, including Environmental Health Officers (EHO), generally or specially authorised by Council in respect of, or whose duty it is to deal with, or to act in regard to, any acts, matters or things in relation to which the expression is used; or
 - b) a police officer.
- 3.7 Classified road - refers to any of the following: a main road, a State highway, a freeway, a controlled access road, a secondary road, a tourist road, a tollway, a State work. Refer to the *Roads Act 1993*, Part 5 for further details.
- 3.8 Food -

⁵ The standards determined by Council for mobile food vending vehicles and temporary food stalls are included in Appendices A and B, respectively. These are additional criteria to those taken from the *Food Regulation 2004* that Council must consider when determining applications.

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- a) includes:
 - i. any substance or thing of a kind used, or represented as being for use for human consumption (whether it is live, raw, prepared or partly prepared);
 - ii. any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (i);
 - iii. any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid;
 - iv. chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; or
 - v. any substance or thing declared to be a food under a declaration in force under Section 3B of the *Commonwealth Food Standards Australia New Zealand Act 1991*, whether or not the substance, thing or chewing gum is a condition fit for human consumption.
 - b) however, food does not include a therapeutic good within the meaning of the Therapeutic Goods Act 1989; and
 - c) to avoid doubt, food may include live animals and plants.
- 3.9 Food stall - includes any structure used for the purpose of selling any article of food that is built or designed to enable it to be dismantled and removed from the site when required.
- 3.10 Handling - in relation to food, includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.
- 3.11 Park - in relation to land, means and areas of open space used for recreation. Not being bushland.
- 3.12 Premises - includes any land (whether or not appertaining to a building), any part of a building and any tent, stall or other structure.
- 3.13 Public place - means:
- a) a public reserve, public bathing reserve, public baths or public swimming pool; or
 - b) a public road, public bridge, public wharf or public ferry road; or
 - c) a Crown reserve comprising land reserved for future public requirements; or
 - d) public land that is not:
 - i. a Crown Reserve (other than a Crown Reserve that is a public place because of a), b) or c); or
 - ii. a common; or
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- iii. land subject to the *Trustees of Schools of Art Enabling Act 1902*;
or
- iv. land that has been sold or leased for lawfully contracted to be sold or leased; or
- e) land that is declared by the regulations to be a public place for the purposes of this definition.

3.14 Public reserve - means:

- a) a public park; or
- b) any land conveyed or transferred to the Council under Section 340A of the *Local Government Act 1993*; or
- c) any land dedicated or taken to be dedicated as a public reserve under Section 340 or 340D of the *Local Government Act 1993*; or
- d) any land dedicated or taken to be dedicated under Section 49 or 50; or
- e) any land vested in the Council, and declared to be a public reserve, under Section 37AAA of the *Crown Lands Consolidation Act 1913*; or
- f) any land vested in the Council, and declared to be a public reserve under Section 76 of the *Crown Lands Act 1989*; or
- g) a Crown Reserve that is dedicated or reserved:
 - i. for public recreation; or
 - ii. for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the *Crown Lands Act 1989*, being a Crown Reserve in respect of which a Council has been appointed as manager of a reserve trust for the reserve or for which no reserve trust has been established; or
- h) land declared as a public reserve and placed under the control of a Council under Section 52 of the *State Roads Act 1986*; or
- i) land dedicated as a public reserve and placed under the control of a Council under Section 259 of the *Roads Act 1993*, and includes a public reserve of which a Council has control under Section 344 of the *Local Government Act 1919*, or Section 48, but does not include a common.

3.15 Public road - a road which the public are entitled to use.

3.16 Retail trade - is trade with consumers.

3.17 Road - includes:

- a) highway, street, lane, pathway, footway, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and track-way, whether temporary or permanent; and
- b) any part of a road and any part of any thing referred to in paragraph (a); and

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- c) anything forming part of a road or anything forming part of anything referred to in paragraph (a).
- 3.18 Roadside stall - includes any stand, van or vehicle set up on the side of a road selling to passing trade, not exceeding 20 square metres in floor space or area.
- 3.19 Sell - includes:
- a) barter, offer or attempt to sell; or
 - b) receive for sale; or
 - c) have in possession for sale; or
 - d) display for sale; or
 - e) cause or permit to be sold or offered for sale; or
 - f) send, forward or deliver for sale; or
 - g) dispose of by any method for valuable consideration; or
 - h) dispose of to an agent for sale on consignment; or
 - i) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work; or
 - j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award government the employment of the employee at the employee's place of work; or
 - k) dispose of by way of raffle, lottery or other game of chance; or
 - l) offer as a prize or reward; or
 - m) give away for the purpose of advertisement or in furtherance of trade or business; or
 - n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation service or entertainment; or
 - o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions); or
 - p) sell for the purpose of resale.
- 3.20 Standing vehicle - includes any mobile food vending vehicle that has stopped to make a sale.
- 3.21 Street vending vehicle - for the purpose of street vending approval under the *Local Government Act 1993*, this term includes all types of vehicles (registered or unregistered) which are used for the sale of articles in a public road or public place.
- 3.22 Temporary food stall - includes any structure (food stall or mobile food stall, any van, truck, trailer or moveable module, tend or gazebo) used for the purpose of selling any article of food. A temporary food stall may be erected,

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installed or located on a public place or public reserve which is used for the sale of food for the duration of any sporting event, fete, fair, festival, carnival, community markets or similar events. A temporary food stall includes any structure that is built or designed to enable it to be dismantled and removed from the site when required.

3.23 Temporary structure - includes:

- a) a booth, tent or other temporary enclosure, whether or not a part of the booth, tent or enclosure is permanent; and
- b) a mobile structure.

3.24 Vermin - includes rodents, reptiles, arachnids and insects of all descriptions.

4. PROVISIONS

The following provisions outline the criteria by which applications to operate mobile food vending vehicles and temporary food stalls will be assessed by Council:

4.1 General

4.1.1 Mobile food vending vehicle - Prior to the issuing of an approval under this policy, the mobile food vending vehicle must be presented to Council for inspection by an Environmental Health Officer (EHO), or as approved by the NSW Food Authority.

The criteria to be used by the EHO in assessing a mobile food vending vehicle for approval should include all the relevant provisions contained in the *Food Act 2003* and the *Food Regulation 2015*, the *Australia New Zealand Food Safety Standards*, *The NSW food Authority Mobile Food vending vehicles guidelines* and the additional approved standards, as set out in Appendix A.

4.1.2 Temporary food stall - Prior to the issuing of an approval for a temporary food stall under this policy, the applicant is to arrange for an inspection of the food stall no later than two working days prior to operation on the day the stall is to be used and before any food is prepared or sold from the temporary food stall.

The criteria to be used in assessing a temporary food stall for approval should include all the relevant provisions contained in the *Food Act 2003* and the *Food Regulation 2015*, the *Australia New Zealand Food Safety Standards 2015*, and the additional approved standards, as set out in Appendix B.

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4.2 Applications

- 4.2.1 Mobile food vending vehicle - Applications must be submitted to Council on the *Application to Operate a Mobile Food Vending Vehicle Form*.
- 4.2.2 Temporary food stalls - Applications must be submitted to Council on the *Application to Operate a Temporary Food Stall Form*.
- 4.2.3 Each vehicle and/or stall must have an individual application form completed, which must be accompanied by the appropriate application fee and supporting documentation when submitting to Council for assessment. Approvals will be issued for a maximum of 12 months.
- 4.2.4 The criteria in Appendix D must be addressed and adhered to at all times.
- 4.2.5 Any application involving traffic safety and management will be referred to Council's Traffic Committee for comment.
- 4.2.6 In all cases, a written approval must be obtained from Council prior to operation.

4.3 Inspections

- 4.3.1 In accordance with the provisions of the *Food Act 2003*, Council Authorised Officers may inspect vehicles at any time during operation.
- 4.3.2 Temporary food stalls - all temporary food stalls must be inspected prior to the sale or preparation of food. The stall must not be used for sale or preparation of food until it has been inspected and approved.

A prior appointment must be made with Council's EHO for an inspection. At least 48 hours' notice is required.

In accordance with the *Food Act 2003*, Council Officers may inspect food stalls at any time of operation.

4.4 Fees

Fees for the assessment of applications, the issuing of approvals and the conducting of all inspections are determined by Council each year and are outlined with the annual *Fees and Charges Schedule*. The application fee includes the cost of the initial inspection.

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Applications will only be considered for approval after payment of the approved fee. Additional inspection fees will be charged for all additional inspections of mobile food vending vehicles and temporary food stalls.

Note: Charities and 'not-for-profit organisations' such as service clubs and some community organisations operating temporary food stalls at carnivals, festivals or the like, are not required to pay the application fee. However, these organisations must still make application and comply with the criteria set out in Appendix B of this policy. Where re-inspections of food stalls are required, organisations and charities may be charged a reinspection fee in accordance with Council's Fees and Charges Schedule.

Local sporting groups and the like who sell food from canteens, stalls, barbeques or the like at weekend competition games must make application (with fee exemption) prior to the beginning of each season. Compliance with Appendix B is required and Council inspections of these facilities may be made from time to time.

