



**ATTACHMENTS TO REPORTS OF THE BLAYNEY SHIRE COUNCIL MEETING  
HELD ON TUESDAY 19 APRIL 2022**

**EXECUTIVE SERVICES REPORTS**

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# Constitution

## **Business Enterprise Centre – Central NSW Limited**

A Public Company Limited by Guarantee

PLEASE NOTE : Those items highlighted in yellow represents amendments to the constitution wording, those highlighted in green are additional changes re directors also need to be members.

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## 1 Name of the Company

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The name of the Company is Business Enterprise Centre – Central NSW Limited.

## 2 Type of Company

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- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) The Company is the successor in title to the Incorporated Association.
- (c) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
  - (i) payment of debts and liabilities of the Company;
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) any adjustment of the rights of the contributories among Members.
- (d) The amount that each Member or past Member is liable to contribute is limited to \$1.00.

## 3 Replaceable Rules

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This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

## 4 Definitions and Interpretation

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### 4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) **ACNC Act** means *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth);
- (c) **AGM** means annual general meeting;
- (d) **Alternate Director** means a person of a Director's choosing who sits on the Board in that Director's place in the event that the Director cannot attend a meeting;
- (e) **Board** means the board of Directors of the Company;
- (f) **Body Corporate** means a legal entity other than a natural person, and includes a local government entity;
- (g) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales;
- (h) **By-laws** means a provision which is necessary for the proper control administration and management of the Company's affairs, operations, finances, interests, effects and property which is not inconsistent with any provision in the constitution;
- (i) **Chair** means the chair of the Company, elected pursuant to **clause 32.5(a)(i)**, and includes any acting chair;

**Constitution**  
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- (j) **Chairperson** means the person holding that office under this Constitution and includes any assistant or acting chairperson;
- (k) **Committee** means a committee of the Board established in accordance with **clause 48**;
- (l) **Company** means Business Enterprise Centre – Central NSW Limited;
- (m) **Constitution** means this constitution as amended or supplemented from time to time;
- (n) **Corporations Act** means **Corporations Act 2001 (Cth)**;
- (o) **Council** means any local government authority;
- (p) **Council Member** means any local government authority;
- (q) **Deputy-Chair** means the deputy-chair of the Company, elected pursuant to **clause 32.5(a)(ii)**, and includes any acting deputy-chair;
- (r) **Director** means a person with appropriate skills and experience and being a person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as has authority to act for the Company;
- (s) **Direct Vote** means a valid notice of a Member's voting intention, made pursuant to **clause 22**;
- (t) **Disciplinary Committee** means the Committee referred to in **clause 13.2(a)**;
- (u) **Entrance Fee** means the entrance fee payable by a Member pursuant to **clause 11**;
- (v) **Financial Year** means the period commencing on 1 July in one calendar year, and concluding on 30 June in the next calendar year;
- (w) **General Member** means a member of the Company excluding Council Members pursuant to **clause 6**;
- (x) **Incorporated Association** means Business Enterprise Centre – Cabonne, Orange, Blayney Incorporated (incorporation number Y1260644), a New South Wales incorporated association which has transferred its incorporation to the Company;
- (y) **Member** means a person who is prepared to promote the objects of the Company as in **clause 5.1**, including both Council Members, General Members and any other classes of Membership created by the Board pursuant to **clause 7.4(a)**, and Membership has the corresponding meaning;
- (z) **Member Present** means in connection with a meeting of Members, a Voting Member being present in person or by proxy or attorney or by Representative;
- (aa) **Member's Guarantee Amount** means the amount referred to in **clause 2(d)**;
- (bb) **Nomination Committee Charter** means the terms of reference for the nomination committee, as approved by the Board from time to time (the nomination committee is a Committee for the purposes of this Constitution);
- (bb) **Objects** mean the objects of the Company as set out in **clause 5.1**;
- (cc) **Office** means the registered office for the time being of the Company;
- (dd) **Office Bearer** means a person holding any of the offices pursuant to **clause 32.5**;
- (ee) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act;

- (ff) **Register** means the register of Members to be kept pursuant to the Corporations Act;
- (gg) **Registration** means registration of the Company as a company by the Australian Securities and Investments Commission;
- (hh) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act;
- (ii) **Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a Member which is a body corporate, as described in **clause 10**;
- (jj) **Secretary** means the person appointed as the secretary of the Company under **clause 51(a)** and includes any assistant or acting secretary;
- (kk) **Special Resolution** has the meaning given to it by the Corporations Act;
- (ll) **Subscription** means the subscription fees payable by a Member pursuant to **clause 11**; and
- (mm) **Voting Member** means a Member who:
  - (i) has voting rights pursuant to **clause 7**; and
  - (ii) has paid any payable Entrance Fee and annual Subscription within the time limits specified in **clause 12(a)(iv)**, namely, at the latest, within thirty (30) days after having been notified by the Company that the Member is in arrears to the Company.

#### **4.2 Interpretation**

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) The singular includes the plural and vice versa;
- (b) Each gender includes the other gender;
- (c) The word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) The words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) Where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) A reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) A reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) An expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (i) Headings do not form part of or affect the construction or interpretation of this Constitution.

## 5 Objects and Powers

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### 5.1 Objects

- (a) The Company is a charitable institution established to promote economic development and trade and commerce, with a focus on the central regions of New South Wales. The Company will achieve this by:
- (i) providing tailored advisory support, education and training to businesses;
  - (ii) delivering business skills workshops, courses and seminars;
  - (iii) referring start-ups and small to medium-sized businesses to:
    - (A) support services, which services will provide them with skills development; and
    - (B) government grant opportunities;
  - (iv) increasing access to digital business practices throughout the business community;
  - (v) operating a registered training organisation;
  - (vi) providing grants to charities, or to other organisations to be used for charitable purposes; and
  - (vii) anything ancillary to the Objects referred to in **clauses 5.1(a)(i) to 5.1(a)(vi)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (i) carry out the Objects of the Company; and
  - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

### 5.2 Income and Property

- (a) The income and property of the Company shall be applied solely towards the promotion of the Objects of the Company.
- (b) No income or property of the Company shall be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution shall prevent payment in good faith to a Member:
- (i) of any surpluses or profits, so long as the Member is charitable and has objects similar to the Objects of the Company;
  - (ii) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (iii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (iv) of reasonable and proper rent for premises leased by any Member to the Company.

### 5.3 Remuneration of Directors

No payment shall be made to **any Director or Member** other than the payment:

- (a) Of out of pocket expenses incurred by **the Director or Member** in the performance of any duty as a **Director or Member** where the amount payable does not exceed an amount previously approved by the Board; and
- (b) For any service rendered to the Company by the **Director or Member** in a

professional or technical capacity, other than in the capacity as **Director or Member**, where the provision of the service has the prior approval of the Board and where the amount payable **is approved** by the Board and is not more than an amount which commercially would be reasonable for the service.

## MEMBERSHIP

### 6 Admission to Membership

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#### 6.1 Eligibility for Membership

Any person is entitled to apply to become a Member if the person:

- (a) Agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) Satisfies the criteria for Membership in accordance with **clause 7**;
- (c) Supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
- (d) Is, in the Board's opinion, of good character;
- (e) Lodges an application form in accordance with **clause 8.2**; and
- (f) Subject to **clause 11(c)**, pays any Entrance Fee in accordance with **clause 11**.

#### 6.2 Benefits

- (a) Each Voting Member will be entitled to vote at all general meetings.
- (b) In addition to each Voting Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.
- (c) Entitled to be a Director of the Company, except for Council Members.

### 7 Classes of Membership

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#### 7.1 Classes of Membership

As at the date of Registration, there shall be two (2) classes of Membership, known as Council Members and General Members.

#### 7.2 Council Members

- (a) Must be Councils;
- (b) Shall not be entitled to vote;
- (c) There shall be at least three (3) Council Members at all times

#### 7.3 General Members shall have the following rights:

- (a) Entitled to vote
- (b) Entitled to be a Director of the Company
- (c) To wind up
- (d) Deregister the company including any ancillary member resolutions pertaining to winding up or deregistering under **clause 57**

#### 7.4 Additional Classes and Qualifications

The Board may determine from time to time:

- (a) Additional Membership classes; and
  - (b) Qualifications for admission to each Membership class and the rights attached to each Membership class,
- both of which shall be detailed in the By-Laws.

## **8 Applications for Membership**

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### **8.1 Membership Classes**

This clause 8 pertains to any new Membership classes under **clause 7.3**.

### **8.2 Applications for Membership**

An application for Membership of the Company must:

- (a) Be made in writing in the form prescribed by the Board from time to time;
- (b) Include a signature, or equivalent acknowledgement by the applicant, acknowledging that the applicant agrees to be bound by the Constitution of the Company as amended from time to time and any code of conduct which the Board may produce from time to time;
- (c) Be accompanied by any Entrance Fee payable pursuant to **clause 11(a)**; and
- (d) Be lodged with the Secretary.

### **8.3 Determining Application for Membership**

- (a) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board which is to determine whether to approve or reject the application.
- (b) As soon as practicable after the Board makes that determination the Secretary must:
  - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable);
  - (ii) if the Board approved the application, enter the applicant's name in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
  - (iii) if the Board rejected the application, refund any Entrance Fee to the applicant and the Board will not be required to provide the applicant with any reasons for the rejection.
- (c) The Board's decision under **clause 8.3(a)** is final, and an applicant shall not be entitled to any rights of appeal against the decision.

## **9 Membership Entitlements Not Transferable**

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A right, privilege or obligation which a Member has by reason of being a Member of the Company:

- (a) Is not capable of being transferred or transmitted to another person; and
- (b) Terminates on cessation of the person's Membership.

## **10 Representative**

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- (a) **Clause 10** only applies to Body Corporate Members and applicants for Membership which are Bodies Corporate.

- (b) A Body Corporate Member may appoint more than one (1) Representative, but only one (1) Representative may exercise the Member's powers at any one (1) time.
- (c) A Body Corporate Member or an applicant for Membership which is a Body Corporate must appoint as its Representative a natural person.
- (d) The name and address of the Representative will be entered in the Register as the representative of the Body Corporate Member.
- (e) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Body Corporate Member which is represented by that particular Representative.
- (f) If the appointment of a Representative by the Body Corporate Member is made by reference to a position held, the appointment must identify the position.
- (g) Despite **clause 9**, a Body Corporate Member may remove and replace a Representative where the Body Corporate Member gives written notice to the Board in a form approved by the Board.
- (h) A signature by a Representative of a Body Corporate Member on behalf of that Body Corporate Member is taken to be the signature of that Body Corporate Member for the purposes of this Constitution.
- (i) Any power or right of a Body Corporate Member as granted by this Constitution can be exercised by the Representative of that particular Body Corporate Member.
- (j) Body Corporate Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 27(a)**.
- (k) The actions of a Representative bind the Body Corporate Member which is represented by that particular Representative.
- (l) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

## **11 Fees**

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- (a) There shall be an Entrance Fee and annual Subscription payable by each Member to the Company, unless the Board determines otherwise.
- (b) Subject to **clause 11(c)**, the amount of the Entrance Fee and annual Subscription shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- (c) The Board may in its discretion:
  - (i) determine that no Entrance Fee or annual Subscription is payable by the Members (in whole or in part) in a given year;
  - (ii) determine that there will be different Entrance Fees and annual Subscriptions for different Members; and
  - (iii) extend the time for payment of the Entrance Fee or annual Subscription by any Member.
- (d) No part of any Entrance Fee or annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 12**.



## 12 Cessation of Membership

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- (a) A Member's Membership will cease:
- (i) on the date that the Secretary receives written notice of resignation from that Member;
  - (ii) upon that Member no longer satisfying the criteria for Membership;
  - (iii) if, being a natural person:
    - (A) upon that Member dying; or
    - (B) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
  - (iv) subject to **clause 11(c)**, if that Member fails to pay an Entrance Fee or annual Subscription:
    - (A) within thirty (30) days after it falls due; and
    - (B) then fails to rectify this default within thirty (30) days of being notified of the default by the Company;
  - (v) if the Member is expelled from the Company pursuant to **clause 13**; or
  - (vi) if, being a Body Corporate:
    - (A) that Member is dissolved or otherwise ceases to exist;
    - (B) that Member has:
      - (1) a receiver;
      - (2) a receiver and manager;
      - (3) a liquidator;
      - (4) an administrator;
      - (5) an administrator of a deed of company arrangement; or
      - (6) a trustee of other person administering a compromise or arrangement between the Member and someone else appointed to it; or
  - (vii) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 12(a)(i)**, resign as a Member but shall continue to be liable for:
- (i) any monies due by the Member to the Company; and
  - (ii) any sum for which the Member is liable as the Member of the Company under **clause 2(c)**.

## **13 Disciplining of Members**

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### **13.1 Disciplining of Members**

- (a) Where the Board is of the opinion that a Member has:
  - (i) persistently refused or neglected to comply with a provision or provisions of this Constitution; or
  - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company, the board may expel or suspend that member from the Company.
  
- (b) A resolution of the Board pursuant to **clause 13.1(a)** is of no effect unless the Board confirms the resolution in accordance with this **clause 13.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 13.1(c)**.
  
- (c) If the Board resolves under **clause 13.1** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
  - (i) setting out the resolution of the Board and the grounds upon which it is based;
  - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
  - (iii) stating the date, place and time of that meeting; and
  - (iv) informing the Member that the Member may do either or both of the following:
    - (A) attend and speak at that meeting; and/or
    - (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
  
- (d) At a meeting of the Board held as referred to in **clause 13.1(c)**, the Board must:
  - (i) give the Member an opportunity to make oral representations;
  - (ii) give due consideration to any written representations submitted to the Board by the Member at or before the Board meeting; and
  - (iii) by a resolution, determine whether to confirm or to revoke the resolution under **clause 13.1(a)**. A resolution to confirm the resolution under **clause 13.1(a)** requires the affirmative votes of at least seventy-five per cent (75%) of the Directors voting on the resolution.
  
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension under **clause 13.1(d)**, the Member must also be notified of the right of appeal available under **clause 13.2**.
  
- (f) A resolution confirmed by the Board under **clause 13.1(d)** does not take effect:
  - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
  - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 13.2(d)(ii)**.

### **13.2 Right of Appeal of Disciplined Member**

- (a) The Board will establish a Disciplinary Committee. The Disciplinary Committee will comprise of an independent panel of three (3) experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 13.1(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 13.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 13.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 13.2(c)**:
  - (i) the Member must be given the opportunity to state its case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
  - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision pursuant to **clause 13.2(d)(ii)** is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:
  - (i) subject to **clause 13.2(f)(ii)**, bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this **clause 13**; and
  - (ii) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 13**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

## **GENERAL MEETINGS**

### **14 Convening of General Meetings**

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#### **14.1 AGMs**

Notwithstanding section 111L of the Corporations Act:

- (a) The Board shall convene an AGM at least once in each calendar year and within five (5) months after the end of the Financial Year, and any AGM which is convened must be done so in accordance with the requirements of the Corporations Act; and
- (b) Notwithstanding **clause 14.1(a)**, the Company's first AGM may be held within the first eighteen (18) months following Registration.

#### **14.2 Convening of General Meetings**

- (a) A minimum of three (3) Directors may, whenever those three (3) Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:

- (i) Members may call a general meeting; and
- (ii) the Company will do so,  
in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.
- (c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives Members a reasonable opportunity to participate in the meeting.

## **15 Notice of General Meeting**

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- (a) Subject to consent to shorter notice being given in accordance with the Corporations Act (notwithstanding section 111L of the Corporations Act), at least twenty-one (21) days' notice of any general meeting must be given specifying:
  - (i) the place, day and hour of the meeting;
  - (ii) the general nature of any business to be transacted at the meeting;
  - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;
  - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (v) any other information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act).
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) Subject to **clause 15(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
  - (i) every Member;
  - (ii) every Director; and
  - (iii) the auditor for the time being of the Company (if any).

## **16 Cancellation or Postponement of General Meeting**

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### **16.1 Cancellation or Postponement of General Meeting**

- (a) Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution, the Board may cancel a general meeting of the Company:
  - (i) convened by the Board; or
  - (ii) which has been convened by Members pursuant to **clause 14.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed, the Board must notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the

postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting.

**16.2 Failure to Notify in Writing**

Any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

**17 Quorum**

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- (a) No business may be transacted at any general meeting unless there is a quorum at all times during the meeting.
- (b) For the purposes of **clause 17(a)**, three (3) Members Present shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
  - (i) the meeting, if convened upon the requisition of Members, shall be dissolved; and
  - (ii) in any other case:
    - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
    - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

**18 Chairperson**

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- (a) The Chair shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chair; or
  - (ii) the Chair is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting, then the following person will be Chairperson in lieu of the Chair in the order of availability set out below:
    - (A) Deputy-Chair;
    - (B) Secretary;
    - (C) another Director chosen by the Directors present at the meeting; and
    - (D) a Voting Member or Representative of a Voting Member chosen by a majority of the Members Present.
- (c) The rulings of the Chairperson on all matters relating to the order of business, procedure and conduct of the meeting shall be final, and no motion of dissent from such rulings shall be accepted.

## **19 Adjournments**

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- (a) The Chairperson of a general meeting at which a quorum is present:
  - (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs, to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is deemed passed on the day it was passed, and not on the date of the original meeting.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for thirty (30) days or more, in which case notice of the adjourned meeting must be given as in the case of an original meeting.