4.5 Use of Separate Premises

Where it is proposed to use any premises (either within or outside the North Sydney LGA) for the storage or preparation of food in conjunction with a mobile food vending vehicle, Development Consent under the *Environmental Planning and Assessment Act 1979* to use such premises for the proposed use must be obtained from Council.

Where the use of premises is outside the control of Council, a copy of the approval from the relevant Council or NSW Food Authority and copies of the most recent inspection reports must be provided with the initial application, or the first renewal application following the adoption of this Policy.

4.6 Noise

Use of amplified music, bells or a public address system is restricted to the approved hours of operation on any day. The use of such equipment is also prohibited whilst the vehicle is stationary. Noise complaints from the operation of food vehicles and temporary stalls will be dealt with in accordance with the above requirements and the relevant noise control legislation. Details of all noise generating equipment must be provided to Council with the application.

4.7 Waste Management

Mobile vendors and temporary food stall operators are required to be responsible on a daily basis for the waste materials that they generate. Waste materials such as food packaging and the like should be collected in bins or suitable receptacles, bagged or contained, and stored and disposed of at the

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cost of the operator. Bins must be readily available to customers. Where reasonable and feasible, packaging used for the sale of food should be selected for its suitability for recycling in the relevant local Council area and recycled where possible. Details of how waste will be managed must be provided with the application.

4.8 Signage

Approvals under this Policy do not infer any approval for the erection or display of any sign or sign structure not directly attached to the mobile vending vehicle or temporary food stall.

Signage on roads relating to the vending activity is prohibited. Traffic Control signage is only permitted provided it is approved as part of a Traffic Management Plan.

4.9 Road Transport Rules

All the provisions of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* must be complied with. The vehicle operator must comply with such road rules with respect to period parking restrictions, obstruction of sight lines, traffic signals and road signage.

The NSW Road Rules must be complied with at all times.

Mobile food vendors operating within a registered vehicle must obey all regulatory parking restrictions, including parking meters.

4.10 Prohibited: Zones, Neighbourhood Shopping Centres, Roads

The selling of goods from mobile food vending vehicles is prohibited within a 100 metre buffer of commercial zones, and along classified roads. A list of zones and roads is contained in Appendix C to this Policy.

4.11 Chosen Route

On each day that mobile vending is carried out, the route chosen for vending should be traversed once only with no part of the route retraced for additional vending purposes. A copy of planned routes should support the application for approval by the Traffic Committee.

4.12 Stopping Time and Distance Between Stops

Mobile vending can be carried out for a maximum of 20 minutes at any one position (unless continuously serving or requested by an authorised officer to leave the area). After stopping to vend, the vending vehicle must drive a

minimum of 100 metres before again stopping to vend.

4.13 Hours of Operation

Hours of operation for mobile food vending vehicles are subject to assessment and approval by Council.

Mobile food vending vehicles must only operate between 8:00am and 8:00pm on any day of the week. *Note: Mobile food vending vehicles are generally prohibited from operating after sunset for reasons of traffic safety, particularly in consideration of children crossing the road to or from the mobile food vending vehicle.*

4.14 Owner/Operator Insurance

The vehicle owner/operator must keep an insurance policy in respect to public and products liability of an amount of not less than \$20 million (for each accident or event) and shall provide to Council, with the application form and at any other time on request, a certificate of currency for that insurance policy. The policy must also insure against any action that may arise from damage to property or injury to any person using the footpath or public road in the vicinity of the activity from which approval is sought.

4.15 Penalties applicable to approvals

The penalties for failure to obtain an approval or failure to comply with an approval for a mobile food vending vehicle or a temporary food stall are as set out in the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*. A summary of the penalties is as follows:

4.15.1 Penalty notice offences (on-the-spot fines) under the *Local Government (General) Regulation 2021* - Schedule 1:

- a) Section 626 - Failure to obtain approval carries a prescribed on-the spot fine equivalent to two penalty units; and
- b) Section 627 - Failure to comply with terms of the approval carries a prescribed on-the-spot fine equivalent to one penalty unit.

4.15.2 Penalties under the *Local Government Act 1993*:

- a) Section 626 - Failure to obtain approval carries a maximum penalty of 20 penalty units; and
- b) Section 627 - Failure to comply with terms of the approval carries a maximum penalty of 20 penalty units.

4.16 Revoke or Amend an Approval to Operate

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Where it is found that a condition of any approval to operate has not been complied with Council may decide to either modify the approval or revoke the approval.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Environmental and Building Compliance Department is responsible for issuing approvals.
- 5.2 Council's Rangers and Parking Services Department is responsible for implementation/enforcement of provisions.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Compliance and Enforcement Policy
- Local Environmental Plan 2013
- Outdoor Dining Policy
- Requirements for Temporary Food Stalls Guidelines
- Sustainable Public Events Policy
- Use of Footpath for Outdoor Dining or Displaying of Goods Policy

The Policy should be read in conjunction with the following documents:

- Australia New Zealand Food Standards Code (Standards 3.1.1, 3.2.2 and 3.2.3)
- Australian Standard 4674-2004, Design, Construction and Fit-out of Food Premises Local Government Act 1993
- Food Act 2003
- Food Regulation 2015
- Local Government (Approvals) Regulation 1999
- Local Government (General) Regulation 2021
- Local Government (Orders) Regulation 1999
- NSW Food Authority Guidelines for Mobile Food Vending Vehicles
- Protections of the Environment Operations Act 1997
- Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999
- Road Transport (Vehicle Registration) Regulation 2017

Version	Date Approved	Approved by	Resolution No.	Review Date
1	22 October 2012	Council	627	2012/13
2	18 February 2013	Council	61	2016/17
3	25 June 2018	Council	214	2020/21
4	[insert date]	Council	[insert min. no.]	2024/25

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APPENDIX A: CRITERIA COUNCIL MUST CONSIDER WHEN DETERMINING APPLICATIONS TO OPERATE A MOBILE FOOD VENDING VEHICLE

1. Eligibility

- a) A food-vending vehicle includes any vehicle, whether mobile or stationary, used for the purpose of selling any article of food.
- b) Roadside stalls are prohibited in North Sydney LGA and therefore will not be approved under this policy.
- c) Where Council's EHO is satisfied that any requirement of these criteria is inappropriate, or is not reasonably practicable in any particular case, the EHO may vary the requirement provided that there is no significant reduction in construction or hygienic requirements and the general intent of the policy.
- d) Food vending vehicles are permitted to operate as follows:
 - i) On public roads except those arterial, sub-arterial and collector roads;
 - ii) By standing on a permitted public road only for such period of time as the operator may be engaged in serving a customer and must keep moving once that customer is served. After stopping to vend, the vending vehicle must drive a minimum of 100 metres before again stopping to vend;
 - iii) As a food stall in conjunction with a regular sporting event, fete, fair, festival, carnival, community market or similar event held on a public place or reserve with the written consent of the event organiser, lessee, or seasonal event hirer. A site plan identifying the location of trade will also be required.
- e) Food vending vehicles must not operate:
 - i) as a roadside stall (i.e. stationary for more than 20 minutes without serving a customer);
 - ii) as a stall to sell food to the public on any site that first requires development consent under the *Environmental Planning and Assessment Act 1979* for that use.

The construction and fit-out of the mobile food vending vehicle must comply with relevant requirements of the *Food Act 2003* and the *Food Regulations 2015*, incorporating the *Australia New Zealand Food Standards Code* and the *NSW Food Authority "Mobile Food Vending Vehicles - Operation, Construction and Food Handling Guidelines"*.

2. Applications to Install and Operate a Mobile Food Vending Vehicle

Refer to Part 4 of this policy for details of making an application for the operation of a mobile food vending vehicle. An application for a mobile food vending vehicle must be made using the approved *Application to Operate a Mobile Food Vending Vehicle Form* and payment of an application fee. Approval and registration of a mobile food vending vehicle is subject to an inspection of the vehicle which shows satisfactory compliance with this Appendix.

3. Annual Registration of Mobile Food Vending Vehicles and Regular Inspections

Refer to Part 4 of this policy for details of annual registration of mobile food vending vehicles. Arrangements for Council's EHO to carry out an inspection of a mobile food vending vehicle

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MOBILE FOOD VENDING VEHICLES AND TEMPORARY FOOD STALLS POLICY

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is to be made annually unless approved under NSW Food Authority agreement. A fee for the application is to be paid pursuant to Clause 4.4 of this policy. An approval will be issued upon satisfactory inspection and is to be retained in the vehicle at all times during operation (see Part 4.3.2). In accordance with the *Food Act 2003*, Council Officers may inspect vehicles at any time of operation.

Re-adopted by Council [insert date]

APPENDIX B: CRITERIA COUNCIL MUST CONSIDER WHEN DETERMINING APPLICATIONS TO OPERATE A TEMPORARY FOOD STALL

1. Eligibility

- a) A temporary food stall includes any structure, food stall or mobile food stall, erected installed or located on a public place or public reserve which is used for the sale of food for the duration of any sporting event, fete, fair, festival, carnival, community markets or similar event. Where a food stall is to operate at any of these locations, the applicant must obtain the written consent of the event organiser, lessee or seasonal event hirer to allow operation under their approval.
- b) A food stall includes any structure used for the purpose of selling any article of food that is built or designed to enable it to be dismantled and removed from the site when required.
- c) A temporary food stall includes any van, truck, trailer or movable module, tent or gazebo used for the purpose of selling any article of food.
- d) Where the EHO is satisfied that any requirement of these criteria is inappropriate, or is not reasonably practicable in any particular case, the EHO may vary the requirement provided that there is no significant reduction in construction or hygienic requirements and the general intent of this policy.

The construction and operation of any food stall must comply with relevant requirements of the *Food Act 2003* and the *Food Regulations*, incorporating the *Food Standards Code* and the *NSW Food Authority "Food Handling Guidelines for Temporary Events"*.

2. Applications to Install and Operate a Temporary Food Stall

Refer to Part 4.2 of this policy for details of making an application and the requirements for the inspection of temporary food stalls. A temporary food stall must not be used for the sale or preparation of food until it has been inspected and approved.

An application for a temporary food stall must be made using an approved *Application to Operate a Temporary Food Stall Form* and payment of an application fee where applicable.

A prior appointment must be made with Council's EHO for an inspection. At least 48 hours notice is required.

Refer to Part 4.4 of this policy, which sets out fee exemptions for Service Clubs and some Community Organisations from paying an application fee. An application, however, is still required from those groups whose temporary food stall is to be inspected, prior to use, as required in 4.2 and 4.3 of this policy.

MOBILE FOOD VENDING VEHICLES AND TEMPORARY FOOD STALLS POLICY

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Local sporting groups who sell food from temporary canteens, stalls, barbeques or the like at regular weekend competition games must make application (with fee exemption) prior to the beginning of each season. Compliance with the Appendix B is required and inspections of these facilities will be made from time to-time.

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APPENDIX C - COMMERCIAL ZONES, MAIN ROADS, AND BUFFER DISTANCES IN WHICH SELLING OF FOOD FROM MOBILE FOOD VENDING VEHICLES IS PROHIBITED

Mobile food vending vehicles are prohibited from trading in or within a 100 metres buffer from the following commercial zones. In addition, vehicles are not permitted to trade along classified, arterial, sub-arterial, collector roads, roads with speed limits greater than 50 km/h, and within school zones when reduced speed limits are applicable.

i) Commercial Zones

The following zones under *North Sydney Local Environmental Plan 2013*:

- B1 - neighbourhood centre
- B3 - commercial core
- B4 - mixed use

ii) Classified Roads

The following classified roads as identified under the *Roads Act 1993*:

- Bannerman Street
- Belgrave Street
- Brook Street
- Chandos Street, between Oxley and Brook Streets
- Clarke Street
- Ernest Street
- Falcon Street
- Gerard Street
- Harriett Street
- High Street, between Warringah Expressway and Clarke Road
- Kurraba Road, between Clarke and Wycombe Road
- McPherson Street
- Miller Street
- Military Road
- Murdoch Street
- Pacific Highway
- River Road
- Shirley Road between, River Road and the Pacific Highway
- Warringah Expressway
- Wycombe Road

iii) The following Council roads:

Any road with a sign posted speed limit greater than 50km/h.

iv) School Zones:

Mobile food vending vehicles are not permitted to trade in school zones, or on a road or footpath, which directly has access to a school during times when the reduced speed limit is applicable.

APPENDIX D: CRITERIA FOR APPROVALS**1. General**

Council will determine the health, hygiene and safety controls placed on street vending activities.

2. Pedestrians

Street vending activities catering for pedestrians must:

- a) Not unduly obstruct the free passage of pedestrians, especially children, people with prams, the elderly and people with disabilities, including wheelchair users.
- b) Be located on footpaths wide enough to accommodate the street vending activity as well as to allow the free movement of pedestrians during peak periods. A minimum clearance of 1.3m (greater for more highly pedestrianised areas) must be provided at all times to accommodate the needs of pedestrians, including mobility impaired people.
- c) Not be located where they would breach regulatory or signposted/standing restrictions.
- d) Not to be located in front of driveways or entrances to properties unless written permission of the property owner is obtained.
- e) Not be located such that customers are forced to stand on the roadway.
- f) Not be located in Council owned/public parks, reserves including car parks.

3. Passing Traffic

Street vending activities catering for passing traffic must:

- a) Not be located where speed limit is 50km/hr or higher.
- b) Not to be located on a hill or a bend where sight distance is limited.
- c) Not to be located in front of driveways or entrances to properties unless written permission from the property owner has been obtained.
- d) Not to be located where motorists are forced to park in the kerbside lane, where parking/standing restrictions apply.
- e) Have sufficient parking near the site.
- f) Not be located in a two-lane, two-way (one lane in each direction) street, unless safe approach to the facility and safe departure from the facility is available.

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4. Approvals

The standard conditions of street vending approval is that the vending operator must:

- a) Display evidence of a current street vending approval whenever street vending activities are being conducted.
- b) Provide proof of identity whenever requested by an authorised Council employee or by the Police, and
- c) Comply with relevant food and traffic regulations.

An approval may be revoked if the operator does not comply with the written conditions.



PARKING MANAGEMENT AND ENFORCEMENT POLICY

D3-04

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Policy Owner: Director City Strategy

Category: Operational

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 North Sydney Council has been delegated the role of managing parking within its local government area by the Commissioner of Police (19 July 2002).
- 1.2 Council has entered into a Deed of Agreement with the NSW State Debt Recovery Office (SDRO) where Council pays a fee to SDRO to manage the processing of penalty notices issued by Council, including all representations and complaints regarding penalty notices, receive payment of penalty notices on behalf of Council and take enforcement action on those penalty notices not paid.
- 1.3 This Policy outlines Council's philosophy and objectives in managing parking and to provide parameters for staff when taking action to appropriately manage parking.
- 1.4 Council's core values relating to responsive and responsible regulation, and fairness and equity also apply to any action taken in accordance with this Policy.

2. ELIGIBILITY

- 2.1 Implementation of this Policy applies to all Council Rangers and Parking Services Officers, where authorised to enforce legislation pertaining to road rules and parking, local government, planning and environmental and other legislation in accordance with Council's *Delegations Manual* and implementation of Delegated Authority documentation.
- 2.2 This Policy applies to all persons who park motor vehicles within the North Sydney local government area.

Re-adopted by Council [insert date]

PARKING MANAGEMENT AND ENFORCEMENT POLICY

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3. DEFINITIONS

- 3.1 On-Street Parking - all public streets, roads and road related areas within the North Sydney local government area.
- 3.2 Off-Street Parking - all areas under Council jurisdiction and includes Council's free car parks, allocated areas under the *Local Government Act 1993*, Council parks and reserves and any private road or car park that have an approved agreement enabling enforcement by Council's Authorised Officers.
- 3.3 Authorised Officer - an employee of or person authorised by Council whose duty it is to act in regard to any matters pertaining to the expression.
- 3.4 Delegations Manual and "Implementation of Delegated Authority" - means the Delegations Manual adopted by Council from time to time and any Implementation of Delegations adopted by Council from time to time, in accordance with Section 377 of the *Local Government Act 1993*.

4. PROVISIONS

4.1 General Principles

The principal purposes of parking management undertaken by Ranger and Parking Services Department are to:

- a) assist in ensuring the safety of pedestrians, drivers of motor vehicles and all other road users;
- b) ensure the equitable use of the limited available parking spaces in an environment where demand for such spaces far exceeds supply;
- c) ensure effective traffic flow within the local government area; and
- d) provide a general service to the community.

4.2 Parking Management Priorities

The major parking management priorities for Ranger and Parking Services Department are:

- a) immediate response to notified or identified dangerous situations or emergencies;
- b) the management of prohibited parking. This covers pedestrian crossings, "No Stopping" and "No Parking" zones as well as adherence to all distance rules;
- c) the management and monitoring of school zones within the local government area;
- d) responding to complaints;
- e) managing and monitoring Clearways and Transitways;

Re-adopted by Council [insert date]

PARKING MANAGEMENT AND ENFORCEMENT POLICY

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- f) reporting signage and parking meter problems or failures;
- g) enforcement of permissive parking signs and parking meters;
- h) focused operations for particular areas or offences; and
- i) managing misuse of Mobility Parking Scheme permits.

4.3 Parking Management Procedures

- a) Effective parking management relies on the deterrence offered by a high profile officer presence and the perception by the community that an officer will be at a particular location every day.
- b) All offences that are observed by an Authorised Officer will be sanctioned as deemed appropriate by that officer with regard to the priorities listed at Section 4.2.
- c) The normal response of an enforcement officer is to issue an infringement notice; any lesser action (such as a caution or direction to move) will be at the discretion of the officer.
- d) All Authorised Officers are directed to show no tolerance to offences occurring in School Zones, at all pedestrian crossings and signposted "No Stopping" zones.