## **20 Determination of Questions**

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### **20.1 Determination of Questions**

At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:

- (a) The Chairperson of the meeting; or
- (b) At least two (2) Members Present.

### **20.2 Proxy Votes**

Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

### **20.3 Declaration by the Chairperson**

A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company, which has been signed by the Chairperson of the meeting or the next succeeding meeting, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **21 Disqualification**

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No person other than:

- (a) A Voting Member;
- (b) A Representative of a Voting Member; or
- (c) A proxy or attorney or Representative of a Voting Member, shall be entitled to vote at a general meeting or on any resolution.

## **22 Direct Votes**

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- (a) The Board will determine from time to time if Voting Members are entitled to vote by a Direct Vote on a matter or a resolution. If the Board has determined that Voting Members are entitled to vote by a Direct Vote, then the Voting Members must do so using the form prescribed by the Board from time to time, which may include electronic means.
- (b) If sent by post or facsimile, the Direct Vote must be signed by the Voting Member or by a duly authorised officer, attorney or Representative.
- (c) If sent by electronic transmission, the Direct Vote is to be taken to have been

- signed if it has been signed or authorised by the Voting Member in the manner approved by the Board.
- (d) The Direct Vote must be received by the Company at least forty-eight (48) hours before the time of the relevant general meeting in order to be valid.
  - (e) A Direct Vote is valid if it contains the following information:
    - (i) the Voting Member's name and address, or any applicable identifying notations such as the Voting Member's identification number or similar approved by the Board or specified in the notice of meeting; and
    - (ii) the Voting Member's voting intention on any or all of the resolutions to be put before the meeting.
  - (f) A Direct Vote is valid unless the Company receives written notification changing the voting intention before the vote is cast.
  - (g) The Chair's decision as to whether a Direct Vote is valid is conclusive.
  - (h) A Voting Member who has cast a Direct Vote is entitled to attend the meeting. The Member's attendance cancels the Direct Vote:
    - (i) unless the Voting Member instructs the Company otherwise; or
    - (ii) the Board has determined that Direct Votes are the only method permitted for voting on a resolution.
  - (i) If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the Chair of the meeting must:
    - (i) on a vote by show of hands, count each Voting Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote; and
    - (ii) on a poll, count the votes cast by each Voting Member who has submitted a Direct Vote directly for or against the resolution.

### **23 Right of Non-Members to Attend General Meeting**

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- (a) The Chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

### **24 Objection to Qualification to Vote**

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Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson of the general meeting, whose decision shall be final and conclusive, and a vote allowed by the Chairperson of the general meeting shall be valid for all purposes.

### **25 Persons of Unsound Mind and Minors**

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- (a) A Voting Member or Representative of a Voting Member:
  - (i) of unsound mind; or
  - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - (iii) who is a minor,

may vote whether on a show of hands or on a poll by that Voting Member or Representative of a Voting Member's committee, or by such other person as properly has the management or guardianship of that Voting Member or Representative of a Voting Member's estate, or by the public trustee (as the case may be), and the committee or other person or trustee may vote by proxy or representative.

- (b) Any person having the right of management or guardianship of the person or estate in respect of a Voting Member or Representative of a Voting Member as referred to in **clause 25(a)**, must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

## **26 Casting Vote**

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In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to a deliberative vote.

## **PROXIES**

## **27 Right to Appoint Proxies**

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Notwithstanding section 111L of the Corporations Act:

- (a) A Voting Member or a Representative of a Voting Member who is entitled to attend and vote at a general meeting of the Company may appoint another person as the Voting Member's or the Representative's proxy to attend and vote for the Voting Member or the Representative at the meeting; and
- (b) If a Voting Member or Representative of a Voting Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

## **28 Appointing a Proxy**

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### **28.1 Appointing a Proxy**

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

### **28.2 Instrument of Proxy**

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
  - (i) the name and address of the appointor;
  - (ii) the name of the Company;
  - (iii) the proxy's name or the name of the office of the proxy; and
  - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 28.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.



## 29 Lodgement of Proxies

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- (a) An instrument appointing:
  - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Voting Member's or Representative of a Voting Member's voting rights at a general meeting or a certified copy of that power of attorney must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this **clause 29** it will be sufficient that any document required to be lodged by a Voting Member or a Representative of a Voting Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Voting Member or Representative of the Voting Member, and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this **clause 29** it will be sufficient that any document required to be lodged be received in legible form by email or other electronic transmission if the notice of meeting so permits, and the document is sent to the address and in the form specified in the notice, and the proxy shall be regarded as received at the time of the receipt of the email or other electronic transmission by the Company.

## 30 Validity of Proxies

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A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) The death or unsoundness of mind of the Voting Member or Representative of the Voting Member;
- (b) The bankruptcy or liquidation of the Voting Member or Representative of the Voting Member; or
- (c) The revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation, or revocation at least twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

## 31 Rights of Proxies and Attorneys

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- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 31(c)**, unless a Voting Member or Representative of a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.

- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

## APPOINTMENT AND REMOVAL OF DIRECTORS

### 32 Number and Appointment of Directors

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#### 32.1 Number of Directors

- (a) The Board of Directors shall consist of at least three (3) and up to nine (9) persons who are General Members of the company.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 32.1(a)**.

#### 32.2 Directors

- (a) The Board may by special resolution appoint Directors to the Board at any time to fill the positions provided for **in clause 32.1**.
- (b) A Director shall be a person who will bring skills and experience **to the Board**, as set out in the Nomination Committee Charter, to enable the Board to advance the **Objects of the Company**.

#### 32.3 Term

- (a) This **clause 32.4** operates subject to **clause 32.5**.
- (b) A Director shall hold office for a term of up to three (3) years, but shall be eligible for reappointment for further terms of up to three (3) years each.
- (c) Time spent on the committee of the Incorporated Association does not count towards the term length of a Director under **this clause 32.3**.

#### 32.4 Initial Board

- (a) The initial Board to hold office from Registration:
  - (i) The following Directors shall all be deemed to hold office:
    - (a) Antonio Mileto (Orange City Council);
    - (b) Ian Davison (Cabonne Shire Council); and
    - (c) Heather Ferguson (Blayney Shire Council);
    - (d) Gary Norton;
    - (e) Wayne Davis;
    - (f) Jack Evans; and
    - (g) Donna Galvin.

#### 32.5 Office Bearers

- (a) The Board shall, at the first meeting of the Board held after Registration and

thereafter at the first meeting of the Board held after an Office Bearer has retired, elect from among the Directors sitting on the Board at the time of the Board meeting:

- (i) the Chair;
  - (ii) the Deputy-Chair; and
  - (iii) such other Office Bearer positions as the Board deems necessary from time to time.
- (b) The Office Bearers shall hold office for a term of one (1) year but shall be eligible for reappointment for terms of one (1) year each, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.

### **33 General Right to Act Despite Vacancy**

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The Board may act despite any vacancy in its body but if its number falls below the minimum fixed in accordance with **clause 32.1**, the Board may act for the purpose of:

- (a) convening a general meeting; and
- (b) in emergencies but for no other purpose.

### **34 Vacation of Office**

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- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
  - (i) dies;
  - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (iii) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
  - (iv) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
  - (v) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
  - (vi) is removed from office by the Company in general meeting;
  - (vii) resigns by notice in writing to the Company; or
  - (viii) is absent without permission of the Board from half (1/2) of the meetings of the Board in a Financial Year.

### **35 Filling of Vacancies on the Board**

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- (a) In the event of a casual vacancy occurring on the Board:
  - (i) in relation to a Director vacancy, the Board shall appoint by special resolution any person to fill the vacancy in accordance with **clause 32.5**.

- (b) Any Director appointed pursuant to **clause 35(a)(i)** shall hold office for the balance of the term of the **vacating Director**.

### **36 Office Bearer Vacancies**

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- (a) In the event of a vacancy occurring in the position of Chair, the Deputy-Chair shall assume office as acting Chair for the balance of the term of the vacating Chair.
- (b) In the event of a vacancy occurring in the position of Deputy-Chair (including as described in **clause 32.5**), the Board at its next meeting shall appoint a Director who is not Chair to assume office as acting Deputy-Chair for the balance of the term of the vacating Deputy-Chair.
- (c) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- (d) Nothing in **clause 35** permits any person to simultaneously hold more than one position of Office Bearer.

### **37 Alternate Directors**

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Alternate Directors shall not be permitted.

## **POWERS AND DUTIES OF DIRECTORS**

### **38 Duties of Directors**

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- (a) Each Director is subject to, and must comply at all times with, the duties set out in governance standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with governance standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

### **39 Powers of Directors**

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The control, management and conduct of the Company shall be vested in the Board, who shall exercise all such powers of the Company as are not by the Corporations Act, the ACNC Act, the ACNC Regulation or by this Constitution required to be exercised in any other manner.

#### **40 Negotiable Instruments**

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All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, requests or arrangements for electronic fund transfers and receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) A Director(s);
- (b) The Secretary; or
- (c) Another staff member of the Company to sign such instruments.

#### **41 Conferment of Powers**

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- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 41** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

### **DIRECTORS' DISCLOSURE OF INTEREST**

#### **42 Contracts**

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- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:
  - (i) the Corporations Act; or
  - (ii) the ACNC Regulation,which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 42(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
  - (i) not be present while the matter is being considered at a meeting;
  - (ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (iii) not vote on the matter;
  - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (v) not vote in respect of, or in respect of any matter arising out of, the

contract or arrangement or proposed contract or arrangement.

- (d) A Director's failure to make disclosure under this **clause 42** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

## **PROCEEDINGS OF DIRECTORS**

### **43 Meetings of Directors**

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- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than six (6) times each calendar year.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Director or Secretary must have used his or her best endeavours to ensure that the notice was properly provided.
- (c) Notice of a meeting of the Board must be in writing in any form, including email or digital messaging, provided that proof of service can be provided upon request.
- (d) Subject to **clause 43(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 43(d)**, must be of a type that is available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

### **44 Quorum**

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- (a) The quorum necessary for the transaction of the Board's business is three (3) Directors being personally present.
- (b) A quorum must be present at all times during the meeting in order for business to be transacted.

#### **45 Chairperson**

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- (a) The Chair shall be the Chairperson.
- (b) The Chair shall, if present, preside as Chairperson of every meeting of the Board.
- (c) If a meeting of the Board is held and the Chair is:
  - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
  - (ii) if present, does not wish to chair the meeting then the following person will be Chairperson in lieu of the Chair in the order of availability set out below:
    - (A) Deputy-Chair; and
    - (B) another Director chosen by the Directors present at the meeting.

#### **46 Voting**

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- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In the case of an equality of votes at a meeting of the Board, the Chairperson is entitled to a casting vote in addition to a deliberative vote.

#### **47 Resolutions by Directors**

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- (a) The Board may pass a resolution without a Board meeting being held if a majority of the Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (d) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 47** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.
- (e) Any decisions made under **clauses 47(a) to 47(d)** shall be tabled at the next Board meeting.

#### **48 Committees**

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- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and/or other persons as it thinks fit and may from time to time revoke such delegation.
- (b) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (c) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (d) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (e) A minute of all the proceedings and decisions of every Committee shall be made, entered, and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

#### **49 Validation of Acts of Directors**

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All acts done:

- (a) At any meeting of the Board; or
  - (b) By any person acting as a Director;
- shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

### **MINUTES**

#### **50 Minutes**

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- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act) for the purposes of recording:
  - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
  - (ii) all orders, resolutions, and proceedings of general meetings and of meetings of the Board and of Committees; and
  - (iii) such matters as are required by the Corporations Act, the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including, without limitation, all declarations made, or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.



- (c) Such minutes shall be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

## **SECRETARY**

### **51 Appointment and Tenure**

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- (a) There must at all times be at least one (1) Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may replace any Secretary so appointed.

## **BY-LAWS**

### **52 By-Laws**

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- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Members all By-Laws, amendments, and repeals.

## **EXECUTION OF DOCUMENTS**

### **53 Execution of Documents**

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- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - i. two (2) Directors signing the same; or
  - ii. one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

## ACCOUNTS AND INSPECTION OF RECORDS

### 54 Financial Year

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The Company's financial year shall be the Financial Year.

### 55 Accounts and Inspection

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The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act, the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act or ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act or the ACNC Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Members.

## NOTICES

### 56 Service of Notices

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- (a) A notice may be given by the Company to any Member by:
  - i. serving it on the Member personally;
  - ii. sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
  - iii. facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
  - iv. sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Subject to this Constitution, a notice may be given under this Constitution to any Director by:
  - i. serving it on the Director personally;
  - ii. sending it by post to the Director or leaving it at the Director's usual residential or business address; or
  - iii. sending it to the facsimile number supplied by the Director to the Company for the giving of notices; or
  - iv. sending it to the electronic address supplied by the Director to the Company for the giving of notices.
- (d) Subject to this Constitution, a notice may be given by a Member or Director to the Company by:
  - i. serving it on the Company at the Office;

- ii. sending it by post to the Office;
  - iii. facsimile to the Company's principal facsimile number; or
  - iv. email to the Company's principal email address.
- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the third (3<sup>rd</sup>) Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (f) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent.
- (g) A notice may be given by the Company to the persons entitled to Membership in consequence of the death or bankruptcy of a Member by:
- i. service on the Member personally;
  - ii. sending it by post addressed to the person by name or by the title of the representative of the deceased or person of unsound mind or the assignee of the bankrupt or by any like description at the address, if any, within Australia, supplied for the purpose by the person claiming to be entitled; or
  - iii. by giving the notice in any manner in which the same might have been given if the death, unsoundness of mind or bankruptcy had not occurred.
- (h) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

## WINDING UP

### 57 Winding Up

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#### 57.1 Surpluses

- (a) If any surplus remains following the winding up of the Company, they will be given or transferred to another institution(s) or corporation(s) which has (have):
- (i) objects which are similar to the Objects and is charitable;
  - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
  - (iii) a constitution which prohibits it from paying or distributing its income and property among its members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) If a Body Corporate Member satisfies the requirements under **clause 57.1(a)**, it may receive the surpluses under that clause.

#### 57.2 Determination of Recipient

The identity of the institution(s) or corporation(s) referred to in **clause 57.1(a)** is to be determined by **the Directors**, in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

## INDEMNITY

### 58 Indemnity

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To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred in that person's capacity as an Officer or employee of the Company (or former Officer or employee of the Company). However, no such Officer or employee (or former Officer or employee) shall be indemnified out of the funds of the Company under this clause 58 unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
  - i. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
  - ii. in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

### 59 Payment of Indemnity Policy Premium

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- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions before or after the date of the issue of the policy or both) except for:
  - i. a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - ii. a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

### 60 Indemnity to Continue

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The indemnity granted by the Company contained in **clauses 58** and **59** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring before the date of the deletion or modification.

## Annexure A Form of Appointment of Proxy

**Business Enterprise Centre – Central NSW Limited**  
(incorporated under the Corporations Act)

### PROXY FORM

**1. Your details**  
*(Please print your name and address)*

Name: \_\_\_\_\_  
ABN/ACN: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_  
Country: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**2. Appoints**

Name: \_\_\_\_\_  
*(Please print name of proxy)*

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of Business Enterprise Centre – Central NSW Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

**3. Directions**

**4. Signature**

**5. Date**



## EXPLANATION OF INTENDED EFFECT

# Agritourism and small-scale agriculture development

Proposed amendments to support farm businesses and regional economies

March 2021



NSW Department of Planning, Industry and Environment | [dpie.nsw.gov.au](http://dpie.nsw.gov.au)

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## About this explanation of intended effect

This explanation of intended effect (EIE) has been prepared for the purposes of section 3.30 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

It is presented in four parts:

- Part 1 – Executive summary
- Part 2 – Context
- Part 3 – Proposed amendments
- Part 4 – Have your say



## Part 1 – Executive summary

### 1.1 This document

This explanation of intended effect (EIE) proposes amendments to the NSW planning system to better enable 'agritourism' and small-scale agricultural development to be approved. It also seeks to respond to natural disasters such as droughts and bushfires, and to simplify planning approvals for development or activities that have no or low environmental impact.

This document outlines the intended effect of proposed amendments to:

- the *Standard Instrument (Local Environmental Plans) Order 2006* (**Standard Instrument LEP Order**),
- the *State Environmental Planning Policy (Primary Production and Rural Development) 2019* (**PPRD SEPP**), and
- the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (**Codes SEPP**).

### 1.2 Background

In recent years, NSW farmers and farming communities have faced many challenges including prolonged drought, land fragmentation and declining terms of trade. This year alone, farming communities have had to deal with unprecedented bushfires and economic impacts arising from COVID-19 including travel and trade restrictions, cancellation of regional events, and temporary closure of local businesses.

The NSW Government is committed to supporting the recovery and resilience of our regional communities and farming by growing emerging industries that are supplementary to, or based on, agriculture. One such industry is agritourism, which will help to strengthen rural communities as travel restrictions ease across NSW.

Agritourism is a tourism-related experience or product that connects agricultural products, people or places with visitors on a farm or rural land for enjoyment, education, or to participate in activities and events. Agritourism activities enable farmers to diversify their income from farming businesses while maintaining primary production on the land as the principal use.