4.4 Procedure For Appealing a Penalty Notice

- a) Council has a contractual arrangement with the SDRO where SDRO will process and manage the administration of penalty notices.
- b) Included in that arrangement is the management and consideration of all representations made in relation to penalty notices issued by Council.
- c) All representations received by Council will be forwarded to SDRO for their consideration. Centralising this process ensures that there is a consistent approach in decision making with regard to representations and appeals on a state wide basis. The address to appeal a penalty notice at SDRO can be found on the reverse side of a penalty notice or on Council's website.
- d) SDRO may refer representations to Council from time to time to seek clarification of evidence. These referrals will be responded to by the appropriate department of Council within 14 days of receipt at Council of the referral.
- e) Where a representation referred to Council by SDRO requires consideration for leniency a Review Panel will be convened within 14 days of receipt of the representation at Council. The Panel will consist of two of the General Manager, Director City Strategy and Director Corporate Services.
- f) The Panel will be provided technical advice by the Manager Ranger and Parking Services who is a non-voting member.
- g) The decision of the Panel will be advised to SDRO within one working day of the Panel meeting.

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PARKING MANAGEMENT AND ENFORCEMENT POLICY

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- 4.5 Exemptions - Clauses 305 to 310, inclusive of *Road Rules 2008*, state the exemptions applicable to parking regulations.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Director City Strategy is responsible for monitoring the implementation of this Policy.
- 5.2 Council's Rangers and Parking Services Officers carrying out their responsibilities in accordance with this Policy.
- 5.3 Council's Manager People and Culture and Manager Ranger and Parking Services will ensure staff are provided with access to training in accordance with this Policy.
- 5.4 The (Internal) Penalty Notice Review Panel is responsible for reviewing Penalty Notices referred to it in accordance with this Policy.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Code of Conduct - Councillors and Staff
- Complaints Handling Policy
- Customer Service Policy
- Mediation Policy
- Resident Parking Permit Policy

The Policy should be read in conjunction with the following documents/legislation

- Fines Act 1996
- Fines Further Amendment Act 2008
- Local Government Act 1993
- Road Rules 2008

Version	Date Approved	Approved by	Resolution No.	Review Date
1	16 February 2009	Council	61	2012/13
2	24 May 2010	Council	296	2012/13
3	18 February 2013	Council	61	2016/17
4	3 February 2016	General Manager	n/a	2016/17
5	20 February 2017	Council	23	2018/19
6	25 June 2018	Council	214	2020/21
7	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted by Council [insert date]



PLACEMAKING POLICY

D3-08

Page 1 of 4

Policy Owner: Director City Strategy

Category: Operational

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 The intent of this policy is to outline Council's commitment and approach to placemaking, which is to:
- a) acknowledge the role of placemaking to reinforce local identity and character and enhance amenity;
 - b) acknowledge placemaking as an essential vehicle for the achievement of multiple Council and community goals;
 - c) encourage the application of placemaking principles to the design and management of physical improvements within the public domain where appropriate and practicable, and enabled by resourcing; and
 - d) encourage collaboration to develop placemaking initiatives in public places that improve the quality of life for the North Sydney community.

2. ELIGIBILITY

- 2.1 This Policy applies to all Council employees, and external consultants engaged as representatives of Council, in roles that impact the appearance, functionality and use of the public domain. These are typically the following functions - Strategic Planning, Engineering Infrastructure, Community Development, Events, Economic Development and Community Engagement, Landscape Planning and Design.

3. DEFINITIONS

- 3.1 Placemaking - is a multi-faceted people-centric approach (both a process and a philosophy) to the planning, design and management of public spaces. Placemaking capitalises on a local community's assets, inspiration and potential, creating good public spaces that promote social and economic wellbeing. It may be temporary or permanent.
- 3.2 Community - broadly refers to any specific socially or geographically defined sectors of the North Sydney community that may have an interest in or be affected by the workings of Council. These may include:

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- a) residents and ratepayers/landowners
- b) business owners and operators
- c) people who work in the local government area (LGA)
- d) visitors (including tourists and shoppers)
- e) government agencies
- f) users of Council services
- g) local community groups and associations (including sporting, church and charity groups)

3.3 Engagement - is the process of purposeful and timely information exchange between the Council and the community, where input/feedback is gathered through consultation mechanisms and is taken into consideration in Council's decision-making processes.

4. PROVISIONS

4.1 Placemaking principles and practices - Council encourages the planning and delivery of temporary and permanent placemaking projects, including events and the development of new or existing infrastructure, in small or large publicly accessible locations, such as CBDs, parks and open spaces which bring economic, environmental and social benefits to the North Sydney LGA.

Council's Guiding Principles for placemaking are:

- a) Identity - places have a strong identity and character which are derived from their physical form, activity or how they are perceived;
- b) Public Benefit - placemaking initiatives have a clear and tangible local and wider community benefit and will be reflective of their context;
- c) Development - the design of new development will deliver good architectural outcomes and contribute directly or indirectly to inviting and attractive public spaces and environments and reinforce the local context and character;
- d) Landscape and Amenity - placemaking initiatives and public infrastructure will provide for or contribute towards attractive, engaging and comfortable places that people want to spend time in;
- e) Inclusion and Safety - placemaking initiatives will be characterised by "safety by design" principles, will welcome, create and promote diversity through and universal and inclusive access; and
- f) Sustainability - the design, construction, materials and ongoing operation of placemaking initiatives will be characterised by a commitment to sustainability and will be adaptable and durable.

4.2 Placemaking initiatives undertaken by Council must be broadly consistent with the *North District Plan* and the *North Sydney Community Strategic Plan*.

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- 4.3 Providing opportunities for placemaking on Council property:
- a) in accordance with Council's *Public Art Policy*, Council will ensure that, where appropriate, major urban design projects identify opportunities for placemaking projects. Council will encourage placemaking projects that:
 - consider the unique characteristics and cultural heritage of the North Sydney LGA;
 - align with major urban design projects;
 - recognise and celebrate Aboriginal stories and heritage, in accordance with cultural protocols;
 - support local artists;
 - enhance and celebrate the distinct characteristics of North Sydney and contribute to the identity of each place;
 - promote high quality art/projects in private development - where permissible; and
 - initiate and implement programs to communicate, educate and engage the public, as appropriate; and
 - b) in accordance with Council's *Events Strategy* Council will ensure that, where appropriate, public events on Council's property identify opportunities for placemaking.
 - c) in accordance with Council's *Disability Inclusion Action Plan*, Council will create a community that promotes universal access and accommodates the needs of all residents and visitors.
- 4.4 Encouraging developers to provide opportunities for placemaking on private property - Council will encourage the provision of placemaking opportunities in private developments where there is significant publicly available space.
- 4.5 Community engagement - in accordance with Council's *Community Engagement Policy* and guided by its *Community Engagement Protocol*, Council will:
- a) identify relevant stakeholders for placemaking projects;
 - b) identify potential impacts;
 - c) provide opportunities for stakeholders to engage in project decision making; and
 - d) provide stakeholders with progress upgrades of the projects.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Placemaking is an "all of Council" responsibility, and therefore requires the cooperation of various Council Departments.
- 5.2 The following Council departments have the lead responsibility for identifying placemaking opportunities and manage the implementation of placemaking

Re-adopted by Council [insert date]

projects/events:

- a) Strategic Planning
- b) Engineering Infrastructure
- c) Project Management
- d) Community Development
- e) Communications and Events
- f) Landscape Planning and Design

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Arts and Cultural Strategic Plan
- Community Engagement Policy
- Community Engagement Protocol
- Disability Inclusion Action Plan
- Events Strategy
- North Sydney CBD Public Domain Strategy
- North Sydney Community Strategic Plan
- North Sydney Development Control Plan
- North Sydney Local Environmental Plan
- North Sydney Local Strategic Planning Statement
- North Sydney Public Art Masterplan
- North Sydney Public Domain Style Manual and Design Codes
- Public Art Policy
- Public Events Policy

The Policy should be read in conjunction with the following documents/legislation:

- Better Placed: An integrated design policy for the built environment, Government Architects 2017
- Local Government Act 1993
- North District Plan

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1	22 July 2019	Council	195	2020/21
2	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted by Council [insert date]



ROOSTERS KEEPING POLICY

D3-05

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Policy Owner: Director City Strategy

Category: Operational

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 The intent of this Policy is to prohibit the keeping of roosters in the North Sydney local government area.

2. ELIGIBILITY

- 2.1 The Policy applies to all residents and businesses in the North Sydney local government area.

3. DEFINITIONS

- 3.1 POEO Act - the *Protection of the Environment Operations Act 1997*
- 3.2 Rooster - poultry outlined in the *Local Government (General) Regulation 2005*.

4. PROVISIONS

- 4.1 Roosters are prohibited in the North Sydney local government area.
- 4.2 For properties that have existing roosters, Council will investigate each on a case-by-case basis in response to a complaint.
- 4.3 In the event that Council is unable to resolve a complaint, it will advise the complainant to take private action in the form of a Noise Abatement Order under the *POEO Act 1997*.
- 4.4 Implementation:
- a) Council will not actively identify properties that have roosters.
 - b) In the event of a complaint, Council will investigate the matter and endeavour to resolve it.
 - c) In some cases, Council may use the provisions outlined in *Local Government (General) Regulation 2021* or the *POEO Act 1997*.

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ROOSTERS KEEPING POLICY

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- d) In the event that a complaint is unable to be resolved, Council will advise the persons(s) making a complaint to take private action in the form of a Noise Abatement Order under the *POEO Act 1997*.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Environmental Health and Compliance Officers and Rangers will ensure that the Policy provisions are carried out and will undertake investigations in the event of a complaint about roosters.
- 5.2 Actions may be taken under the provisions of the *Local Government Act 1993* or the *POEO Act 1997*.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Complaints Handling Policy
- Compliance and Enforcement Policy

The Policy should be read in conjunction with the following documents/legislation:

- Protection of the Environment Operations Act 1997
- Local Government Act 1993
- Local Government (General) Regulation 2021

Version	Date Approved	Approved by	Resolution No.	Review Date
1	15 July 2002	Council	747	2008/09
2	16 February 2009	Council	61	2012/13
3	18 February 2013	Council	61	2016/17
4	25 June 2018	Council	214	2020/21
5	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted by Council [insert date]



SMOKE-FREE ENVIRONMENT - DECLARED PUBLIC AREAS POLICY

D3-06

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Policy Owner: Director City Strategy

Category: Strategic

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 North Sydney Council acknowledges its obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to all members of the community.
- 1.2 This Policy recognises Council's commitment to improve the natural environment and the amenity of the local area by reducing the amount of cigarette smoking, passive smoke caused by smoking and cigarette butt littering in outdoor spaces in the North Sydney local government area.
- 1.3 This Policy aims to providing a rationale and framework for the management of Council declared smoke-free public areas where smoking is prohibited to protect both members of the community from the health and social impacts of second-hand cigarette smoke and the environment, particularly the waterways, from the litter generated by some smokers.

2. ELIGIBILITY

- 2.1 This Policy applies to all persons who use or are in the vicinity of the identified locations/public places within the North Sydney local government area that are detailed in this Policy.

3. DEFINITIONS

- 3.1 Authorised Persons - Council Rangers.
- 3.2 Council-owned land - is land either owned by North Sydney Council or Crown land under the care, control and management of Council and land that is being leased by Council.
- 3.3 Recreational Facilities - owned by Council or on Crown land under Council's care, control and management, including the MacCallum Pool, North Sydney

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Olympic Pool, North Sydney Indoor Sports Centre, Skate Plaza, but excluding Cammeray Golf Course.

- 3.4 Sportsgrounds - are areas of land used primarily for active recreation involving organised sports, including tennis courts, croquet courts, netball courts and the like. Sportsgrounds include the playing surface as well as related ancillary facilities including infrastructure (flood lights, goal posts, nets etc.), amenities buildings (clubhouses, toilets, change rooms and storage areas), and other amenities (seating, shade, shelter, barbecues and picnic facilities).
- 3.5 Outdoor Dining - those areas associated with an existing or approved shop, restaurant, café, take away food or drink premises or tavern/pub located on land owned by the Council or under Council's care, control and management where Council has issued a licence for the purpose of outdoor dining.
- 3.6 Playgrounds - includes simple swing-sets tucked away in local parks to sophisticated custom-built playgrounds for children, with a multitude of activities, located in some of Council's larger parks.

4. PROVISIONS

- 4.1 The *Smoke-free Environment Act 2000* stipulates that the following settings are smoke-free:
- in public playgrounds within 10 metres of children's play equipment;
 - in open areas of public swimming pools;
 - an area set aside for or being used by spectators to watch an organised sporting event at a sportsground or other recreational area;
 - at public transport bus stops, wharves and stations;
 - at taxi ranks; and
 - within four metres of the pedestrian access point to a building accessible to the general public excluding those buildings that are used or partly used for residential purposes.
- 4.2 Non-compliance with any provision stated in 4.1 is an offence under the *Smoke-free Environment Act 2000*. Authorised Officers for the purpose of this Act are NSW Department of Health Inspectors.
- 4.3 The *Local Government Act 1993*, gives Council the authority to further expand upon, manage and enforce smoke-free areas stated under the *Smoke-free Environment Act 2000* by declaring specified areas to be smoke-free and:
- a) Erecting suitably worded and strategically placed notices in "public places" (such places including, but not limited to, public reserves, Crown reserves, public bathing reserves, public baths, public swimming

Re-adopted by Council [insert date]

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- pools, public parks and public roads) within the local government area of North Sydney prohibiting smoking (see, relevantly, Sections 632 (1) and (2)(e) and 632 (3) of the Act);
- b) Serving, by means of a person authorised under the Act (Council Ranger and Parking Services Officer or Police Officer), a penalty notice (Minimum Penalty: \$110.00) upon any person who fails to comply with the terms of any such notice (see, relevantly, Section 679 of the Act);
 - c) Demanding, by means of an authorised person, the name and address of any person reasonably suspected of failing to comply with the terms of any such notice (see, relevantly, Section 680 of the Act);
 - d) Removing, by means of an authorised person, from community land any person who fails to comply with the terms of any such notice (see, relevantly, Section 681 of the Act); and
 - e) Otherwise prohibit smoking in any place within the local government area of North Sydney, in respect of which Council is the owner or occupier, as a condition of entry to that place.
- 4.4 Accordingly, considering 4.3 above, Council may declare any place stated in section 3 above to be “Smoke-free”. In doing so consideration will be given as to the cost of implementing the prohibition; how the effective management of the prohibition will be and any likely enforcement actions taken against persons who may breach the prohibitions will be undertaken.
- 4.5 A “declared” Smoke-free area need not be named or otherwise mentioned within this policy for the area to be declared.
- 4.6 Playgrounds and Equipment - Although Council playgrounds and equipment are covered within the *Smoke-free Environment Act 2000*, Council will erect signs in accordance with Sections 632 (1) and (2)(e) of the *Local Government Act 1993*, in the vicinity of all playgrounds and equipment to notify that smoking is prohibited within 10 metres and that penalties apply. This prohibition will be enforced by Council Authorised Officers.
- Playgrounds situated within community centre grounds that are leased by Council to other organisations are subject to the prohibition stipulated within the *Smoke-free Environment Act 2000*.
- 4.7 Sportsgrounds and Recreational Facilities - Permits for the hire of Council’s sportsgrounds and recreational facilities have smoke-free clauses inserted into their agreements for use.

 Conditions of hire will require management by the hirer of the smoking prohibition in the designated vicinity of sportsgrounds and recreational facilities in accordance with the *Smoke-free Environment Act 2000*.

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Although Council Sportsgrounds and Recreational facilities including Cammeray Skate Park are covered within the *Smoke-free Environment Act 2000* wherever Council deems it appropriate, signage in accordance with Sections 632 (1) and (2) (e) of the *Local Government Act 1993* will be erected in the vicinity of specified sports fields and recreational facilities.

Tennis courts, croquet courts and netball courts that are leased by Council to other organisations are subject to a smoking prohibition stipulated within the *Smoke-free Environment Act 2000*.

In accordance with Sections 632 (1) and (2)(e) of the *Local Government Act 1993*, Council has prohibited smoking within 10 metres of McCallum Pool. Signs have been erected advising of this prohibition and the penalties that apply.

- 4.8 Outdoor Dining - Agreements to lease outdoor dining spaces have smoke-free clauses inserted into their licence agreements for use.

The lessee and or licensee will be responsible for enforcing the restrictions on smoking and for any non-compliance; and if there are continuous breaches, penalties may apply in accordance with Section 626 (3) of the *Local Government Act 1993* and licences may not be renewed.

- 4.9 Enclosed Bus Shelters and Taxi Ranks - Council will erect signs in accordance with Sections 632 (1) and (2)(e) of the *Local Government Act 1993*, in the vicinity of all enclosed bus shelters and taxi ranks situated on Council-owned land, to notify that smoking is prohibited and that penalties apply.

- 4.10 Education and Enforcement - Council will conduct educational programs to support the bans and to promote community awareness and acceptance.

Council Rangers have the authority to enforce the smoking bans and to issue penalties in accordance with Sections 679 of the *Local Government Act 1993*.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Rangers are responsible for carrying out enforcement action for breaches of this Policy.
- 5.2 Council's Manager Ranger and Parking Services is responsible for consultation programs to promote community awareness of the Policy.
- 5.3 Council's Manager Environmental Services is responsible for the management of areas of prohibition and education programs to promote community awareness and acceptance.