The NSW Government is seeking comment on proposals recommended by stakeholders to:

- broaden the types of agritourism activities that can be undertaken and provide approval pathways tailored to the scale and types of activities,
- support farmers during times of hardship or following natural disaster events,
- reduce land use conflict by providing clearer rules and better managing environmental and social impacts, and
- clarify current planning controls and expand approval pathways for certain agricultural activities.

The proposed amendments are underpinned by the principle of no or low environmental impact.

## 1.3 What is proposed

Informed by the NSW Government's *Making Business Easier Program* and a wider agritourism project led by the NSW Small Business Commission and Service NSW, the following amendments are proposed to the NSW planning system to facilitate agritourism:

- **farm stay accommodation** – to support more farm stay accommodation amendments are proposed to the existing definition of 'farm stay accommodation'
- **farm events** – to remove existing barriers and support farm events amendments are proposed to introduce a new definition for 'farm events'
- **farm gate activities** – to enable farm gate businesses to be established amendments are proposed to introduce a new definition for 'farm gate activities'

Fast track approval pathways, known as exempt and complying development, will also be established for these types of agritourism.

Comment is also sought on the following proposals to facilitate or improve approval pathways for low-impact agricultural activities:

- **small-scale processing plants** – allow establishment of these plants as complying development for meat, dairy and honey where certain development standards are met
- **rebuilding of farm infrastructure** – allow reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to same size and contemporary building standards
- **stock containment areas** – update and rationalise existing planning controls to reflect current practice, and ensure stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses
- **farm dams** – clarify terminology used in the planning system and provide a consistent approval process across the state
- **biosecurity for poultry farms and pig farms** – update development standards to align with separation distances required under biosecurity standards
- **setbacks for rural dwellings** - review controls that allow dwellings on rural lots as complying development to ensure there is sufficient separation from adjacent primary production enterprises
- **recreational beekeeping** – providing an exempt development pathway for recreational beekeeping to improve certainty.





## Part 2 – Context

### 2.1 Background

With changes in markets, diminishing wholesale returns from traditional agricultural production and the seasonal nature of many agricultural industries, some traditional farms can no longer remain viable by simply producing food or fibre for wholesale markets. The planning system seeks to protect agricultural land and secure it as a resource for food production for future generations. There is scope for the planning framework to better support farmers' ability to innovate and diversify from purely primary production to other forms of value adding or complementary agribusiness.

Agritourism involves visiting a farm or food related business for enjoyment and education or to participate in activities and events. Agritourism is a growing sector of both the Australian and NSW economies, worth more than \$2 billion in NSW in 2014–15<sup>1</sup> and is expected to be worth \$18.6 billion in Australia by 2030, up from \$10.8 billion in 2018.<sup>2</sup> In 2019, Australians took 4.7 million trips to a farmgate, winery, brewery or distillery in a regional destination.<sup>3</sup>

Farmers are increasingly seeking options to diversify their income stream or value-add to their core agricultural business to make it more resilient, profitable and attractive to a new generation of farmers. The current regulatory and land use planning framework for these options can be complicated, costly and challenging for farmers to navigate.

Certainty, confidence and consistency in the planning framework will support investment in agritourism. A robust and flexible land use planning framework can provide strategic direction and a streamlined and efficient process for facilitating land uses that supplement agricultural industries.

In addition to agritourism, the department has identified other changes that could be made to reduce red tape and make it easier to use for farmers, particularly those running small-scale operations.

The NSW Government is committed to supporting economic development and job creation for NSW farms through a range of initiatives including simplifying land use definitions and development approval processes.

The proposed changes outlined below recognise the significance of agricultural industries and seek to:

- support investment in farms seeking supplementary incomes through other uses on the land
- facilitate a simple and streamlined approach to gaining approval for uses supplementary to primary production
- support farmers during times of hardship and following disaster events
- reduce land use conflict.

---

<sup>1</sup> NSW Department of Primary Industries, *NSW Agribusiness Positioned for prosperity*, Deloitte Access Economics report for the NSW Department of Primary Industries, July 2019,

[https://www.dpi.nsw.gov.au/data/assets/pdf\\_file/0009/691191/Positioned-for-prosperity\\_final.pdf](https://www.dpi.nsw.gov.au/data/assets/pdf_file/0009/691191/Positioned-for-prosperity_final.pdf).

<sup>2</sup> CSIRO, *Growth opportunities for Australian food and agribusiness: Economic analysis and market sizing*, 2019, <https://www.csiro.au/en/Do-business/Futures/Reports/Ag-and-Food/Opportunities-for-Food-and-Agribusiness>.

<sup>3</sup> Tourism Research Australia, *Wineries, Breweries, Distilleries, Farmgates*, Headline Stats for 2019.

## 2.2 Consultation and collaboration

### 2.2.1 Making Business Easier

The NSW Small Business Commission in collaboration with Service NSW has undertaken a program to help farmers diversify as part of the NSW Government's *Making Business Easier* program. Diversification is especially important in times of drought where land typically reserved for productive use is unable to generate enough income through its primary activities. It also supports the continued sustainability of agriculture in rural areas.

The department has worked with the commission to identify simplified pathways to establish low impact agritourism businesses on farms, including farm stay accommodation, farm tours, roadside stalls, farm events and retail on farms. This work aligns with the department's commitment to reduce red tape and make the planning system easy to use.

#### What is 'agritourism'?

'Agritourism' is a tourism-related experience or product that connects agricultural products, people or places with visitors on a farm or rural land for enjoyment, education, or to participate in activities and events.

Agritourism activities include direct shopfront outlets with produce tastings, regional markets, farm and winery tours, cooking classes, food and wine festivals, farm stays, restaurants sourcing local produce, self-picking experiences and farm gate sales. The term also covers farm-stay, camping and other on-farm accommodation, farm tours and activities, and events based on farms for their scenic quality, such as weddings.

More broadly, agritourism allows regional economies to showcase what's special about the region, its unique growing conditions and natural resources and provides a visitor draw card from which other regional tourism businesses and experiences can benefit.

Service NSW has conducted research that identified challenges in the current planning regime for aspirational agri-entrepreneurs.<sup>4</sup> Many regional businesses have experienced difficulties in setting up agritourism businesses as:

- there is a lack of guidance to understand the planning approvals required
- it can be costly and time consuming to obtain approval
- some requirements have not kept up with contemporary practices
- some existing land use definitions and standards are inappropriate for the proposed use.

There is also variability in how the planning system is applied across NSW. This variation often relates to historical land use planning approaches and is not necessarily justified by regional differences or reflective of modern agricultural businesses.

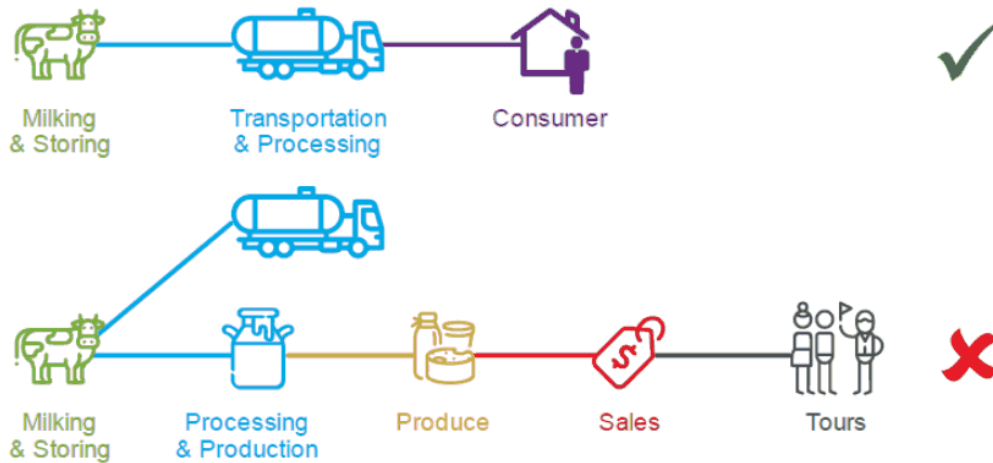
Figure 1 illustrates the variation between the permissibility of a traditional supply chain compared with agritourism activities, approval for which may vary for land with the same zoning in adjoining local government areas.

For example, two farmers can have cows, milk the cows and send the milk off site for processing, as intensive livestock agriculture is permitted. However, if they want to turn some milk into cheese, sell it on the property and provide tours, there may be different local environmental planning controls in place, which mean different rules apply to each farmer. On one side of the fence the farmer may be able to undertake the additional activities, but these may not be permitted on the other side because of local regulations. The activities could also be categorised, in planning terms,

<sup>4</sup> Service NSW and NSW Small Business Commissioner, *Starting and running an agritourism business: Farmers' experiences and needs*, December 2019.

as covering a range of different uses including retail, artisan food and drink, light industry, eco-tourism, and information and education premises.

Figure 1 - Traditional supply chain compared with agritourism activities





## Part 3 – Proposed amendments

### 3.1 Overview

The department is proposing amendments to existing controls within the planning system to facilitate more agritourism and small-scale agricultural developments, while balancing the need for individual councils to respond to different environmental and development settings.

The proposed changes include:

1. **Farm stay accommodation:** amending the existing definition for farm stay accommodation in the Standard Instrument LEP Order
2. **New land use terms:** introducing two new land use terms for farm gate activities and farm events in the Standard Instrument LEP Order. Including the new term in the Standard Instrument LEP Order will automatically introduce the term into all Standard Instrument LEPs
3. **New optional LEP clauses** - introducing new optional clauses for farm stay accommodation and farm gate activities that councils can apply where a development application is required
4. **New approval pathways** - providing exempt and complying development approval pathways in the Codes SEPP for agritourism activities where certain development standards are met
5. **Small-scale processing plants** - allowing the establishment of small-scale processing plants as complying development for meat, dairy and honey where certain development standards are met
6. **Rebuilding of farm infrastructure** - allowing the reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to the same size and contemporary building standards including the Building Code of Australia and relevant Australian Standards.
7. **Stock containment lots** - updating and rationalising existing controls for stock containment lots to reflect current practice, and ensuring stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses.
8. **Farm dams** - clarify terminology used in the planning system and provide a consistent approval process across the state
9. **Biosecurity** - updating development standards for poultry farms and pig farms to align with separation distances required under biosecurity standards
10. **Rural dwelling setbacks** - updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises.
11. **Recreational beekeeping** – providing exempt development pathway for recreational beekeeping to improve certainty

These changes will allow small-scale agritourism development and other small-scale agricultural activities to occur on land where the primary use of the land is agriculture. Recognising the seasonal nature of some agricultural uses of land and the variability of the Australian climate, the proposals will also allow agritourism activities on farms that are not currently producing for reasons outside the landowner's control such as prolonged drought. The changes are not intended to enable hobby farmers or other recreational farmers to establish agritourism businesses.

#### 3.1.1 Simplified planning pathways

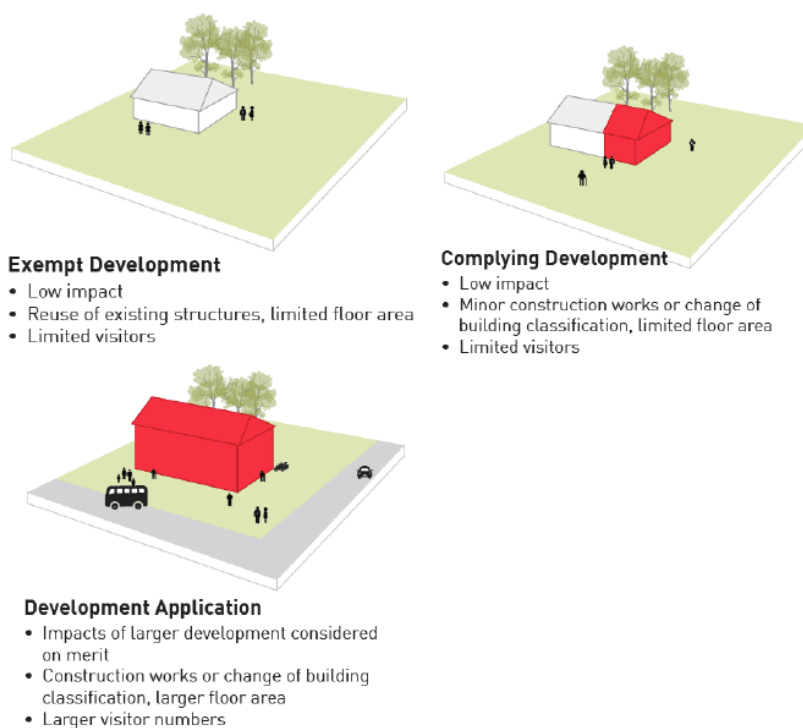
As illustrated in Figure 2 below, exempt development is minor, low impact development that can be undertaken without the need for planning or building approval if the work complies with specified development standards. Complying development is a combined planning and construction



approval for straightforward development that can be determined through a fast track assessment by a local council or a registered certifier. Complying development must also meet specified development standards.

Some councils have already simplified their planning requirements at a local level. The new exempt and complying development will allow more activities and development of low environmental impact on farms to gain planning approval quickly across NSW. Proposed new development standards will ensure development is at a scale appropriate for the agritourism or agricultural activity with minimal impacts on the surrounding land and amenity. Where these standards cannot be met, a landowner can lodge a development application with the local council.

**Figure 2 - Illustration of development approval pathway thresholds (indicative only)**



### 3.2 Farm stay accommodation

A key aspect of an agritourism business is the provision of on farm accommodation. It is also critical to the tourism industry in some regions. On farm accommodation:

- encourages tourism to locations that cannot be reached by day trip from major centres
- encourages longer stays
- can utilise existing assets – such as farm workers' accommodation or large homesteads
- can provide ancillary income for a business – particularly where the business is seasonal or affected by weather conditions
- allows visitors to understand and engage with the area in greater depth than can be offered by day visits. It is often coupled with activities within the property
- facilitates recreation, entertainment and/or educational experiences to visitors
- supports increased awareness of agriculture and an improved connection between food

production and consumption.

#### **Current Definition (Standard Instrument LEP)**

*'farm stay accommodation'* means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

### **3.2.1 Proposed amendments**

The changes propose to amend the existing definition of farm stay accommodation to recognise that farming activities may fluctuate seasonally (particularly during periods of drought) and to broaden the use to include camping.

To ensure farm stay accommodation remains a low impact use, an optional clause is proposed that councils can choose to adopt, with development standards councils can tailor to suit local conditions.

Exempt and complying development pathways have been developed to allow some building works, the change of use of existing buildings to farm stay accommodation and some camping opportunities without the need for a development application as long as the development standards are met.

#### **3.2.1.1 Proposed definition**

It is proposed to amend the existing definition of farm stay accommodation in the Standard Instrument LEP Order to:

- remove the references to working farm and secondary business as these requirements are restrictive for farms that operate on a seasonal basis and are not typically planning considerations
- replace these references with a requirement that the existing principal use of the land must be the production of agricultural/primary production goods for commercial purposes to ensure a farm stay supplements an existing commercial farming business
- enable farm stay accommodation on a farm that is currently not producing goods because of drought or similar events outside the landowner's control
- include accommodation in a building and camping (camping is currently not included under farm stay accommodation). It is proposed to amend the definitions of camping ground and caravan park to exclude tents, campervans and caravans erected on land for the purposes of farm stay accommodation. This is intended to facilitate small-scale camping being undertaken on a farm as exempt development (described below).

Amending the definitions in the Standard Instrument LEP Order will amend the definitions in all Standard Instrument LEPs.

#### **3.2.1.2 Permissibility**

Farm stay accommodation will continue to be permissible with consent wherever councils currently identify it as permissible with consent in their LEPs.

#### **3.2.1.3 Approval Pathways**

The proposed approval pathways for farm stay accommodation are exempt development, complying development and lodging a development application. The approval pathway will depend on the type of development proposed, as shown in Table 1.

**Table 1 - Summary of proposed approval pathways for farm stay accommodation**

Approval pathway	Proposed development	Approval required
Exempt development	<ul style="list-style-type: none"> <li>Change of use of an existing dwelling or part of a dwelling</li> <li>Use of land for farm stay accommodation in tents, caravans or similar</li> </ul>	No planning or building approval required if specified development standards are met
Complying development	<ul style="list-style-type: none"> <li>Change of use of an existing building or manufactured home</li> <li>Erection, alteration or addition to a building or manufactured home</li> </ul>	A fast-tracked approval can be issued by the local council or a registered certifier if specified development standards are met
Development application	<ul style="list-style-type: none"> <li>Any proposal that does not satisfy the requirements for exempt and complying development</li> </ul>	The local council will undertake a merit assessment of the proposal and issue a development consent if approved

Further details about these proposed approval pathways and the proposed development standards for each pathway are explained below.

#### Exempt development

##### **Change of use of an existing dwelling or part of a dwelling**

It is proposed to allow the change of use of an existing dwelling or part of a dwelling (including rural workers dwelling and secondary dwellings) on rural zoned land as exempt development for the purpose of farm stay accommodation where it has been lawfully constructed and introduce the following development standards:

##### **Maximum guests**

- allow up to two persons aged over 12 per bedroom

##### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

##### **Use of land for farm stay accommodation**

It is proposed to allow the use of land for farm stay accommodation as exempt development where visitors reside in tents, caravans, campervans or other similar portable and light weight temporary shelters on rural zoned land and introduce the following development standards:

##### **Operational requirements**

- the use must be permissible with consent under council's local environmental plan
- allow up to 20 persons in any tents, caravans, campervans or other similar portable and light weight temporary shelters at any one time on the landholding for up to 14 days
- unoccupied caravans, campervans and tents are not to remain on the land after 24 hours

#### Location and size

- a tent must not be installed closer than 6 metres to any building, caravan, annexe or campervan or closer than 3 metres to any other tent
- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*
- the development cannot occur on land that is bush fire prone land

#### Setbacks

- the minimum following setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation may have the same setback
- a setback of 100 metres from any waterway

#### Waste management

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed
- if human waste storage devices are proposed, these devices must not be emptied on sites without reticulated sewerage.

#### Complying development

##### Change of use of an existing building or manufactured home

It is proposed to enable a change of use of an existing building or manufactured home to farm stay accommodation on rural zoned land as complying development under the Codes SEPP. The following development standards are proposed:

##### **Use, number of buildings and size**

- the current use must be a lawful use
- maximum one dwelling per 15 hectares, to a maximum of six dwellings on a landholding
- the new use must not be carried out at premises that are a moveable dwelling or associated structure (except for a manufactured home), temporary structure, or tent
- maximum floor area of the development must be 60 square metres

##### **Bush fire prone land and flood control lots**

- the development must comply with the flood control lots requirements in the Codes SEPP (clause 3D.7) if the building is on this type of land
- the development must not be a type that requires a bush fire safety authority under section 100B of the *Rural Fires Act 1997* because it is on bushfire prone land.

##### **Setbacks**

- the minimum setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres

- other intensive livestock agriculture – 500 metres
- intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres

or 250 metres from the boundary with the other use, whichever is greater

- if an existing dwelling has a setback from another use that is less than these setbacks or is less than 250 metres from the boundary, the farm stay accommodation may have the same setback

#### **Services**

- if water supply or sewerage services (or both) is to be provided by a water utility, the applicant must obtain written advice that specifies the works or other requirements to be completed from the relevant water utility

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

Note: Farm stay accommodation is a type of 'tourist and visitor accommodation' under the SILEP Order. Under the *Rural Fires Act 1997*, development for the purpose of tourist accommodation cannot be undertaken as complying development on bush fire prone land.

#### **Erection, alteration or addition to a building or manufactured home**

It is proposed to enable the **erection, alteration or addition to a building or manufactured home** as complying development on rural zoned land to be used for farm stay accommodation. The following development standards are proposed:

#### **Use, location and size**

- any structure constructed or converted for the purpose of farm stay accommodation cannot be used as a dwelling without consent
- the erection of a new building or manufactured home for farm stay accommodation must be within 300 metres of the existing dwelling
- maximum height of 6 metres
- for a new building or manufactured home, a maximum floor area that is the greater of the standard in the relevant LEP or 60 square metres
- maximum one dwelling per 15 hectares, to a maximum of six dwellings on a landholding
- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*

#### **Setbacks**

- side setback of the existing dwelling on the land or 200 metres, whichever is less
- the minimum following setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres

or 250 metres from the boundary with the other use, whichever is greater



- if an existing dwelling has a setback from the other use that is less than these setbacks or is less than 250 metres from the boundary, the farm stay accommodation may have the same setback

#### Services

- the development cannot occur on unsewered land to which *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* applies, if that development will result in an increase to the number of bedrooms on the site or in a site disturbance area of more than 250 square metres or in any other drinking water catchment identified in any other environmental planning instrument

#### Waste management

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

#### Development application

Where a proposal for farm stay accommodation does not satisfy the requirements for exempt or complying development, a development application can be lodged with the local council. To appropriately consider the impact of farm stay accommodation where development consent is required, an optional clause is proposed that councils can choose to include in their LEPs which:

- includes objectives to:
  - allow for small scale tourism and commercial uses that complement the agricultural use of the land
  - balance the impacts of tourism and commercial uses on the environment, infrastructure and adjoining land uses
- provides the following requirements for farm stay accommodation:
  - allow the number of people accommodated in any buildings/manufactured homes to be three times the number of bedrooms permitted under clause 5.4(5) of the council's LEP, or the number the council specifies in its LEP
  - allow the number of persons in any tents, caravans, campervans or other similar portable and light weight temporary shelters on the landholding to be 20 at any one time for up to 14 days
  - require the maximum floor area of any new building to be 75 square metres or the number the council specifies in its LEP (which must be not more than 75 square metres).

It is also proposed to amend clause 2.6 of the Standard Instrument LEP Order to prevent the creation of a dwelling entitlement in relation to farm stay accommodation. This is intended to preclude the fragmentation of prime agricultural land.

#### 3.2.2 Farm stay accommodation - consultation questions

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?

4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.



Photo courtesy of Smith and Tzannes Architecture and Urban Planning

### 3.3 Farm gate activities

Farm gate is a common term used where value is added to a farm's produce and there is an interaction with the farm by the purchaser of the goods. Farm gate activities may include appropriate infrastructure to enable on-farm dining or entertainment.

Farm gate activities are in keeping with the surrounding agricultural landscape, community and region. These activities can also protect farming from encroachment by non-agricultural or conflicting uses by strengthening the value of the agricultural activity itself.

Landholders are generally unable to process and sell retail products produced on a farm under existing planning requirements.

The proposed changes will make it easier for farmers to gain approval and establish businesses associated with their agricultural production activity. Farm gate activities vary significantly, from selling apple pie on a farm where the apples are grown on the property, to developing a cidery on a farm which uses ingredients predominantly grown in the surrounding area.

It is proposed to introduce a new land use term 'farm gate activities' into the Standard Instrument LEP Order to provide greater opportunities for landowners to showcase the agricultural produce from their land or the surrounding area through retail sales, a small restaurant or café, or tastings and workshops.

To ensure farm gate activities remain low intensity uses, an optional clause is proposed that councils can choose to adopt and tailor to suit local conditions.

Exempt and complying development pathways have also been developed to allow streamlined approval pathways for farm gate activities on certain land. This will allow some building works as complying development, changing the use of existing buildings to farm gate activities and erecting a roadside stall as exempt development.

### 3.3.1 Proposed amendments

#### 3.3.1.1 Proposed definition

It is proposed to introduce a new land use term in the Standard Instrument LEP Order for farm gate activities which includes:

- a. the processing, packaging and sale of agricultural produce, or
- b. a restaurant or café, or
- c. facilities for the holding of tastings, workshops or providing information or education to visitors

for agricultural produce grown on the farm or predominantly grown in the surrounding area.

The proposed definition will make it clear that the principal use of the land must be the production of agricultural goods for commercial purposes. The proposed new term will also enable farm gate activities where the farm is currently not producing goods because of drought or similar events outside the landowner's control.

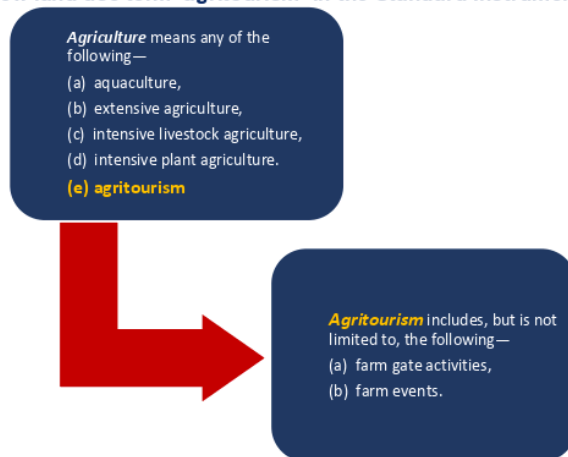
#### 3.3.1.2 Permissibility

It is proposed to create a new land use term 'agritourism' in the Standard Instrument LEP Order and farm gate activities will be a subset of this new term. It is further proposed that 'agritourism' will be a subset of the existing land use term 'agriculture'.

Additional proposals include existing terms in the Standards Instrument LEP Order, 'roadside stall' and 'cellar door premises', to become subsets of the new 'farm gate activities' term.

These changes mean that farm gate activities will initially be permissible in all LEPs wherever 'agriculture' is currently permissible. Councils can then permit farm gate activities in additional zones, such as zones in which existing land uses, e.g. roadside stalls, are currently permitted. Roadside stalls and cellar door premises will continue to be permissible where they are currently permitted, as well as being permitted wherever 'agriculture' is permissible.

Figure 3 - Proposed new land use term 'agritourism' in the Standard Instrument LEP Order



Note: This is indicative only and subject to change in response to feedback received during exhibition

#### 3.3.1.3 Approval pathways

The proposed approval pathways for farm gate activities are exempt development, complying development and lodging a development application. The approval pathway will depend on the type of development proposed, as shown in Table 2.



**Table 2 - Summary of proposed approval pathways for farm gate activities**

Approval pathway	Proposed development	Approval required
Exempt development	<ul style="list-style-type: none"> <li>Use of land for farm gate activities</li> <li>Change of use to a roadside stall</li> <li>Erection of a roadside stall</li> </ul>	No planning or building approval required if specified development standards are met
Complying development	<ul style="list-style-type: none"> <li>Change of use of an existing building</li> <li>Erection, alteration or addition to a building for a farm gate activity</li> </ul>	A fast-tracked approval can be issued by the local council or a registered certifier if specified development standards are met
Development application	<ul style="list-style-type: none"> <li>Any proposal that does not satisfy the requirements for exempt and complying development</li> </ul>	The local council will undertake a merit assessment of the proposal and issue a development consent if approved

Further detail about these proposed approval pathways and the proposed development standards for each pathway are explained below.

### Exempt development

#### Use of land for farm gate activities

It is proposed to allow the use of land for farm gate activities on rural zoned land as exempt development and introduce the following development standards:

#### Operational requirements

- the development must not involve a change of building use
- standard hours of operation to apply – 7.00 am to 7.00 pm Monday to Saturday and 9.00 am to 6.00 pm on a Sunday or a public holiday

#### Setbacks

- the minimum setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres

or 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm gate activity may have the same setback

#### Site location and access

- where development utilises an existing access point to a road, that access point is to have a clear sight distance of 250 metres to an approaching vehicle along the major road or comply with the sight distance requirements of Austroads Guide to Road Design Part 3, Table 5.5
- the development cannot be carried out on land in bush fire attack level-40 or the flame zone

#### Maximum guests

- maximum number of guests is 50 at any one time

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

#### **Change of use to a roadside stall**

It is proposed to allow a change of use to a roadside stall on rural-zoned land as exempt development subject to the existing development standards in clause 2.20B of the Codes SEPP (roadside stalls are currently excluded from these provisions), which include preventing an increase in gross floor area of the building, compliance with existing conditions of development consent relating to hours of operation, noise, car parking, waste management, etc.

#### **Erection of a roadside stall**

It is proposed to allow the erection of a roadside stall on rural zoned land as exempt development and introduce the following development standards:

##### **Building use, location and size**

- the use must be permissible with consent under council's local environmental plan
- maximum footprint 8 square metres
- the development must be located on private property
- the development must not be located adjacent to a classified road

##### **Site access and parking**

- development must use an existing access point to a road and this access is to have a clear sight distance of 250 metres to an approaching vehicle along the road or comply with the sight distance requirements of Austroads Part 3, Table 5.5.
- any parking accommodated on the verge:
  - must be at least 3 metres from any carriageway
  - the verge must be graded
- if parking is not provided on the verge, it must be provided within the boundary of the property and cars must be able to access and leave the property in a forward direction
- maximum one roadside stall per land holding

##### **Waste Management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

Note: Approval from the roads authority is required for any new access driveway.

#### **Complying development**

##### **Change of use of an existing building**

It is proposed to allow the **change of use of an existing building** to a farm gate activity premises on rural zoned land as complying development and introduce the following development standards:

##### **Use, location and size**

- the current use must be a lawful use
- the new use must not be carried out at premises that are a manufactured home, moveable dwelling or associated structure, temporary structure, tent
- maximum 200 square metre footprint for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events

#### **Maximum guests**

- maximum number of guests is 50 at any one time

#### **Setbacks**

- the minimum following setbacks from any adjoining established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres
- or 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm gate activity may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

#### **Services**

- if water supply or sewerage services (or both) is to be provided by a water utility, the applicant must obtain written advice that specifies the works or other requirements to be completed from the relevant water utility

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

#### **Erection, alteration or addition to a building for a farm gate activity**

It is proposed to allow the **erection, alteration or addition to a building for a farm gate activity** on rural zoned land as complying development and introduce the following development standards:

#### **Building location and size**

- maximum 200 square metres for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events provide that a road setback is not required for structures with a floor area less than 12 square metres and height up to 3.5 metres and which are for the sale of goods or produce (roadside stalls)
- maximum height:
  - 7 metres for landholding 4000 square meters to 10 hectares
  - 10 metres for landholding greater than 10 hectares
- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*

#### **Maximum guests**

- maximum number of guests is 50 at any one time

#### **Setbacks**

- the minimum following setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres

or 250 metres from the boundary with the other use, whichever is greater

- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm gate activity may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

#### **Services**

- the development cannot occur on unsewered land in the Sydney drinking water catchment if it will cause a site disturbance area of more than 250 square metres, or in any other drinking water catchment identified in an environmental planning instrument

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

#### **Development application**

Where a proposal for farm stay accommodation does not satisfy the requirements for exempt or complying development, a development application can be lodged with the local council. To appropriately consider the impact of farm gate activities where development consent is required, an optional clause that councils can adopt in their LEPs is proposed which will:

- introduce objectives:
  - to allow for small scale tourism and commercial uses that complement the agricultural use of the land
  - to balance the impacts of tourism and commercial uses on the environment, infrastructure and adjoining land uses
- introduce the following standards:
  - a. the gross floor area must not exceed 200 square metres or the number the council specifies in its LEP (which must be not less than 200 square metres)
  - b. the maximum number of people is not to exceed 50 at any one time or the number the council specifies in its LEP (which must be not less than 50)
  - c. despite a., if a structure is a roadside stall, the maximum floor area must not exceed 8 square metres or the number the council specifies in its LEP (which must be not less than 8 square metres).

#### **3.3.2 Farm gate activities - consultation questions**

5. How far do you think a roadside stall should be setback from the road?
6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?





Photo courtesy of Smith and Tzannes Architecture and Urban Planning

### 3.4 Farm events

The ability to hold rural events can allow farmers to diversify and value add to their agricultural business. In addition to the direct benefits to agricultural business, rural events can have a far-reaching supply chain benefit to the surrounding economy. For example, if a farm can host a wedding, beyond just the hiring of a venue on a farm, the event can result in hiring of local accommodation services, engagement of event services (such as photographers, stylists and transport), food and drink services, supporting services (gift shops, child minding) and facilities services (party hire, mobile toilet hire etc).

There are limited land use terms in the planning system that enable rural events. Applicants can rely on the definition in the Standard Instrument LEP Order for 'function centre' or use the temporary use of land clause in the Standard Instrument LEP Order (clause 2.8) to seek development consent. Including a definition for events on farms will provide greater certainty around where such development can take place.

It is proposed to introduce a new land use term 'farm events' into the Standard Instrument LEP Order to allow events, tours, functions and conferences on land used for agriculture.

The proposed definition will also enable farm events on a commercial farm that is currently not producing goods because of drought or similar events outside the landowner's control.

Exempt and complying development pathways have been developed to allow streamlined approvals for low scale, low impact farm events. The exempt development pathway will only be available for a limited number and scale of events per year and certain development standards must be met. Complying development pathways will allow some building works and a change of use of existing buildings for farm events.

### 3.4.1 Proposed amendments

#### 3.4.1.1 Proposed definition

It is proposed to introduce a new land use term in the Standard Instrument LEP Order to permit events, tours, functions, conferences, fruit picking, horse riding and other similar experiences on land for which the principal use of the land is the production of agricultural goods for commercial purposes. The definition will also enable farm events on a commercial farm that is currently not producing goods because of drought or similar events outside the landowner's control.

#### 3.4.1.2 Permissibility

It is proposed to create a new land use term 'agritourism' in the Standard Instrument LEP Order and farm events will be a subset of this new term. It is further proposed that 'agritourism' will be a subset of the existing land use term 'agriculture' – see diagram at section 3.3.1.2 Permissibility.

These changes mean that initially, farm events will be permissible in all local environmental plans wherever 'agriculture' is currently permissible. Councils can then permit farm events in any additional zones.

#### 3.4.1.3 Approval pathways

The proposed approval pathways for farm events are exempt development, complying development and lodging a development application. The approval pathway will depend on the type of development proposed, as shown in Table 3.

**Table 3 - Summary of proposed approval pathways for farm events**

Approval pathway	Proposed development	Approval required
Exempt development	<ul style="list-style-type: none"> <li>Use of rural zoned land for farm events</li> </ul>	No planning or building approval required if specified development standards are met
Complying development	<ul style="list-style-type: none"> <li>Change of use of an existing building to farm event premises</li> <li>Erection, alteration or addition to a farm event building</li> </ul>	A fast-tracked approval can be issued by the local council or a registered certifier if specified development standards are met
Development application	<ul style="list-style-type: none"> <li>Any proposal that does not satisfy the requirements for exempt and complying development</li> </ul>	The local council will undertake a merit assessment of the proposal and issue a development consent if approved

Further detail about these proposed approval pathways and the proposed development standards for each pathway are explained below.