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SMOKE-FREE ENVIRONMENT - DECLARED PUBLIC AREAS POLICY

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- 5.4 Outdoor Dining Permit Holders are responsible for enforcing the restrictions on smoking and for any non-compliance in the area covered by the Permit/Licence Agreement.
- 5.5 Sportsgrounds and recreational facilities hirers are responsible for notifying players and spectators of the restrictions on smoking and for managing the prohibition for the period of the hire.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Complaints Handling Policy
- Outdoor Dining and Goods Display Policy
- Smoking in the Workplace Policy (staff policy)
- Sporting Facilities Booking Policy
- Parks Plans of Management (various)
- Playgrounds Plan of Management
- Sportsgrounds Plan of Management

The Policy should be read in conjunction with the following documents/legislation:

- Local Government Act 1993
- Smoke-free Environment Act 2000
- Work Health and Safety Act 2011
- Tobacco Legislation Amendment Act 2012

Version	Date Approved	Approved by	Resolution No.	Review Date
1	22 July 2019	Council	188	2020/21
2	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted by Council [insert date]



VOLUNTARY PLANNING AGREEMENTS POLICY

D3-07

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Policy Owner: Director City Strategy

Category: Strategic

Direction: 3. Our Innovative City

1. STATEMENT OF INTENT

- 1.1 This Policy sets out North Sydney Council's policy and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979*. It establishes a fair, transparent and accountable framework governing the use of voluntary planning agreements by Council.
- 1.2 The objectives of the policy are:
- to broaden the range and extent of development contributions (monetary contributions, dedication of land or material public benefits) made by developers towards public facilities in the North Sydney local government area (LGA);
 - to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits and;
 - to facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefit; and
 - where applicable, to achieve outcomes from development which ensure that the public has full access to the North Sydney's public natural assets.

2. ELIGIBILITY

- 2.1 This policy applies to all proposed development within the North LGA and will be considered by all Council staff, Councillors and consultants when determining proposals that involve proposed planning agreements.
- 2.2 The current legal and procedural framework for planning obligations is set out in Subdivision 2 of Division 7.1 of Part 7 of the Act and Division 1 of Part 9 of the Regulation.

A Practice Note titled "Planning Agreements" dated February 2021 has been issued by the Department of Planning for the purposes of clause 203 of the Regulation. While Council is not legally bound to follow the Practice Note,

Re-adopted by Council [insert date]

VOLUNTARY PLANNING AGREEMENTS POLICY

Council will be guided by it. Should there be any inconsistency between this policy and the Practice Note, this policy will prevail.

- 2.3 Section 7.4 of the Act sets out the circumstances under which a planning agreement may be entered into. It provides that a planning agreement may be made between a planning authority, such as Council (or two more planning authorities) and a person (the developer):
- a) who has sought a change to an environment planning instrument (such as a planning proposal); or
 - b) who has made or proposes to make a development application; or
 - c) who has entered into an agreement with or is otherwise associated with a person in one of the above two categories.
- 2.4 The Land and Environment Court has held that s7.4 of the Act authorises a voluntary planning agreement to be made between a planning authority and a developer who proposes to modify an existing development consent.
- 2.5 Council, in its complete discretion, may negotiate a voluntary planning agreement in connection with any application by the developer for an instrument change, a development consent or modification to a development consent relating to any land in the North Sydney LGA.

3. DEFINITIONS

- 3.1 Act - means the *Environmental Planning and Assessment Act 1979*.
- 3.2 Contribution Plan - means a contribution plan approved under Section 7.18 of the Act for the purpose of requiring contributions under Section 7.11 or 7.12 of the Act.
- 3.3 Council - is North Sydney Council.
- 3.4 Developer - is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (Section 7.4(11)), or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person.
- 3.5 Development application - has the same meaning as in the Act.
- 3.6 Development contribution - means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

VOLUNTARY PLANNING AGREEMENTS POLICY

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- 3.7 Explanatory note - means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement, as required under clause 205 of the Regulation.
- 3.8 Instrument change - means a change to an environmental planning instrument to facilitate a development the subject of a planning agreement.
- 3.9 Net public benefit - is a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.
- 3.10 Planning benefit - means a development contribution that confers a net public benefit.
- 3.11 Planning obligation - means an obligation imposed by a planning agreement requiring a developer to make a development contribution.
- 3.12 Practice Note - means the *Practice Note on Planning Agreements* published by the Department of Planning and Environment (February 2021).
- 3.13 Public - includes a section of the public.
- 3.14 Public benefit- is the benefit enjoyed by the public as a consequence of a development contribution.
- 3.15 Public facilities - means public infrastructure, facilities, amenities and services.
- 3.16 Public purpose - means any purpose that benefits the public, including but not limited to a purpose specified in Section 7.4(2) of the Act.
- 3.17 Regulation - means the *Environmental Planning and Assessment Regulation 2021*.

4. PROVISIONS**4.1 Guiding Principles**

Council's use of planning agreements will be governed by the following principles:

- a) Planning decisions will not be bought or sold through planning agreements;

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- b) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other act or law;
 - c) Council will not use planning agreements for any purpose other than a proper planning purpose;
 - d) development that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers, unless those public benefits address or offset the impacts of concern;
 - e) Council will not seek benefits under a planning agreement that are wholly unrelated to a particular development, however a developer may offer benefits that are not connected to the proposed development;
 - f) when considering the merits of a proposed development or instrument change, the provision of any public facility or public benefits proposed in the planning agreement that is wholly unrelated to the application will be given little to no weight;
 - g) when considering a development or instrument change, Council will not give undue weight to a planning agreement;
 - h) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement; and
 - i) Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.

Council generally will not agree to a planning agreement providing for any alleged surplus value under a planning agreement being refunded to the developer or offset against development contributions required to be made by the developer in respect of other development in North Sydney LGA.

4.2 Timing of negotiation

Council is required to ensure that a proposed planning agreement is publicly notified as part of, in the same manner as and where practicable, at the same time as the application for the instrument change or development application to which it relates.

The planning agreement must therefore be negotiated and documented before it is publicly notified as required by the Act or regulation.

Council prefers that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

4.3 Matters for consideration

Re-adopted by Council [insert date]

The matters that the Council may consider in any such negotiation may include, but are not limited to the need for contributions to provide for the following:

- a) compensation for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration;
- b) meeting the demands created by the development for new public infrastructure, amenities and services;
- c) achieving the provision of affordable housing;
- d) addressing a deficiency in the existing provision of public facilities in the North Sydney LGA;
- e) achieving recurrent funding in respect of public facilities;
- f) prescribing inclusions in the development that meet specific planning objectives of Council;
- g) monitoring the planning impacts of development; and
- h) securing planning benefits for the wider community.

When exercising its functions under the Act in relation to an application by a developer for an instrument change or a development consent to which a proposed planning agreement relates, Council will consider to the fullest extent permitted by law:

- a) whether the proposed planning agreement is relevant to the application and whether it must be considered in connection with the application; and
- b) if so, the proper planning weight to be given to the proposed planning agreement.

4.4 Acceptability test to be applied to all planning agreements

Council will apply the following test in order to assess the desirability of a proposed voluntary planning agreement:

- a) is the proposed planning agreement directed towards a proper or legitimate planning purpose having regard to its statutory planning controls and other adopted planning policies and strategies and the circumstances of the case?
- b) does the proposed planning agreement provide for a reasonable means of achieving the relevant purpose and outcomes and securing the benefits?
- c) can the proposed planning agreement be taken into consideration in the assessment of the relevant instrument change or development application?
- d) will the proposed planning agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest against planning harm?

Re-adopted by Council [insert date]

VOLUNTARY PLANNING AGREEMENTS POLICY

- e) does the proposed planning agreement promote Council's objectives in relation to the use of planning agreements as set out in this policy?
- f) does the proposed planning agreement conform to the principles governing Council's use of planning agreements as set out in this policy?
- g) are there any relevant circumstances that may operate to preclude Council from entering into the proposed planning agreements?
- h) will the proposed planning agreement provide public benefits that bear a relationship to the development or is there justification for the provision of unrelated benefits?

4.5 Mandatory requirements of a planning agreement

4.5.1 Section 7.4 of the Act requires planning agreements to include provisions specifying:

- a) a description of the land to which the agreement applies;
- b) a description of the change to the environmental planning instrument to which the agreement applies or the development to which the agreement applies;
- c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made;
- d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of Section 94, 94A or 94 EF of the Act to the development;
- e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under Section 94;
- f) mechanism for the resolution of disputes under the agreement;
- g) the enforcement of the agreement, in the event of a breach of the agreement by the developer;

4.5.2 Clause 205 of the Regulation requires that an explanatory note must accompany a planning agreement that:

- a) summarises the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- b) that contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

4.6 Application of Section 7.11, Section 7.12 and Section 7.24 to development to which a planning agreement relates

Council has no general policy on whether a planning agreement should exclude the application of Section 7.11, Section 7.12 or Section 7.24 of the Act to development which the agreement relates. This is a matter for negotiation between Council and a developer having regard to the particular circumstances of the case.

If a planning agreement excludes the application of Section 7.11 or Section 7.12 to a particular development, the consent authority for the development or the Minister must be a Party to the agreement.

The application of Section 7.24 may not be excluded under a planning agreement without the consent of the Minister or a development corporation designated by the Minister to give such an approval.

4.7 Provision of security under a planning agreement

Council will generally require a planning agreement to make provision for security to cover the developer's obligations under the agreement. The form of security will generally be an unconditional bank guarantee from an Australian Bank in favour of the Council, to the full value of the developer's obligations under the planning agreement and on terms otherwise acceptable to Council.

The Council will consider other forms of security provided that the agreement provides for means of enforcement that, in the Council's opinion, eliminate or reduce the risk that the obligations under the planning agreement will not be performed.

4.8 Provision of Contributions

Council will require a planning agreement to include details relating to the provision of contributions, including:

- a) the times at which and, if relevant, the period during which, the developer is to make provision under the planning agreement;
- b) the design, technical specification, and standard of work required by the planning agreement to be undertaken by the developer;
- c) the manner in which work is to be handed over to Council;
- d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement;
- e) the management of maintenance of land or works following handover to Council; and
- f) Council's involvement in any construction contracts to be entered into, including any tendering requirements.

There may be some circumstances where the parties are not able to resolve the specific details of these matters at the time the agreement is entered into, particularly if the agreement accompanies an application for an instrument change. If this is the case, Council may require the planning agreement to include clauses that require or specify the following:

- a) designs to be subject to Council specification and approved by Council prior to the works being carried out;
- b) the outcomes or objectives the work must achieve and criteria for assessing those outcomes or objectives;
- c) inspections of the work by Council and the correction of defects identified on inspection;
- d) certification by the Council and the developer on completion of the works;
- e) assignment of any rights and warranties under a construction contract held by the developer to the Council, so that the Council can enforce any rights under that contract regarding defects liabilities or otherwise;
- f) terms for construction contracts such as defects liability periods and security for defects;
- g) invitations to tender for construction contracts and/or the Council to be involved in awarding construction contracts; or
- h) works and maintenance activities to be carried out to the satisfaction of the Council.

4.9 Council's cost of negotiating, entering into, monitoring and enforcing a planning agreement

Council will require a planning agreement to make provision for payment by the developer of Council's reasonable costs of and incidental to preparing, negotiating and entering into the agreement. These costs will include any costs Council incurs in obtaining external legal advice.

Council may also require the payment of a monetary contribution for administration of the planning agreement, including enforcing and monitoring the agreement.

The amounts to be paid by the developer will be determined by negotiation in each case.

4.10 Notifications on certificates

Council will require a planning agreement to contain an acknowledgement by the developer that the Council will make a notation under Section 10.7(5) of the Act relating to the land that is the subject of the agreement or any other land associated with the agreement.

4.11 Registration of planning agreements

Council may require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to Section 7.6 of the Act and to obtain the agreement of any other relevant entities to the registration.

4.12 Dispute resolution

Council will require a planning agreement to provide for mediation of disputes between the two parties (at their own cost) before the parties may exercise any other legal rights in relation to the dispute.

4.13 Assignment and dealings by the developer

Council may require a planning agreement to provide that the developer may not assign its rights or obligations under the agreement nor have any dealings in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- a) Council has given its consent to the proposed assignment or dealing;
- b) the developer has, at no cost to Council, first secured the execution by the person with whom it is dealing, of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a Party to the original agreement; and
- c) the developer is not in breach of the planning agreement.

This restriction will cease to apply if the obligations under the planning agreement are fulfilled.

4.14 Entering into a planning agreement

Council will require a planning agreement to be entered into as a condition of consent to which the agreement relates in accordance with Section 7.7 of the Act.

Where a planning agreement relates to an instrument change, the agreement will need to be entered into prior to the instrument change, however the agreement may become operational when a later event occurs, such as the grant of development consent that relies on the instrument change. This will depend on the circumstances in each case and can be negotiated between the parties.

If there are any indications that a developer has decided not to execute the planning agreement after it has been exhibited with a planning proposal, the Council will consider that to be a significant change to the planning proposal

and will request the Minister not to proceed with the proposed amendment under Section 3.35 of the Act.

A planning agreement is entered into when it is executed by all of the parties.

A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation.

4.15 Planning agreement register

Council is required to keep a register of planning agreements applying to land within the Council's area, whether or not the Council is a Party to a planning agreement. Council is required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendment).

Council will make the following available for public inspection during ordinary office hours:

- a) this Policy;
- b) the planning agreement register kept by the Council;
- c) copies of all planning agreements (including amendments) that apply to the area of the Council; and
- d) copies of the explanatory notes relating to those agreements or amendments.

Council will also make this policy and the planning agreement register available to the public on its website.

4.16 Recurrent charges

Planning agreements may require a developer to make contributions towards the recurrent costs of public facilities. Details regarding charges will need to be negotiated between the developer and the planning authority and documented within the draft agreement.

Where the public facility or public benefit is intended to serve the wider community, the planning agreement may require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

4.17 Modification and discharge of the developer's obligations

Council will generally only agree to a provision in a planning agreement permitting the developer's obligation under the agreement to be modified or

discharged where the modification or discharge is linked to the following circumstances:

- a) the developer's obligations have been fully carried out in accordance with the agreement;
- b) the developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to Council to perform the developer's obligations under the agreement;
- c) the development consent to which the agreement relates has lapsed;
- d) the performance of the planning agreement has been frustrated by an event beyond the control of the parties; and
- e) Council and the developer otherwise agree to the modification for discharge of the agreement.

Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

4.18 Public notification of planning agreements

A proposed planning agreement must be publicly notified and available for public inspection for a minimum period of 28 days. Council is required to ensure that a proposed planning agreement is publicly notified as part of, in the same manner as and, where practicable, at the same time as the proposed instrument change or development application to which it relates. Where it is not practicable to notify the planning agreement at the same time as the instrument change or application it must be notified as soon as possible afterwards.

Council will publicly re-notify and make available for public inspection a planning agreement and application to which it relates, if in the Council's opinion, a material change is made to the terms of the agreement after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification, or the formal consideration by the Council or any other reason.

Council encourages the public to make submissions on planning agreements. Public submissions to planning agreement notifications will be considered by the Council in accordance with the *North Sydney Community Engagement Protocol*.

4.19 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer, Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning

agreements and applied progressively for the different purposes under those agreements. Pooling may be appropriate to allow public benefits to be provided in a fair, equitable and timely way.

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Staff with appropriate delegated authority will negotiate a planning agreement on behalf of Council.
- 5.2 Councillors will not be involved in the face-to-face negotiation of the agreement.
- 5.3 If Council has a commercial interest in the subject matter of a planning agreement as a landowner, developer or financier, Council will ensure that the Council officer who assesses the application to which a planning agreement relates is not the same Council officer, or a subordinate of the officer, who negotiated the terms of the planning agreement on behalf of Council in its capacity as landowner, developer or financier.
- 5.4 Council may appoint an independent person to facilitate or otherwise participate in the negotiation of a planning agreement, or aspects of it, such as where:
 - a) an independent assessment of a proposed instrument change or development application is necessary or desirable;
 - b) factual information requires validation in the course of negotiations;
 - c) sensitive financial or other information must be verified or established in the course of negotiations;
 - d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved; or
 - e) dispute resolution is required under a planning agreement.

The cost of the independent person will be borne by the developer, unless otherwise agreed by the Council prior to the independent person being engaged.

6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council instruments, policies and documents:

- Access to Information Policy
- Community Engagement Policy
- Community Engagement Protocol
- Development Control Plan 2013

Re-adopted by Council [insert date]

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- Local Environmental Plan 2013
- Privacy Management Plan
- Open Government Policy

The Policy should be read in conjunction with the following legislation:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- Government Information (Public Access) Act 2009
- Local Government Act 1993
- Privacy and Personal Information Protection Act 1998
- State Records Act 1998

Version	Date Approved	Approved by	Resolution No.	Review Date
1	12 November 2012	Council	664	2012/13
2	18 February 2013	Council	61	2016/17
3	25 June 2018	Council	214	2020/21
4	[insert date]	Council	[insert min. no.]	2024/25

Re-adopted by Council [insert date]

Appendix 1 - Procedures relating to the use of planning agreements

Council's negotiation system for planning agreements aims to be efficient, transparent and accountable. Council will seek to ensure that negotiations of planning agreements run in parallel with applications for instrument changes or development applications so as not to unduly delay ordinary planning processes.

1. Process to entering into a planning agreement

The Council's preferred method for negotiation of a planning agreement will generally involve the following key steps:

1. Prior to lodgement of the relevant application by the developer, the Council (represented by an authorised delegate) and Developer (and any other relevant person) will decide whether to negotiate a planning agreement;
2. The parties will then appoint a person to represent them in the negotiations and also appoint a third person to attend and take minutes of all negotiations;
3. The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, and appoint such a person.
4. The parties will also agree on a timetable for negotiations and the protocols and work practices governing their negotiations;
5. The parties will then identify the key issues for negotiation and undertake the negotiations, including any negotiations or consultations with relevant public authorities;
6. If agreement on the general contributions to be offered is reached, the developer will prepare the proposed planning agreement including the explanatory note and provide a copy to Council;
7. The parties may undertake further negotiations on the specific terms of the proposed planning agreements;
8. Once agreement is reached on the terms of the proposed planning agreement, the developer may then make the relevant application to Council accompanied by a copy of the proposed agreement;
9. The proposed agreement and explanatory note will be notified and exhibited together with the relevant application;
10. Submissions will be considered and further amendments to the proposed agreement may be negotiated.