#### Exempt development

##### Use of rural zoned land

It is proposed to allow the use of rural zoned land for a farm event that does not involve manufacturing food or drink as exempt development and introduce the following development standards:

##### Operational requirements

- the development must not involve a change of building use
- events must only take place during the following times:

- 7.30 am to 11.00 pm on Monday, Tuesday, Wednesday or Thursday
  - 7.30 am to 12.00 am on Friday or Saturday
  - 8.00 am to 8.00 pm on Sunday
- maximum number of guests and event days per year:
  - 52 event days per year and up to 30 guests per event, or
  - 10 event days per year and up to 50 guests per event
- the event holder is to notify neighbours of an event at least one week before holding the event

#### **Setbacks**

- the minimum setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm accommodation gate activity may have the same setback
- setback at least 50m from any other fence or otherwise marked property boundary
- events that have amplified music or voices, must be located at least 1,000 metres from the nearest existing dwelling house and any building which houses animals including stables, stock yards and poultry sheds, on an adjoining property

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

#### **Complying development**

##### **Change of use of an existing building to farm event premises**

It is proposed to allow a change of use of an existing building to farm event premises on rural zoned land as complying development and introduce the following development standards:

#### **Operational requirements**

- the current use must be a lawful use
- the new use must not be carried out at premises that are a manufactured home, moveable dwelling or associated structure, temporary structure, tent
- events must only take place during the following times:
  - 7.30 am to 11.00 pm on Monday, Tuesday, Wednesday or Thursday
  - 7.30 am to 12.00 am on Friday or Saturday
  - 8.00 am to 8.00 pm on Sunday
- maximum number of guests and event days per year:
  - 52 event days per year and up to 30 guests per event, or
  - 10 event days per year and up to 50 guests per event

#### **Use, location and size**

- maximum 200 square metres for each building and 500 square metre footprint for all buildings used for farm gate activities and farm events

#### **Setbacks**

- the minimum setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metresor 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm event may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

#### **Services**

- if water supply or sewerage services (or both) is to be provided by a water utility, the applicant must obtain written advice that specifies the works or other requirements to be completed from the relevant water utility

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed

#### **Erection, alteration or addition to a farm event building**

It is proposed to allow the erection, alteration or addition to a building that is to be used for a farm event on rural zoned land as complying development and introduce the following development standards:

#### **Operational requirements**

- maximum number of guests and event days per year:
  - 52 event days per year and up to 30 guests per event, or
  - 10 event days per year and up to 50 guests per event
- events must only take place during the following times:
  - 7.30 am to 11.00 pm on Monday, Tuesday, Wednesday or Thursday
  - 7.30 am to 12.00 am on Friday or Saturday
  - 8.00 am to 8.00 pm on Sunday
- the event holder is to notify neighbours of an event at least one week before holding the event

#### **Building location and size**

- maximum footprint of 200 square metres for each building and 500 square metres for all buildings used for farm gate activities and farm events
- maximum height:
  - 7 metres for landholding 4000 square metres to 10 hectares
  - 10 metres for landholding greater than 10 hectares



- the development cannot occur on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*

#### **Setbacks**

- the minimum following setbacks from any neighbouring established or proposed:
  - pig farm, feedlot or poultry farm – 1,000 metres
  - other intensive livestock agriculture – 500 metres
  - intensive plant agriculture, forestry, mines and extractive industries, railway lines and rural industries – 250 metres
- or 250 metres from the boundary with the other use, whichever is greater
- if any existing dwelling has a setback from the other use that is less than these setbacks, or is less than 250 metres from the boundary, the farm event may have the same setback
- setback at least 50 metres from any other fence or otherwise marked property boundary

#### **Services**

- the development cannot occur on unsewered land in the Sydney water catchment if it will cause a site disturbance area of more than 250 square metres, or in any other drinking water catchment identified in an environmental planning instrument

#### **Waste management**

- waste generated must be managed on the site and then disposed of at a waste management facility including the recycling of all recyclables
- putrescible and organic waste may only be disposed of on-site if disposed in a managed composting system where odours and other pollutants are controlled and or managed.

### 3.4.2 Farm events - consultation questions

7. The proposed maximum number of people and events per day for exempt and complying development are:
  - a) 52 event days per year and up to 30 guests per event, or
  - b) 10 event days per year and up to 50 guests per eventAre these appropriate?
8. What events, if any, do you think should be excluded from the definition of farm events?
9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.
  - a) RU1
  - b) RU2
  - c) RU4 zones
  - d) Other zones (please specify)
10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?
11. Is there any rural land or areas in which agritourism activities should not be permitted? If yes, why?



### 3.5 Additional proposed changes relating to agritourism

The following additional changes are proposed to apply existing standards to the agritourism activities and amend existing exempt development standards to better facilitate these activities.

#### 3.5.1 Proposed amendments

**Bush fire prone land:** Apply existing complying development standards in the Codes SEPP for bush fire prone land to buildings used for farm activities or farm events as complying development.

**Business identification signs:** Amend clause 2.83 exempt development provisions of the Codes SEPP to allow business identification signs for farm stay accommodation, farm gate activities and farm events, limited to 4 per landholding and one sign every 2 kilometres.

**Free standing signs:** Amend the Codes SEPP to allow the construction of business identification signs as exempt development that are displayed on a free-standing structure, fixed to the fence adjacent the entry gate or the entry gate. Introduce the following development standards:

- a) the development must not result in more than 3 business identification signs of this type per property
- b) the development must be associated with a farm gate activity use, farm stay accommodation, or farm events use on the land
- c) the development must not be more than 2 metres above ground level (existing)
- d) each sign must not have an area greater than 2 square metres
- e) the development must be constructed and installed in accordance with Australian Standards:
  - i. AS/NZS 1170.0:2002, Structural design actions, Part 0: General principles
  - ii. AS/NZS 1170.2:2011, Structural design actions, Part 2: Wind actions
- f) only one sign may be illuminated and if illuminated must:
  - i. not be animated, flashing or moving
  - ii. comply with AS 4282-1997 Control of the obtrusive effects of outdoor lighting
- g) if the hours of operation of the business identified on the sign have been approved, operate during those hours, or if the hours of operation of the business identified on the sign have not been approved, operate between 7.00 am and 10.00 pm on any day

- h) a sign on rural zoned land advertising a roadside stall may only be located on the same landholding as the roadside stall.

**Verandahs:** Amend clause 2.12 of the Codes SEPP to allow decks, patios, pergolas, terraces and verandahs on the front of buildings in rural zones as exempt development if they are setback 50 metres from the road. This will allow farm gate businesses to provide an area for tastings.



### 3.6 Small-scale processing plants

Amendments to the Codes SEPP are proposed to allow small-scale processing plants associated with agricultural produce industries that process meat, honey and dairy as complying development. The provisions would use the definitions of livestock processing industries and agricultural produce industries contained in the Standard Instrument LEP.

#### 3.6.1 Proposed development standards

Small-scale processing plants would be complying development with the following development standards:

- maximum throughput per annum of:
  - 3 million litres for dairy
  - 4,000 carcasses for pork
  - 1,000 lamb carcasses
  - 100 beef carcasses
  - 4,000 carcasses for poultry
  - 1,000 carcasses for other animals such as deer, kangaroo
- not be used for the processing of skins or wool of animals, or as knackereries, tanneries, woolscours or rendering plants
- must be setback a minimum of:
  - 100 metres from a natural waterbody or wetland
  - 500 metres from the nearest existing dwelling house other than the house located on the property
  - 5 kilometres from a residential zone



- no more than one per property.
- hours of operation 6am to 7pm Monday to Saturday, 8am to 5pm Sunday
- must be a minimum of 500 metres from another existing or proposed poultry or pig production facility.

Note: There are provisions in the EP&A Regulation (Schedule 3) that classify livestock processing industries and agricultural produce industries as designated development by certain locational criteria. Designated development cannot be complying development.

### 3.6.2 Small scale processing plants - consultation questions

12. Should any other agricultural produce industries be complying development? What standards should apply?
13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?
14. Should any additional standards be included?
15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:
  - a) as complying development?
  - b) through the standard DA process?

## 3.7 Rebuilding of farm infrastructure

This year, farming communities were impacted by unprecedented bushfires. A range of amendments were made to planning controls in January and February 2020 to help people affected by the bushfires such as allowing certain activities without planning approval including temporary accommodation, temporary portable offices, temporary storage, and demolition and repair of damaged buildings.

To further assist in efficient recovery following future events, amendments to the Codes SEPP are proposed to allow farm buildings that have been damaged or destroyed by a natural disaster event to be rebuilt as exempt development, if built to a contemporary standard and in the same location. This will benefit farmers that are unable to use the existing exempt development provisions to rebuild farm buildings because of requirements such as minimum setbacks from boundaries.

### 3.7.1 Proposed development standards

Reconstruction of farm buildings is exempt development with the following development standards:

- The structure must have been destroyed or significantly damaged in a natural disaster.
- The structure must be of the same building class under the BCA.
- The structure must have been a lawful structure.
- The structure must be built to current BCA standards.
- The new structure is to be located on the same building footprint as the former structure.
- The height of the new structure must not be greater than the structure that was lost due to a natural disaster.
- The new structure must comply with standards identified under the following provisions except for provisions relating to height and footprint. If it is:
  - a farm building (other than stock holding yards, grain silos, and grain bunkers) it must comply with clause 2.32 of the Codes SEPP
  - a stock holding yard it must comply with clause 2.32B of the Codes SEPP

- o a grain silo or grain bunker it must comply with clause 2.32D, 2.32E, 2.32F of the Codes SEPP.

### 3.7.2 Rebuilding of farm infrastructure - consultation questions

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?
17. Should any additional standards be included?



## 3.8 Stock containment areas

These proposed amendments relate to the construction of stock containment areas to temporarily contain livestock to assist during and immediately after natural disasters, and for routine animal husbandry purposes:

- amendments to implement locational requirements for all stock containment areas in response to impacts some containment areas have had on waterways and the oyster industry
- amendments to simplify clauses 18(2) and (3) of the Primary Production and Rural Development SEPP and update them to reflect current practice
- currently the provisions for stock containment areas and feedlots are spread across the Primary Production and Rural Development SEPP and Standard Instrument LEP. To reduce complexity, options to locate these controls in one place are being explored.

Allow minor permanent infrastructure to be developed without consent for stock containment areas (to contain livestock temporarily, not permanently).

### 3.8.1 Proposed development standards

Development for the purpose of a stock containment area, or other feeding or housing arrangements, for any or a combination of the following purposes:

- to manage stock during or immediately following a drought, flood, fire or similar emergency
- for temporary agistment or housing; or
- for weaning, dipping, tagging, backgrounding or similar husbandry purposes may be carried out without development consent if:

- a) development for the purpose of agriculture may be carried out with or without development consent on the land
- b) there is currently an agriculture land use lawfully occurring on the land
- c) it is not located in an environmentally sensitive area
- d) it is not located within 100 metres of a natural watercourse
- e) it is not located within 500 metres of a residential zone or an adjoining dwelling that is not associated with the development.

### 3.8.2 Stock containment areas - consultation questions

18. What type of permanent infrastructure should be permitted for stock containment areas?

19. What type of permanent infrastructure should not be permitted for stock containment areas?

## 3.9 Farm dams

Farm dams are minor development that is essential for agricultural purposes to provide water for stock, fire protection and irrigation. In areas of NSW (near the Murray River) small farm dams are permitted without consent while in other areas they are considered 'water storage facilities' that often need consent.

There is some inconsistency in terminology used around farm dams in the Standard Instrument LEP, the PPRD SEPP, and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

Stakeholders have suggested the various planning terms and approval pathways that apply across the state could be consolidated to simplify the planning system.

### 3.9.1 Proposed amendments

Clarify terminology used in the SI LEP, PPRD SEPP and EP&A Regulation 2000 and consider providing a consistent approval process.

### 3.9.2 Farm dams - consultation questions

20. How could we simplify planning provisions for farm dams?

## 3.10 Biosecurity for poultry farms and pig farms

Currently, the standards for biosecurity for poultry farms and pig farms in the Standard Instrument LEP (clause 5.18) and PPRD SEPP are not in line with industry standards such as the Best Practice Management for Meat Chicken Production in NSW produced by the NSW Poultry Meat Industry Committee in conjunction with the Department of Primary Industries and other government agencies.

Amendments are proposed to better address biosecurity for poultry farms and pig farms. Biosecurity risks for poultry are negligible up to 10,000 birds, so it is proposed to raise the provisions allowing poultry farms to be developed without consent from 1,000 to 10,000 birds, subject to locational restrictions.

### 3.10.1 Proposed amendments

Clause 5.18 of the Standard Instrument LEP will be amended so that development consent is not required for poultry farms with less than 10,000 birds but only if they are not within:

- 1,000 metres of other poultry farms, or
- 5,000 metres of poultry farms used for the breeding of poultry
- If it is a poultry farm used for the breeding of poultry – 5,000 metres of a poultry farm.

Development consent is not required for pig farms with fewer than 20 breeding sows, or fewer than 200 pigs (of which fewer than 20 may be breeding sows) but only if they are not within 3,000 metres of another pig farm.

Other locational restrictions in clause 5.18 will remain. The PPRD SEPP will be amended to align with these changes.

### 3.10.2 Biosecurity for poultry and pig farms - consultation questions

21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?

22. Should any additional standards be included?

## 3.11 Rural dwelling setbacks from intensive livestock agriculture

Currently, the Codes SEPP requires a setback of 250m for rural dwellings from a boundary with adjoining land being used for any of the following:

- (i) forestry
- (ii) intensive livestock agriculture
- (iii) intensive plant agriculture
- (iv) mines and extractive industries
- (v) railway lines
- (vi) rural industries.

There are concerns that these setbacks may not be large enough to minimise impacts from intensive livestock agriculture on new dwellings.

### 3.11.1 Proposed amendments

In addition to the existing setbacks from boundaries of properties being used for intensive livestock agriculture, the department proposes that rural dwellings have a setback of:

- 1,000 metres from any existing or proposed pig farm, feedlot or poultry farm
- 500 metres from any existing or proposed other intensive livestock agriculture development

The greater separation distance will apply. If these setbacks cannot be complied with, a development application will be required.

These changes to setbacks seek to reduce potential land use conflict without significantly reducing the ability for rural landowners to develop new houses as complying development.

### 3.11.2 Rural dwelling setbacks from intensive agriculture - consultation questions

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when carried out as complying development)?

24. From which point should the setbacks be measured?

- a) From the proposed or existing intensive agricultural use
- b) From the property boundary shared with land used for intensive agriculture
- c) A combination of the above





### 3.12 Recreational Beekeeping

Recreational beekeeping has grown in popularity in recent years, including in urban and metropolitan areas. It can be an interesting and rewarding hobby with minor impacts if managed appropriately.

While commercial beekeeping is defined as a form of extensive agriculture in the Standard Instrument LEP, recreational beekeeping is not defined. This has led to some confusion regarding whether development approval is needed for the activity.

In NSW, beekeepers who own honey bees for more than 3 months during a 12 month period, are required to hold a biosecurity registration under the *Biosecurity Act 2015*. The biosecurity registration requires information on the location, contact person and number of hives on a property and ensures that the Department of Primary Industries can effectively manage any disease outbreaks.

The proposed amendments will clarify that recreational beekeeping is exempt development and does not need planning approval if it complies with certain standards. These standards are in line with the NSW Beekeeping Code of Practice and are designed to avoid inappropriate development and minimise impacts related to such development.

#### 3.12.1 Proposed amendments

Amendments are proposed to the Codes SEPP to permit recreational beekeeping as exempt development if certain development standards are met. Where the development standards cannot be met a development application would be required.

The development:

- Must not be used for a commercial purpose.
- Must not consist of more than:
  - 2 hives for lots up to 300m<sup>2</sup>,
  - 4 hives for lots 300m<sup>2</sup> to 1000m<sup>2</sup>,
  - 8 hives for lots above 1000m<sup>2</sup>,
  - no limit for lots in a rural zone.
- Must not contain any hive within 1m of any lot boundary, or within 3m of any boundary adjoining a public reserve, childcare centre, health services facility, educational establishment or community facility.
- Must be located in a rural, residential, or environmental zone.



- If it is in a residential zone, be located in the rear yard.
- If it is located on bush fire prone land, not be within 5m of a dwelling.

Note: Beekeepers must also comply with the requirements of the *Biosecurity Act 2015*, the Australian Honey Bee Industry Biosecurity Code of Practice and the Beekeeping Code of Practice for NSW.

### 3.12.2 Recreational Beekeeping – Consultation Questions

25. Are the proposed development standards appropriate and are any additional standards needed?

## Part 4 – Have your say

This EIE outlines proposed changes to the NSW Planning System to better support farming businesses and rural and regional areas. The department welcomes your feedback during public exhibition.

Your feedback will help us better understand the views of the community, which will then inform the preparation of the proposed changes to the planning framework.

The department will publish all individual submissions and an assessment report on all submissions received, shortly after the exhibition period has ended.

To view the EIE and supporting documents, and to make a submission online, please follow the steps below:

[www.planningportal.nsw.gov.au/exhibition](http://www.planningportal.nsw.gov.au/exhibition)

- 1) Read our privacy statement and decide whether to include your personal information in your submission.
- 2) Fill in the online submission form. Your submission can either be typed or uploaded as a PDF and should include:
  - a. the name of the proposal (Agritourism and small-scale agriculture development: Proposed amendments to support farm businesses and regional economies)
  - b. a brief statement on whether you support or object to the proposal
  - c. the reason why you support or object to the proposal.
- 3) Ensure you disclose reportable political donations. Anyone lodging submissions must declare reportable political donations (including donations of \$1,000 or more) made in the previous two years.
- 4) Agree to our online statement and lodge your submission.

You may also lodge your submission via post by sending it to:

Executive Director  
Local Government and Economic Policy  
Department of Planning, Industry and Environment  
Locked Bag 5022, Parramatta NSW 2124

In your submission, you are encouraged to respond to the consultation questions at the end of each proposal. Alternatively, you can respond to these questions via a survey on the department's website [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission.

### Call for expressions of interest from local councils

During exhibition of the EIE, councils are asked to consider whether they wish to adopt the new optional clauses for farm stay accommodation and farm gate activities and identify the zones in which they wish to allow the new farm events and farm gate activities. Councils who wish to make these changes to their LEPs are invited to provide an expression of interest and nominate a suitable contact(s) to liaise with the department about implementation.

Following exhibition, the department will work with councils that have submitted an expression of interest to facilitate amendments to their LEPs through an amending State environmental planning policy, saving the time and resources required to progress individual planning proposals.

To find out more, please visit [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

## 4.1 Consultation Questions

### 4.1.1 Farm stay accommodation

1. Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?
2. Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?
3. For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300 metres (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?
4. Should there be different development standards for farm stay accommodation based on land size or location (such as whether the land is inland or east of Great Dividing Range)? If yes, please provide your suggestions and reasons.

### 4.1.2 Farm gate activities

5. How far do you think a roadside stall should be setback from the road?
6. What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?

### 4.1.3 Farm events

7. The proposed maximum number of people and events per day for exempt and complying development are:
  - a) 52 event days per year and up to 30 guests per event, or
  - b) 10 event days per year and up to 50 guests per eventAre these appropriate?
8. What events, if any, do you think should be excluded from the definition of farm events?
9. Should changes be made to the planning system to facilitate destination weddings under a development application? If so, in which zones should destination weddings be permitted? Please provide reasons for your selection.
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  - b) RU2
  - c) RU4 zones
  - d) Other zones (please specify)
10. Should the department prepare a model clause for destination weddings which councils can choose to adopt?
11. Is there any rural land or areas in which agritourism activities should not be permitted?

### 4.1.4 Small scale processing plants

12. Should any other agricultural produce industries be complying development? What standards should apply?
13. Is a maximum throughput of 1,000 carcasses per annum for other animals such as deer or kangaroo appropriate?
14. Should any additional standards be included?

15. Should the locational criteria that classify livestock processing industries as designated development be reviewed for small-scale processing plants to determine whether these plants could be approved:
  - a) as complying development?
  - b) through the standard DA process?

#### 4.1.5 Rebuilding of farm infrastructure

16. Will these provisions sufficiently enable the rebuilding of buildings lost to natural disasters in the same location of the same size and form?
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#### 4.1.6 Stock containment areas

18. What type of permanent infrastructure should be permitted for stock containment areas?
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20. How could we simplify planning provisions for farm dams?

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21. Do the proposed provisions adequately provide for biosecurity between poultry farms and pig farms?
22. Should any additional standards be included?

#### 4.1.9 Rural dwelling setbacks from intensive agriculture

23. Should the setbacks for rural dwellings be increased from its current requirement to be 250 metres from the boundary (when done as complying development)?
24. From which point should the setbacks be measured?
  - a) From the proposed or existing intensive agricultural use
  - b) From the property boundary shared with land used for intensive agriculture
  - c) A combination of the above

#### 4.1.10 Recreational Beekeeping

25. Are the proposed development standards appropriate and are any additional standards needed?

Division of Local Government  
Department of Premier and Cabinet

**GUIDELINES FOR THE  
APPOINTMENT & OVERSIGHT OF  
GENERAL MANAGERS**



July 2011

These are Director General's Guidelines issued pursuant to section 23A of the *Local Government Act 1993*.

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## DEFINITIONS

**Code of Meeting Practice** means a code of meeting procedure complying with requirements set out in the *Local Government Act 1993* and the Local Government (General) Regulation 2005

**GIPA** means the *Government Information (Public Access) Act 2009*

**Integrated Planning and Reporting:**

**Integrated Planning and Reporting Guidelines** means the Guidelines issued by the Division of Local Government in 2009

**Community Strategic Plan** as prescribed under the *Local Government Act 1993*

**Delivery Program** as prescribed under the *Local Government Act 1993*

**Operational Plan** as prescribed under the *Local Government Act 1993*

**Resourcing Strategy** as prescribed under the *Local Government Act 1993*

**LGSA** means the Local Government and Shires Associations of NSW

**LGMA** means Local Government Managers Australia (NSW)

**Model Code of Conduct** means the Model Code of Conduct for Local Councils in NSW prescribed by the *Local Government Act 1993*

**Ministerial Investment Order** means any investment order approved by the Minister for Local Government under the *Local Government Act 1993*

**Quarterly Budget Review Statements** means the draft Guidelines issued by the Division of Local Government in October 2010

**Senior Staff** means senior staff as defined by the *Local Government Act 1993*

**Standard Contract** means the standard form of contract for the employment of the general manager approved by the Director General (or delegate) pursuant to section 338(4) of the *Local Government Act 1993*

**Statutory and Other Offices Remuneration Tribunal** means the Statutory and Other Offices Remuneration Tribunal (SOORT) as constituted under the *Statutory and Other Offices Remuneration Act 1975*

**The Act** means the *Local Government Act 1993*

**The Regulation** means the Local Government (General) Regulation 2005

## PURPOSE

The purpose of these Guidelines is to assist councillors to be aware of their obligations under the *Local Government Act 1993* (the Act) and the Local Government (General) Regulation 2005 (the Regulation) when recruiting, appointing, reappointing and overseeing general managers. It provides a summary of the essential matters that must be addressed by councils when engaging in these processes.

These Guidelines are issued under section 23A of the *Local Government Act 1993* and must be taken into consideration by council's governing body when exercising council functions related to the recruitment, oversight and performance management of general managers.

These Guidelines should be read in conjunction with the following:

- Provisions of the Act and the Regulation 2005
- Local Government General Managers Performance Management Guidelines – LGSA & LGMA
- Practice Note 5: Recruitment of General Managers and Senior Staff – DLG
- The standard form of contract for the employment of the general manager

Any references to sections are references to sections of the Act. Where there are any inconsistencies between these Guidelines and the documents above (with the exception of the Act and Regulation 2005), the Guidelines prevail.

## INTRODUCTION

The position of general manager is pivotal in a council. It is the interface between the governing body comprised of elected councillors, which sets the strategy and monitors the performance of the council, and the administrative body of the council, headed by the general manager, which implements the decisions of the governing body. The relationship between the general manager and the councillors is of utmost importance for good governance and a well functioning council.

The Act requires all councils' governing bodies to appoint a person to be general manager (section 334). The Guidelines provide a guide and checklist for councillors to refer to when considering:

- the recruitment and appointment of general managers
- re-appointment of general managers or ending contracts
- conducting performance reviews of general managers, and
- engaging in the day to day oversight of general managers.

They are designed to promote a consistent approach across NSW councils to the recruitment, appointment, and oversight of general managers.

There are appendices to the Guidelines which do not form part of the Guidelines.

These Guidelines were prepared with the assistance of the Local Government and Shires Associations of NSW (LGSA) and the Local Government Managers Association (NSW) (LGMA).

## **A. STAFFING OF COUNCIL**

### **1. Organisation structure**

A council should have sufficient and appropriately qualified staff for the efficient and effective delivery of its functions.

The Act requires the governing body of council to determine an organisation structure, the senior staff positions within that structure and the resources to be allocated towards the employment of staff (s332).

When considering the most appropriate organisation structure for council to adopt, the governing body of council needs to consider what human resources are necessary to successfully achieve the goals articulated in the council's Community Strategic Plan, Delivery Program and Resourcing Strategy. For this reason, a Workforce Strategy is an essential component of a council's Resourcing Strategy. A council's organisation structure should align with its Workforce Strategy and be designed to support its Delivery Program and the achievement of its Community Strategic Plan.

The governing body of council must approve and adopt their organisation structure by council resolution. Councils must review and re-determine the council's organisation structure within 12 months of an ordinary election.

Councils may review and re-determine the council's organisation structure at any other time. Generally a council should consider reviewing its organisation structure in the event of a significant change to its Community Strategic Plan, Delivery Program or Resourcing Strategy.

Councillors are entitled to access the council's organisation structure when required and upon request to the general manager.

### **2. Appointment of Staff**

The only staff position that is appointed by the governing body of council is that of the general manager. The position of general manager is a senior staff position (s334).

The general manager is responsible for the appointment of all other staff (including senior staff) in accordance with the organisation structure and resources approved by the council's governing body (s335(2)).

However, the general manager may only appoint or dismiss senior staff after consultation with the governing body of council (s337).

## **B. RECRUITMENT AND SELECTION**

### **1. Requirements of the Local Government Act 1993**

As with the appointment of all council staff, the council must ensure that the appointment of the general manager is made using merit selection principles (section 349).

Recruitment using merit selection is a competitive process where the applicant who demonstrates that they have the best qualifications and experience relevant to the position is appointed.

Equal Employment Opportunity principles also apply to the recruitment of general managers (sections 349 and 344).

The recruitment process must be open and transparent, but the confidentiality of individual applicants must be maintained. A failure to maintain appropriate confidentiality may constitute a breach of the Act and/or Privacy legislation.

### **2. The pre-interview phase**

The council's governing body is responsible for recruiting the general manager.

The governing body of council should delegate the task of recruitment to a selection panel and approve the recruitment process. The panel will report back to the governing body of council on the process and recommend the most meritorious applicant for appointment by the council.

The selection panel should consist of at least the mayor, the deputy mayor, another councillor and, ideally, a suitably qualified person independent of the council. The LGSA and the LGMA can be contacted for assistance to identify suitable independent recruitment committee members and recruitment consultants. The selection panel membership should remain the same throughout the entire recruitment process.

Selection panels must have at least one male and one female member (other than in exceptional circumstances).

The council's governing body should delegate to one person (generally the mayor) the task of ensuring:

- the selection panel is established
- the general manager position description is current and evaluated in terms of salary to reflect the responsibilities of the position
- the proposed salary range reflects the responsibilities and duties of the position
- the position is advertised according to the requirements of the Act
- information packages are prepared
- applicants selected for interview are notified.

The mayor, or another person independent of council staff, should be the contact person for the position and should maintain confidentiality with respect to contact by potential applicants.

### **3. Interview Phase**

Interviews should be held as soon as possible after candidates are short listed.

Questions should be designed to reflect the selection criteria of the position and elicit the suitability of the candidate for the position.

Interviews should be kept confidential.

All written references must be checked.

A selection panel must delegate the task of contacting referees to one panel member. Other panel members should not contact referees.

If contact with someone other than a nominated referee is required, the applicant's permission is to be sought.

At least 2 referees must be contacted and asked questions about the candidate relevant to the selection criteria.

Where tertiary qualifications are relied on they should be produced for inspection and if necessary for verification.

Appropriate background checks must be undertaken, for example bankruptcy checks. For more guidance on better practice recruitment background checks, councils are referred to the Australian Standard AS 4811-2006 *Employment Screening* and ICAC publications, which can be found on the ICAC website at <http://www.icac.nsw.gov.au>.

### **4. Selection Panel Report**

The selection panel is responsible for preparing a report to the council's governing body that:

- outlines the selection process
- recommends the most meritorious applicant with reasons
- recommends an eligibility list if appropriate
- recommends that no appointment is made if the outcome of interviews is that there are no suitable applicants.

This report should be confidential and reported to a closed meeting of council.

The council's governing body must by resolution approve the position of the general manager being offered to the successful candidate before that position is actually offered to that candidate.



## **5. Finalising the appointment**

The mayor makes the offer of employment after the governing body of council has resolved to appoint the successful candidate. The initial offer can be made by telephone.

Conditions such as term of the contract (1-5 years) and remuneration package (within the range approved by the governing body of council) can be discussed by phone, but must be confirmed in writing.

The Standard Contract for the Employment of General Managers as approved by the Chief Executive of the Division of Local Government must be used. The Standard Contract (Annexure 3 of these Guidelines) is available in the 'Information for Councils', 'Directory of Policy Advice for Councils' section of the Division's website at <http://www.dlg.nsw.gov.au>.

The terms of the Standard Contract must not be varied. Only the term and the schedules to the Standard Contract can be individualised.

General managers must be employed for 1 – 5 years.

The contract governs:

- the duties and functions of general managers
- performance agreements
- the process for renewal of employment contracts
- termination of employment and termination payments
- salary increases
- leave entitlements.

It should be noted that the Chief Executive of the Division of Local Government cannot approve individual variations to the standard terms of the contract.

Those candidates who are placed on the eligibility list and unsuccessful applicants should be advised of the outcome of the recruitment process before the successful applicant's details are made public.

## **6. Record keeping**

Councils should keep and store all records created as part of the recruitment process including the advertisement, position description, selection criteria, questions asked at interview, interview panel notes, selection panel reports and notes of any discussions with the selected candidate. These records are required to be stored and disposed of in accordance with the *State Records Act 1998*.

## **C. ROLE OF THE GENERAL MANAGER**

Councillors comprise the governing body of a council and make decisions by passing resolutions. It is the general manager's role to implement council decisions and carry out functions imposed by legislation. A council's governing body monitors the implementation of its decisions via reports by the general manager to council meetings.

### **1. Key duties of all general managers**

The general manager is generally responsible for the effective and efficient operation of the council's organisation and for ensuring the implementation of the council's decisions without undue delay. The general manager carries out all their functions within the guidelines and policy framework approved by the council.

The general manager also has a role to play in assisting the governing body of council develop its strategic direction. The general manager is responsible for guiding the preparation of the Community Strategic Plan and the council's response to it via the Delivery Program. The general manager is responsible for implementing the Delivery Program and will report to the governing body of council on its progress and conduct regular updates and reviews.

The general manager is responsible for recruiting and appointing staff within the organisation structure determined by the governing body of council. This must be in accordance with the budget approved by the council's governing body and be for the purpose of carrying out the council's statutory functions and implementing council's Community Strategic Plan, Delivery Program and Operational Plan.

The general manager must consult with the governing body of council before appointing or dismissing senior staff. The general manager must report to the council at least annually on the contractual conditions of senior staff (cl.217 of the Regulation).

The general manager is responsible for performance management of staff, including staff discipline and dismissal.

The general manager is also responsible for ensuring councillors are provided with information and the advice they require in order to make informed decisions and to carry out their civic duties.

The governing body of council may direct the general manager to provide councillors with advice or a recommendation, but cannot direct as to the content of that advice or recommendation.

Generally, requests by councillors for assistance or information should go through the general manager, except where he or she has authorised another council officer to undertake this role. The Guidelines for the Model Code of Conduct contemplate that a council should develop a policy to provide guidance on interactions between council officials. This policy should be agreed to by both the council's governing body and the general manager.

Councillors could reasonably expect general managers will report routinely on significant industrial issues and/or litigation affecting the council, particularly those that impact on the council's budget or organisation structure.

The general manager should ensure that the council meeting business papers are sufficient to enable the council to make informed decisions, as well as to allow councillors to properly monitor and review the operations of the council. This will assist councils in ensuring that they are complying with any relevant statutory obligations, keeping within the budget approved by the council and achieving the strategic goals set by the council in its Delivery Program and Operational Plan.

Councillors should receive a number of financial reports during the year, including the Quarterly Budget Review Statements included in the Code of Accounting Practice and Financial Reporting and which are referred to in the draft Quarterly Budget Review Statements Guidelines, reports required by the Regulation and any legislation. In addition, the council should receive at least quarterly a report about any significant litigation affecting the council.

Councillors should also receive reports, at least half yearly, on progress towards implementation of the Community Strategic Plan and Delivery Program (see clause 203 of the Regulation or page 20 of the Integrated Planning and Reporting Guidelines).

Clause 10 of the Model Code of Conduct sets out the obligations on general managers and council staff to provide councillors with information in order for councillors to carry out their civic functions.

Councillors have a right to sufficient information to make informed decisions. Applications for information under the *Government Information (Public Access) Act* 2009 (GIPAA) are available to everyone including councillors.

## **2. Duties delegated to general managers**

A governing body of council may delegate certain functions to the general manager. A delegation of a council function must be made by a council resolution (Chapter 12 Part 3 ss 377-381 of the Act).

A governing body of council cannot delegate the functions set out in section 377(1) of the Act.

A council's governing body may not delegate the adoption of a Code of Meeting Practice, a Code of Conduct, or the endorsement of Community Strategic Plans, Resourcing Strategies, Delivery Programs and Operational Plans.

Each governing body of council must review its delegation of functions during the first 12 months of each term of office (s.380). To assist with this review, it is recommended that, within the first 6 months of the new term, the governing body of council reviews what functions have been delegated and to whom they have been delegated to determine if the delegation and the policies guiding those delegated decisions have been working effectively.

It should be noted that the general manager may sub-delegate a function delegated to him/her by the governing body of council (s378). However, the general manager still retains responsibility to ensure that any sub-delegated function is carried out appropriately.