See clause 4.14 for details regarding execution and entering into a planning agreement.

Parties may be required to undertake further negotiations and a number of the above steps may need to be repeated as a result of the public notification process or its formal consideration by the Council in connection with the relevant application.

Throughout the process, the matter may be reported to Council for determination, depending on the complexity of the matter and relevant delegations. Developers should be aware that

negotiations with Council staff are aimed at producing the terms of a proposed planning agreement that can be exhibited and formally considered by the Council (or the relevant staff with delegated authority) at the time the relevant application is considered. A preliminary agreement with Council staff about the terms of the proposed agreement does not mean that the Council will ultimately agree to enter into the proposed agreement in the terms offered, or that the relevant application will be approved.

2. Preparation and form of a planning agreement

The developer will prepare a draft planning agreement relating to a particular application for an instrument change or development application which reflects the policies and procedures set out in this document. All planning agreements are to be accompanied by an explanatory note. Base templates for planning agreements and explanatory notes are set out at Appendix 2 and Appendix 3. The templates should be used as base documents only and as a guide for determining the types of matters that must be included in the relevant documents.

3. Methodology for valuing public benefits under a planning agreement

Unless otherwise agreed in a particular case, public benefits will be valued as follows:

3.1 Provision of land for a public purpose

Where the benefit under a planning agreement is the provision of land for a public purpose, the value of the benefit will be determined by an independent valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council), on the basis of a scope of work which is prepared by Council. All costs of the independent valuer in carrying out such a valuation will be borne by the developer.

If the land to be dedicated is specified in a Contributions Plan, the provisions of that Plan must be considered when determining the value of the land.

3.2 Carrying out of works for a public purpose

Where the benefit under a planning agreement is the carrying out of works for a public purpose, the value of the benefit will be determined by an independent quantity surveyor (who is acceptable to Council), on the basis of the estimated value of the completed works being determined using the method that would ordinarily be adopted by a quantity surveyor. Council will prepare the scope of work for the independent quantity surveyor. All costs of the independent quantity surveyor in carrying out the work will be borne by the developer.

3.2 Material public benefit

Where the benefit under a planning agreement is the provision of a material public benefit, Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement.

4. Monitoring and reviewing of planning agreements

Council will continuously monitor the performance of the developer's obligations under a planning agreement. This may include Council requiring the developer (at their cost) to report periodically to Council on its compliance with obligations under the planning agreement.

Council will require the planning agreement to contain a provision establishing a mechanism and relevant criteria for periodic review of the planning agreement with the involvement of all parties. This will include a review of the developer's performance under the agreement.

Council will require the planning agreement to contain a provision requiring the parties to use the best endeavours to agree on a modification to the agreement having regard to the outcomes of the review.

5. Hand-over of works

Council will generally not accept the hand-over of a public work carried out under a planning agreement unless the developer furnishes to the Council a certificate to the effect that the work has been carried out and completed in accordance with the agreement and any applicable development consents (which certificate may, at the Council's discretion, be a final occupation certificate, compliance certificate or a subdivision certificate) and, following the issue of such a certificate to the Council, the work is also certified as complete by a Council building surveyor or engineer.

Council will also require the agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense.

6. Management of land or works after hand-over

If a planning agreement provides for the developer, at the developer's cost, to manage or maintain land that has been dedicated to the Council or works that have been handed over to the Council, the Council may require the management and maintenance of the land or works to be carried out to the satisfaction of the Council or to achieve particular outcomes or objectives (see clause 4.8 of this policy).

Any dispute regarding the Council's specifications for the management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the planning agreement.

7. Public use of privately-owned facilities

If a planning agreement provides for the developer to make a privately-owned facility available for public use, Council may require clauses to be inserted into the planning agreement to specify the arrangement or particular outcomes or objectives for the arrangement. Leases, licences or access agreements may be entered into separately to formalise the arrangement if required.

Appendix 2 - Planning Agreement Template

This template provides the general basis for a planning agreement. The specific terms of each agreement will be negotiated with and determined by the Council in accordance with this policy.

(Between Council and Developer)

PLANNING AGREEMENT

Parties

of, New South Wales (**Council**)

and

of, New South Wales (**Developer**)

Background

(For Development Applications)

- A. On _____, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an irrevocable offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development Consent was granted.

(For Changes to Environmental Planning Instruments)

- A. On _____, the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development Consent was granted.

Operative provisions

- 1. **Planning agreement under the Act**

Re-adopted by Council [insert date]

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2. Application of this Agreement

[Specify the land to which the Agreement applies and the development to which it applies.]

3. Operation of this Agreement

[Specify when the Agreement takes effect]

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

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

Development means [describe the subject development by reference to the Land, application numbers and the general description of the proposal]

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 or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

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

Instrument Change means the change to the Local Environmental Plan sought by the Developer and more particularly described in Schedule ___.

Land means Lot _____ DP _____, known as _____.

Local Environmental Plan means the North Sydney Local Environmental Plan 2013.

Party means a Party to this agreement, including their successors and assigns.

Public Facilities means infrastructure, facilities, amenities and services that serve a public purpose.

Re-adopted by Council [insert date]

Regulation means the *Environmental Planning and Assessment Regulation 2021 (NSW)*.

- 4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amount payable under this Agreement are payable in Australian dollars.
 - (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - (i) 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.
 - (j) 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.

- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

[Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made.]

6. Application of the Development Contributions

[Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied.]

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

[Specify whether and to what extent Section 7.11, Section 7.12 and Section 7.24 apply to development, the subject of this Agreement.]

8. Registration of this Agreement

[Specify whether the Agreement is to be registered as provided for in Section 7.6 of the Act.]

9. Review of this Agreement

[Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur.]

10. Dispute Resolution

[Specify an appropriate dispute resolution process that provides for mediation of disputes prior to exercising any other legal rights.]

11. Enforcement

[Specify the means of enforcing the Agreement.]

12. Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.

- (b) Emailed to that Party at its email address set out below.

Council
Attention:
Address:
Email:

Developer:
Attention:
Address:
Email:

- 12.2 If a Party gives the other Party three business days notice of a change of its address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted to the latest address.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if it is delivered, when it is left at the relevant address.
 (b) if it is sent by post, 2 business days after it is posted.
- 12.4 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.

13. Approvals and consent

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

14. Assignment and Dealings

[Specify the following and any other restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply.

The developer may not assign its rights and obligations under the agreement nor have any dealings in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- (a) Council has given its consent to the proposed assignment or dealing;

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- (b) the developer has, at no cost to Council, first secured the execution by the person with whom it is dealing, of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a party to the agreement; and
- (c) the developer is not in breach of the planning agreement.]

15. Costs

The developer will pay the Council's reasonable costs of negotiating, preparing, executing, stamping and registering the Agreement.

[Specify any other provisions relating to costs of the Agreement.]

16. Entire agreement

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

17. Further acts

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

18. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Joint and individual liability and benefits

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

20. No fetter

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

21. Representation and warranties

The Parties represent and warrant that they have power or enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

22. Severability

Re-adopted by Council [insert date]

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

23. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

24. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25. GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

26. Section 10.7 Planning Certificates

The developer acknowledges and agrees that the Council will include a notation that this Agreement has been entered into on any Planning Certificate issued under Section 10.7(5) of the Act relating to the Land.

Execution

Dated:

Executed as an Agreement:

Re-adopted by Council [insert date]

Appendix 3 - Explanatory Template

Environmental Planning and Assessment Regulation 2021
(Clause 205)

Explanatory Note

Draft Planning Agreement

under Section 7.4 of the Environmental Planning and Assessment Act 1979

1. **Parties**

(Planning Authority)
(Developer)
2. **Description of Subject Land.**
3. **Description of Proposed Change to Environmental Planning Instrument/
Development Application.**
4. **Summary of Objectives, Nature and Effect of the Draft Planning Agreement.**
5. **Assessment of the Merits of the Draft Planning Agreement.**
6. **The Planning Purposes served by the Draft Planning Agreement.**
7. **How the Draft Planning Agreement promotes the Objects of the *Environmental
Planning and Assessment Act 1979*.**
8. **How the Draft Planning Agreement promotes the Public Interest.**
9. **How the Draft Planning Agreement promotes the Objects of the *Local Government
Act 1993* under which the Council is constituted.**
10. **Whether the Agreement specifies that certain requirements must be complied with
prior to the issue of a construction certificate, occupations certificate or subdivision
certificate.**
11. **How the Draft Planning Agreement promotes the Elements of the Council's Charter.**
12. **Whether the Draft Planning Agreement conforms with the Council's Capital Works
Program.**

Re-adopted by Council [insert date]

VOLUNTARY PLANNING AGREEMENTS POLICY

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- 13. The Impact of the Draft Planning Agreement on the Public or Any Section of the Public.**
 - 14. Other Matters**

Signed and dated by All Parties

Re-adopted by Council [insert date]