Where functions are delegated to the general manager to perform on behalf of a governing body of council, it is important for the governing body of council to ensure there are policies in place to guide the decision making. The governing body of council should keep policies guiding the delegated decisions under regular review.

For example, where media liaison is delegated to the general manager, the governing body of council should adopt a media policy to guide statements to the media.

It is important that council's governing body ensure that proper records are kept of applications that are determined under delegation and that there is regular reporting on the implementation of delegated functions. This is essential so that council's governing body can be provided with assurance that the delegated function is being undertaken in accordance with any relevant council policies and regulatory framework, eg, development application decisions.

The council's internal audit function is another important internal control to ensure that delegated functions are complying with relevant policy and legislation. A well designed internal audit program should give council independent assurance that council's internal controls are working effectively.

Where authority to make a decision is delegated this does not remove a council's authority to make a decision.

Matters that fall outside the terms of a council policy, delegation, or day to day management (section 335), should be referred to the governing body of council for a decision.

## **D. DAY-TO-DAY OVERSIGHT AND LIAISON WITH THE GENERAL MANAGER**

Council's governing body is required to monitor and review the performance of the general manager as discussed in Section C, above. However, a council's governing body should delegate to the mayor the role of day-to-day oversight of and liaison with the general manager.

The mayor's role in the day-to-day management of the general manager should include:

- approving leave
- approving expenses incurred
- managing complaints about the general manager.

The council's governing body should ensure there are adequate and appropriate policies in place to guide the mayor in the day-to-day oversight of and liaison with the general manager and keep those policies under regular review.

Some of the key policies the governing body of council should have in place relate to:

- leave
- travel
- credit cards
- purchasing and procurement
- expenses and facilities
- petty cash
- financial and non-financial delegations of authority.

The governing body of council should also ensure there are adequate policies in place with respect to expenditure of council funds, as well as adequate reporting requirements in relation to that expenditure.

The council's governing body should satisfy itself that any policy governing the conferral of a benefit on the general manager, such as use of a motor vehicle, allows the actual dollar value of that benefit to be quantified so it can be accurately reflected in the general manager's salary package in Schedule C to the Standard Contract.

Within 6 months of the date of these Guidelines, council's governing body should check to ensure these key policies are in place. They should then be kept under regular review.

## **E. PERFORMANCE MANAGEMENT**

### **1. General manager performance management framework**

The general manager is made accountable to their council principally through their contract of employment.

The role of the governing body is to oversee the general manager's performance in accordance with the Standard Contract.

The performance of the general manager must be reviewed at least annually against the agreed performance criteria for the position. Council may also choose to undertake more frequent interim reviews of the general manager's performance.

The agreed performance criteria are set out in an agreement that is signed within three months of the commencement of the contract. Development of the performance agreement is discussed below.

### **2. Establishing the framework for performance management**

The council's governing body is to establish a performance review panel and delegate the task of performance reviews of the general manager to this panel. The extent of the delegation should be clear.

It is recommended that the whole process of performance management be delegated to the performance review panel, including discussions about performance, any actions that should be taken and the determination of the new performance agreement.

Performance review panels should comprise the mayor, the deputy mayor, another councillor nominated by council and a councillor nominated by the general manager. The council's governing body may also consider including an independent observer on the panel. Panel members should be trained in the performance management of general managers.

The role of the review panel includes:

- conducting performance reviews
- reporting the findings and recommendations of those reviews to council
- development of the performance agreement.

The governing body of council and the general manager may agree on the involvement of an external facilitator to assist with the process of performance appraisal and the development of new performance plans. This person should be selected by the governing body of council or the performance review panel. The LGSA and the LGMA can be contacted for assistance to identify suitable independent facilitators to assist in the performance management process.

All councillors not on the panel can contribute to the process by providing feedback to the mayor on the general manager's performance.

All councillors should be notified of relevant dates in the performance review cycle and be kept advised of the panel's findings and recommendations.



The panel should report back to the governing body of council in a closed session the findings and recommendations of its performance review as soon as practicable following any performance review. This should not be an opportunity to debate the results or re-enact the performance review of the general manager. The general manager should not be present when the matter is considered.

The performance management report of any council staff member, including the general manager, should not be released to the public and should be retained on the appropriate confidential council employment file. Release of such personal information to other than the Performance Review Panel, the general manager and the councillors in confidence may be a breach of privacy legislation.

### **3. *Establishing the performance agreement***

The performance agreement is the most important component of successful performance management. The performance agreement should include clearly defined and measurable performance indicators against which the general manager's performance can be measured.

As one of the general manager's key responsibilities is to oversee the implementation of council's strategic direction, it is important to align the general manager's performance criteria to the goals contained in the council's Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan.

The performance agreement should also include the general manager's personal contribution to the council's key achievements and the general manager's core capabilities, including leadership qualities.

The performance agreement should contain but not be limited to key indicators that measure how well the general manager has met the council's expectations with respect to:

- service delivery targets from the council's Delivery Program and Operational Plan;
- budget compliance;
- organisational capability;
- timeliness and accuracy of information and advice to councillors;
- timely implementation of council resolutions;
- management of organisational risks;
- leadership etc.

### **4. *Performance Review Process***

The Standard Contract requires that the performance of the general manager must be formally reviewed at least annually. The governing body of council may also undertake interim performance reviews as appropriate.

The assessment should include:

- self assessment by the general manager
- assessment by the review panel of the general manager's performance against the performance agreement.

The performance review meeting should be scheduled with sufficient notice to all parties and in accordance with clauses 7.6 and 7.7 of the Standard Contract.

The meeting should concentrate on constructive dialogue about the general manager's performance against all sections of the agreed performance plan.

The meeting should identify any areas of concern and agree actions to address those concerns.

In undertaking any performance review, care must be taken to ensure that the review is conducted fairly and in accordance with the principles of natural justice and that the laws and principles of anti-discrimination are complied with. The

appointment by a council, in agreement with the general manager, of an external facilitator (see above) to advise on the process should assist council in complying with these laws and principles.

The council's governing body must advise the general manager, in writing, in clear terms, the outcome of any performance review.

The new performance agreement for the next period should be prepared as soon as possible after the completion of the previous period. The agreement should be presented to the governing body of council for discussion in a closed meeting together with the outcomes of the previous review period.

### **5. Contract Renewal or Separation**

It is important that any decision by the governing body of council to renew a contract for the general manager and the term of that contract be reported back to an open meeting of council, together with the total amount of any salary package agreed to.

Termination of a contract on the basis of poor performance can only occur where there has been a formal review undertaken against the signed performance agreement where performance difficulties were identified and have not subsequently been remedied. For further discussion on separation or renewal of general managers' contracts, see section F, below.

### **6. Reward and Remuneration**

An annual increase in the salary package, equivalent to the latest percentage increase in remuneration for senior executive office holders as determined by the Statutory and Other Offices Remuneration Tribunal, is available to the general manager under the Standard Contract on each anniversary of the contract.

Discretionary increases to the general manager's total remuneration package under the provisions of the Standard Contract may only occur after a formal review of the general manager's performance has been undertaken by the governing body of council and the governing body of council resolves to grant such a discretionary increase because of better than satisfactory performance.

Discretionary increases are intended to be an incentive for general managers to perform at their maximum throughout the life of the contract. Discretionary increases are also intended to encourage contracts of the maximum duration.

Any discretionary increases should be modest and in line with community expectations.

All discretionary increases in remuneration, together with the reasons for the increase, must be reported to an open meeting of council.

## **F. SEPARATION OR RENEWAL**

### **1. Termination of a general manager's employment**

The Standard Contract for general managers sets out how a general manager's contract can be terminated before its expiry date by either the governing body of council or the general manager (clause 10 of the Standard Contract).

Termination can be by agreement of both parties. The general manager may terminate the contract by giving 4 weeks written notice to the governing body of council.

A governing body of council may terminate the contract by giving 4 weeks written notice where the general manager has become incapacitated for 12 weeks or more, has exhausted their sick leave and the duration of the incapacity is either indefinite or for a period that would make it unreasonable for the contract to be continued.

Termination of a contract on the basis of poor performance may only occur where there has been a formal review undertaken against the signed performance agreement, where performance difficulties have been identified and have not been remedied as agreed. In these instances, the council must give the general manager either 13 weeks written notice of termination or termination payment in lieu of notice calculated in accordance with Schedule C of the Standard Contract.

A governing body of council may terminate the general manager's contract at any time by giving the general manager 38 weeks written notice or pay the general manager a lump sum of 38 weeks remuneration in accordance with Schedule C of the Standard Contract. If there are less than 38 weeks left to run in the term of the general manager's contract, a council can pay out the balance of the contract in lieu of notice.

In the circumstances set out at 10.4 of the Standard Contract, a council may summarily dismiss a general manager. The remuneration arrangements under these circumstances are set out in clause 11.4 of the Standard Contract.

Section 336 (2) of the Act sets out other circumstances where a general manager's appointment is automatically terminated.

### **2. Suspension of General Manager**

The governing body of council may suspend the general manager. However, great caution should be exercised when considering such a course of action and it would be appropriate for a governing body of council to seek and be guided by expert advice from a person or organisation that is suitably qualified and experienced in such matters. The governing body may authorise the Mayor to obtain such expert advice.

Suspension should be on full pay for a clearly defined period.

Any decision to suspend a general manager should be taken by a governing body of council at a closed council meeting, having first carefully considered any independent expert advice obtained on the specific matter.

It would not be appropriate to seek advice from council human resources staff on the issue of suspending the general manager.

The principals of natural justice and procedural fairness apply to any decision to suspend a general manager, ie, the general manager must be advised of the circumstances leading to the suspension, the reasons for the suspension, the period of the suspension and be given a right to respond to the decision to suspend.

### **3. *Dispute resolution***

The Standard Contract contains a dispute resolution clause at clause 17.

These provisions are designed to encourage councils and general managers to attempt to negotiate agreement on disputes where they arise.

The governing body of council should ideally resolve to delegate this function to the mayor or a panel of 3 councillors including the mayor.

If the dispute involves the mayor then the deputy mayor should take the mayor's place. If there is no deputy mayor then the governing body should resolve to appoint another councillor to take the mayor's place.

The governing body of council and general manager should agree on an independent mediator to mediate the dispute. The LGSA and LGMA can provide assistance to their members to identify a suitable mediator.

The Standard Contract allows the Chief Executive of the Division of Local Government to appoint a mediator where the parties cannot agree on one.

### **4. *Renewing a general manager's contract***

Clause 5 of the Standard Contract describes how a general manager's appointment may be renewed.

The terms of the new contract, and in particular the schedules to the new contract, should be set out in the letter of offer. Before offering a new contract, the council should carefully review the terms of the schedules to the new contract.

The governing body of council should ensure that the performance management terms of the new contract adequately reflect its expectations as to the general manager's performance.

The governing body of council should also have regard to the previous performance reviews conducted under previous contracts.

The process of deciding whether or not to offer a general manager a new contract should be that:

- a performance review is conducted
- findings and recommendations are reported to a closed council meeting in the absence of the general manager
- the closed meeting considers and decides whether or not to offer a new contract and on what terms as set out in the schedules to the contract
- the general manager is then advised of the governing body of council's decision in confidence by the mayor.



Details of the decision to offer a new contract and a salary package should be reported to an open council meeting.

### Appendix 1 - Performance Management Timelines

Timeline	Activity	Responsibility
At commencement of each new council	Provide induction training on performance management of the general manager	Council
Within 3 months of the commencement date of the contract	A performance agreement setting out agreed performance criteria must be signed between the general manager and the council	Council or council panel General Manager
Within 2 months of the signing of the performance agreement	The general manager must prepare and submit to council an action plan which sets out how the performance criteria are to be met	General Manager
21 days notice (before annual review)	The general manager gives the council written notice that an annual performance review is due	General Manager
At least 10 days notice	The council must give the general manager written notice that any performance review is to be conducted	Council or council panel
After 6 months	The council may also decide, with the agreement of the general manager, to provide interim feedback to the general manager midway through the annual review period	Council or council panel General Manager
Prior to the annual review	Ensure all councillors on the Review Panel have been trained in performance management of general managers	Council
Prior to the annual performance review	The general manager may submit to council a self assessment of his/her performance	General Manager
Annually	The general manager's performance must be reviewed having regard to the performance criteria in the agreement	Council or council panel General Manager
Annually	The performance agreement must be reviewed and varied by agreement	Council or council panel General Manager
Within 6 weeks of the conclusion of the performance review	Council will prepare and send to the general manager a written statement with council's conclusions on the general manager's performance during the performance review period	Council or council panel
As soon as possible after receipt of the statement	The general manager and the council will agree on any variation to the performance agreement for the next period of review	Council or council panel General Manager

## Appendix 2 - Stages of performance management

STAGE	ACTION	PROCESS
1. Developing performance agreement	<ul style="list-style-type: none"> <li>▪ Examine the position description and contract</li> <li>▪ List all position responsibilities from the position description</li> <li>▪ Identify stakeholder expectations</li> <li>▪ List the key strategic objectives from the Service Delivery and Operational Plans</li> <li>▪ Develop performance measures (identify indicators - set standards)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Good planning</li> <li>▪ Direct and effective communication</li> <li>▪ Open negotiation</li> <li>▪ Joint goal setting</li> </ul>
2. Action planning	<ul style="list-style-type: none"> <li>▪ Develop specific strategies to meet strategic objectives</li> <li>▪ Identify resources</li> <li>▪ Delegate tasks (eg, put these delegated tasks into the performance agreements for other senior staff)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Detailed analysis</li> <li>▪ Two way communication</li> <li>▪ Detailed documentation</li> </ul>
3. Monitoring progress (feedback half way through the review period)	<ul style="list-style-type: none"> <li>▪ Assess performance</li> <li>▪ Give constructive feedback</li> <li>▪ Adjust priorities and reset performance measures if appropriate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Communication</li> <li>▪ Avoid bias</li> <li>▪ Counselling</li> <li>▪ Coaching</li> <li>▪ Joint problem solving</li> </ul>
4. Annual	<ul style="list-style-type: none"> <li>▪ Assess performance against measures</li> <li>▪ Give constructive feedback</li> <li>▪ Identify poor performance and necessary corrective action</li> <li>▪ Identify outstanding performance and show appreciation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Evaluation of the reasons behind performance being as assessed</li> <li>▪ Open, straightforward communication (as bias free as possible)</li> <li>▪ negotiation</li> <li>▪ Counselling, support, training</li> <li>▪ Documenting</li> <li>▪ Decision making</li> </ul>
5. Developing revised agreement	See stage 1	See Stage 1

**Appendix 3 – Standard Contract of Employment**

**STANDARD CONTRACT OF  
EMPLOYMENT**

**for**

**GENERAL MANAGERS OF LOCAL  
COUNCILS IN NEW SOUTH WALES**

Acknowledgements

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### **Contract of Employment**

This Contract of Employment is made on

Date \_\_\_\_\_

**between**

Name of Council \_\_\_\_\_

*[Referred to in this contract as "Council"]*

Address \_\_\_\_\_

**and**

Name of Employee \_\_\_\_\_

*[Referred to in this contract as "the employee"]*

Address \_\_\_\_\_



## 1 Position

The position to which this contract applies is that of General Manager.

**Note: A person who has held civic office in relation to Council must not be appointed to any paid position on the staff of Council within 6 months after ceasing to hold the office: section 354 of the Act.**

## 2 Term

Subject to the terms and conditions in this contract, Council will employ the employee for a term of:

[Length of term] \_\_\_\_\_

---

**Note: The term of this contract must not be less than 12 months or more than 5 years (including any option for renewal): section 338 of the Act.**

commencing on [date] \_\_\_\_\_

and terminating on [date] \_\_\_\_\_

### 3 Definitions

3.1 In this contract, unless otherwise stated or indicated:

**the Act** means the *Local Government Act 1993*.

**Code of conduct** means the document within the meaning of section 440 of the Act adopted by Council and which incorporates the provisions of the model code.

**Commencement date** means the date that this contract commences as specified in clause 2.

**Confidential information** means any and all confidential information, data, reports, operations, dealings, records, materials, plans, statistics, finances or other agreements and things (other than that which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of Council or any undertaking from time to time carried out by Council.

**Director-General** means the Director-General of the New South Wales Department of Local Government.

**Equal employment opportunity management plan** means the document a council must prepare under Part 4 of Chapter 11 of the Act.

**Minister** means the New South Wales Minister for Local Government.

**Model code** means the Model Code of Conduct for Local Councils in NSW prescribed by the Regulation.

**Month** means a calendar month.

**Performance agreement** means the agreement referred to in clause 7.

**Performance criteria** means the criteria to which a performance review is to have regard.

**Performance review** means a review of the employee's performance conducted in accordance with the procedures under clause 7.

**the position** means the position referred to in clause 1.

**the Regulation** means the *Local Government (General) Regulation 2005*.

**Senior executive office holder (New South Wales Public Service)** means the holder of a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002*.

**Statutory and Other Officers Remuneration Tribunal** means the Statutory and Other Officers Tribunal constituted under the *Statutory and Other Officers Remuneration Act 1975*.

**Termination date** means the date that this contract terminates as specified in clause 2.

3.2 Expressions in this contract corresponding with expressions that are defined in the Act have those meanings.

#### **4 Contract operation and application**

- 4.1 This contract constitutes a contract of employment for the purposes of section 338 of the Act, and governs the employment of the employee while in the position.
- 4.2 A reference in this contract to any Act or regulation, or any provision of any Act or regulation, includes a reference to subsequent amendments of that Act, regulation or provision.
- 4.3 A reference to a Schedule to this contract refers to a Schedule as may be varied in accordance with this contract, and applies whether or not the Schedule has been physically attached to this contract.
- 4.4 Where the mayor or any other person is lawfully authorised to act as Council or Council's delegate for the purpose of this contract, this contract will be construed as if:
- (a) any reference to Council includes a reference to that authorised person, and
  - (b) any reference to a requirement for Council's approval includes a reference to a requirement for that authorised person's written approval,
- 4.5 Any staff entitlement under a lawful policy of Council as adopted by Council from time to time and that is set out in Schedule A will apply to the employee unless this contract makes express provision to the contrary. Schedule A may be varied from time to time by agreement between the employee and Council, such agreement not to be unreasonably withheld.

**Note: Only those policies that create entitlements are to be set out in Schedule A. Schedule A policies are distinct from those which create a *duty or function* as referred to in subclause 6.1.4 and which are *not* required to be set out in Schedule A.**

- 4.6 Subject to clauses 7 and 13, the terms of this contract, as varied from time to time in accordance with this contract, represent the entire terms of all agreements between the employee and Council and replace all other representations, understandings or arrangements made between the employee and Council that relate to the employment of the employee in the position.

**Note: The contract authorises the making of agreements that are linked to the contract. Clause 7 requires the parties to sign a performance agreement. Clause 13 allows either party to require the other to sign a confidentiality agreement for the purpose of protecting intellectual property.**

## **5. Renewal of appointment**

- 5.1 At least 9 months before the termination date (or 6 months if the term of employment is for less than 3 years) the employee will apply to Council in writing if seeking re-appointment to the position.
- 5.2 At least 6 months before the termination date (or 3 months if the term of employment is for less than 3 years) Council will respond to the employee's application referred to in subclause 5.1 by notifying the employee in writing of its decision to either offer the employee a new contract of employment (and on what terms) or decline the employee's application for re-appointment.
- 5.3 At least 3 months before the termination date (or 1 month if the term of employment is for less than 3 years) the employee will notify Council in writing of the employee's decision to either accept or decline any offer made by Council under subclause 5.2.
- 5.4 In the event the employee accepts an offer by Council to enter into a new contract of employment, a new contract of employment will be signed.

## **6. Duties and functions**

- 6.1 The employee will:
  - 6.1.1 to the best of their ability, meet the performance criteria set out in the performance agreement as varied from time to time,
  - 6.1.2 carry out the duties and functions imposed by the Act and Regulation, or any other Act and associated regulations, which include but are not limited to:
    - (a) the efficient and effective operation of Council's organisation,
    - (b) implementing, without undue delay, the decisions of Council,
    - (c) exercising such of the functions of Council as are delegated by Council to the employee,
    - (d) appointing staff in accordance with an organisation structure and resources approved by Council,
    - (e) directing and dismissing staff,
    - (f) implementing Council's equal employment opportunity management plan,

- (g) consulting with Council prior to the appointment or dismissal of senior staff,
- (h) reporting to Council, at least once annually, on the contractual conditions of senior staff,
- (i) giving immediate notice to Council on becoming bankrupt or making a composition, arrangement or assignment for the benefit of the employee's creditors and providing Council, within the time specified by Council with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment,
- (j) subject to subclause 6.2.3, providing advice and recommendations to Council or the mayor if directed to do so,
- (k) not engaging, for remuneration, in private employment or contract work outside the service of Council without the approval of Council,
- (l) not approving, where appropriate, any member of Council staff from engaging, for remuneration, in private employment or contract work outside the service of Council that relates to the business of Council or that might conflict with the staff member's Council duties,
- (m) acting honestly and exercising a reasonable degree of care and diligence in carrying out the employee's duties and functions,
- (n) complying with the provisions of the code of conduct,
- (o) preparing and submitting written returns of interest and disclosing pecuniary interests in accordance with the Act and the Regulation,

**Note: Sections 335, 337, 339, 341, 352, 353, 439, 440 and 445 of the Act.**

- 6.1.3 carry out the duties and functions set out in Schedule B as varied from time to time by agreement between the employee and Council, such agreement not to be unreasonably withheld,

**Note: Schedule B may include additional duties and functions, for example, those related to special projects.**

- 6.1.4 carry out the duties and functions set out in the policies of Council as adopted by Council from time to time during the term of this contract,

- 6.1.5 observe and carry out all lawful directions given by Council, in relation to the performance of the employee's duties and functions under this contract,
  - 6.1.6 work such reasonable hours as are necessary to carry out the duties and functions of the position and the employee's obligations under this contract,
  - 6.1.7 obtain the approval of the Council for any absences from the business of Council,
  - 6.1.8 promote ethical work practices and maintain a culture of integrity and professionalism where Council staff members treat each other, members of the public, customers and service providers with respect and fairness,
  - 6.1.9 facilitate Council staff awareness of the procedures for making protected disclosures and of the protection provided by the *Protected Disclosures Act 1994*,
  - 6.1.10 take all reasonable steps to ensure that actions and policies of Council accord with the strategic intent of Council,
  - 6.1.11 take all reasonable steps to maximise compliance with relevant legislative requirements,
  - 6.1.12 maintain effective corporate and human resource planning,
  - 6.1.13 maintain the Council staff performance management system,
  - 6.1.14 maintain satisfactory operation of Council's internal controls, reporting systems (including protected disclosures), grievance procedures, the documentation of decision-making and sound financial management,
  - 6.1.15 develop procedures to ensure the code of conduct is periodically reviewed so that it is in accordance with the Act and Regulation and adequately reflects specific organisational values and requirements,
  - 6.1.16 promote and facilitate compliance with the code of conduct ensuring that each councillor and Council staff member is familiar with its provisions, and
  - 6.1.17 report to Council on any overseas travel taken by the employee or any Council staff member where that travel is funded in whole or in part by Council.
- 6.2 Council:



- 6.2.1 will provide adequate resources to enable the employee to carry out the duties and functions specified in subclause 6.1 and Schedule B,
- 6.2.2 will provide the employee with reasonable opportunities to participate in professional development initiatives relevant to the duties and functions under this contract subject to the operational needs of Council, and
- 6.2.3 will not direct the employee as to the content of any advice or recommendation made by the employee.

**Note: section 352 of the Act.**

## **7. Performance agreement and review**

- 7.1 Within 3 months after the commencement date, the employee and Council will sign a performance agreement setting out agreed performance criteria.
- 7.2 In the event that the employee and Council are unable to agree on the performance criteria, Council will determine such performance criteria that are reasonable and consistent with the employee's duties and functions under clause 6 and in Schedule B.
- 7.3 The performance agreement may be varied from time to time during the term of this contract by agreement between the employee and Council, such agreement not to be unreasonably withheld.
- 7.4 Within 2 months after signing or varying the performance agreement, the employee will prepare and submit to Council an action plan which sets out how the performance criteria are to be met.
- 7.5 Council will ensure that the employee's performance is reviewed (and, where appropriate, the performance agreement varied) at least annually. Any such review is to have regard to the performance criteria.

**Note: Council may review the employee's performance every 6 months or more frequently if necessary.**

- 7.6 The employee will give Council 21 days' written notice that an annual performance review in accordance with subclause 7.5 is due.
- 7.7 Council will give the employee at least 10 days notice in writing that any performance review is to be conducted.

- 7.8 The structure and process of the performance review is at the discretion of Council following consultation with the employee.
- 7.9 The employee may prepare and submit to Council an assessment of the employee's own performance prior to a performance review.
- 7.10 Within 6 weeks from the conclusion of a performance review, Council will prepare and send to the employee a written statement that sets out:
- (a) Council's conclusions about the employee's performance during the performance review period,
  - (b) any proposal by Council to vary the performance criteria as a consequence of a performance review, and
  - (c) any directions or recommendations made by Council to the employee in relation to the employee's future performance of the duties of the position.
- 7.11 The employee and Council will, as soon as possible after the employee receives the written statement referred to in subclause 7.10, attempt to come to agreement on any proposal by Council to vary the performance criteria and on any recommendations by Council as to the future performance of the duties of the position by the employee.
- 7.11 Subject to the employee being available and willing to attend a performance review, Council undertakes that if a performance review is not held in accordance with this clause, this will not operate to the prejudice of the employee unless the employee is responsible for the failure to hold the performance review.

## **8. Remuneration**

- 8.1 Council will provide the employee with the total remuneration package set out in Schedule C.
- 8.2 The total remuneration package includes salary, compulsory employer superannuation contributions and other benefits including any fringe benefits tax payable on such benefits.

**Note: Compulsory employer superannuation contributions are those contributions required under the *Superannuation Guarantee Charge Act 1992* of the Commonwealth and any contributions required to be paid for an employee under a superannuation arrangement entered into by Council for that employee. See Schedule C.**

- 8.3 Council may, on only one occasion during each year of this contract, approve an increase in the total remuneration package where the employee's performance has been assessed in accordance with a performance review as being of a better than satisfactory standard.
- 8.4 Any increase in remuneration approved under subclause 8.3 will not be paid as a lump sum.
- 8.5 On each anniversary of the commencement date, the total remuneration package will be increased by a percentage amount that is equivalent to the latest percentage amount increase in remuneration for senior executive office holders as determined by the Statutory and Other Officers Remuneration Tribunal.

**Note: When making determinations referred to in subclause 8.5, the Tribunal takes into account key national economic indicators and movements in public sector remuneration across Australia, market conditions, the Consumer Price Index and wages growth as measured by the Wage Cost Index. Tribunal determinations are published in the Government Gazette and are available at [www.remtribunals.nsw.gov.au](http://www.remtribunals.nsw.gov.au). The Premier's Department issues periodic Memoranda summarising the Tribunals determinations. These Memoranda are available at [www.premiers.nsw.gov.au](http://www.premiers.nsw.gov.au).**

- 8.6 The structure of the total remuneration package may be varied from time to time during the term of this contract by agreement between the employee and Council, such agreement not to be unreasonably withheld.
- 8.7 The total remuneration package, as varied from time to time, remunerates the employee for all work undertaken by the employee while in the position. No other remuneration, benefit, overtime or allowances other than those to which the employee may be entitled under this contract will be paid to the employee during the term of this contract.

## 9. Leave

### 9.1 General

- 9.1.1 Council will pay remuneration calculated in accordance with Schedule C to the employee proceeding on paid leave under this clause.
- 9.1.2 On the termination of this contract, and if the employee is not re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure, the Council will pay:
- (a) to the employee in the case of annual leave, or

- (b) to the employee or new employer council in the case of long service leave,

accrued but unused leave entitlements calculated at the monetary value of the total remuneration package as specified in Schedule C.

- 9.1.3 If the employee is re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure within 3 months after the termination of this contract, the employee will be taken to have continuing service with Council for the purpose of determining the employee's entitlement to annual leave, long service leave and sick leave.

- 9.1.4 Any leave accrued with Council standing to the credit of the employee immediately prior to entering into this contract will be taken to be leave for the purposes of this contract.

## **9.2 Annual leave**

The employee is entitled to four weeks paid annual leave during each year of employment under this contract to be taken as agreed between the employee and Council.

## **9.3 Long service leave**

- 9.3.1 The employee's entitlement to long service leave is to be calculated by the same method that applies to a non-senior member of Council staff.
- 9.3.2 Long service leave is transferable between councils in New South Wales in the same manner that applies to a non-senior member of Council staff.

## **9.4 Sick leave**

- 9.4.1 The employee is entitled to 15 days paid sick leave during each year of employment under this contract provided that:
  - (a) Council is satisfied that the sickness is such that it justifies time off, and
  - (b) satisfactory proof of illness to justify payment is provided to Council for absences in excess of two days.
- 9.4.2 Sick leave will accumulate from year to year of employment under this contract so that any balance of leave not taken in any one year may be taken in a subsequent year.

9.4.3 Council may require the employee to attend a doctor nominated by Council at Council's cost.

9.4.4 Accrued but unused sick leave will not be paid out on the termination of this contract.

**9.5 Parental leave**

9.5.1 Parental leave includes supporting parent's leave, maternity leave, paternity leave and adoption leave.

9.5.2 The employee is entitled to the same parental leave that a non-senior member of Council staff would be entitled.

**9.6 Carer's leave**

The employee is entitled to the same carer's leave that a non-senior member of Council staff would be entitled.

**9.7 Concessional leave**

The employee is entitled to the same concessional leave that a non-senior member of Council staff would be entitled.

**9.8 Special leave**

Council may grant special leave, with or without pay, to the employee for a period as determined by Council to cover any specific matter approved by Council.

**10 Termination**

**10.1 General**

On termination of this contract for any reason the employee will immediately return to Council all property of Council in the employee's possession including intellectual property and confidential information and will not keep or make any copies of such property and information.

## **10.2 Termination date**

The employment of the employee under this contract terminates on the termination date.

## **10.3 Termination by either the employee or Council**

This contract may be terminated before the termination date by way of any of the following:

10.3.1 written agreement between the employee and Council,

10.3.2 the employee giving 4 weeks' written notice to Council,

10.3.3 Council giving 4 weeks' written notice to the employee, or alternatively by termination payment under subclause 11.1, where:

- (a) the employee has been incapacitated for a period of not less than 12 weeks and the employee's entitlement to sick leave has been exhausted, and
- (b) the duration of the employee's incapacity remains indefinite or is likely to be for a period that would make it unreasonable for the contract to be continued,

10.3.4 Council giving 13 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.2 where Council:

- (a) has conducted a performance review, and
- (b) concluded that the employee has not substantially met the performance criteria or the terms of the performance agreement,

10.3.5 Council giving 38 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.3.

## **10.4 Summary dismissal**

10.4.1 Council may terminate this contract at any time and without notice if the employee commits any act that would entitle an employer to summarily dismiss the employee. Such acts include but are not limited to:

- (a) serious or persistent breach of any of the terms of this contract,



- (b) serious and willful disobedience of any reasonable and lawful instruction or direction given by Council,
- (c) serious and willful misconduct, dishonesty, insubordination or neglect in the discharge of the employee's duties and functions under this contract,
- (d) failure to comply with any law or Council policy concerning sexual harassment or racial or religious vilification,
- (e) commission of a crime, resulting in conviction and sentencing (whether or not by way of periodic detention), which affects the employee's ability to perform the employee's duties and functions satisfactorily, or in the opinion of Council brings Council into disrepute,
- (f) absence from the business of Council without Council approval for a period of 3 or more consecutive business days.

10.4.2 This contract is terminated immediately without notice if the employee becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

## **11 Termination payments**

- 11.1 On termination of this contract under subclause 10.3.3, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 4 weeks' remuneration calculated in accordance with Schedule C.
- 11.2 On termination of this contract under subclause 10.3.4, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 13 weeks' remuneration calculated in accordance with Schedule C.
- 11.3 On termination of this contract under subclause 10.3.5, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 38 weeks' remuneration calculated in accordance with Schedule C, or the remuneration which the employee would have received if the employee had been employed by Council to the termination date, whichever is the lesser.
- 11.4 On termination of this contract under subclause 10.3.1, 10.3.2, 10.4.1 or 10.4.2, Council will pay the employee remuneration up to and including the

date of termination calculated in accordance with Schedule C and any other payment to which the employee is entitled under this contract.

## **12 Expenses and credit cards**

In addition to any duties or entitlements that may be set out in any relevant policies of Council as adopted by Council from time to time, the employee will:

- 12.1 keep such records of expenses, travel and motor vehicle use as required by Council from time to time,
- 12.2 be reimbursed by Council for expenses properly incurred on Council business, subject to Council's prior approval to this expense being incurred,
- 12.3 only use any credit card provided by Council for expenses incurred on Council business, and
- 12.4 return any credit card provided by Council on request from Council.

## **13 Intellectual property**

- 13.1 Any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract is the sole property of Council and Council will unless otherwise agreed have the exclusive right to use, adapt, patent and otherwise register it.
- 13.2 The employee will immediately disclose to Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee after the commencement date to enable Council to ascertain whether it was discovered, developed or produced wholly outside and wholly unconnected with the course of employment under this contract.
- 13.3 To protect disclosures made in accordance with subclause 13.2, Council or the employee may require a confidentiality agreement to be signed prior to, during or immediately after discussion of the intellectual property being considered.

**Note:** IP Australia, the Commonwealth Government intellectual property agency, has developed a Confidentiality Agreement Generator for the purpose of preparing intellectual property confidentiality agreements. It is available at <http://www.ipaustralia.gov.au/smartstart/cag.htm>.

13.4 The employee assigns to Council by way of future assignment all copyright, design, design right and other property rights (if any) in respect to any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract.

13.5 At the request and expense of Council the employee will complete all necessary deeds and documents and take all action necessary to vest in Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract and obtain for Council the full benefit of all patent, trademark, copyright and other forms of protection throughout the world.

#### **14 Confidential Information**

The employee will not divulge any confidential information about Council either during or after the term of their employment under this contract.

#### **15 Waiver**

The failure of either the employee or Council to enforce at any time any provision of this contract or any right under this contract or to exercise any election in this contract will in no way be considered to be a waiver of such provision, right or election and will not affect the validity of this contract.

#### **16 Inconsistency and severance**

16.1 Each provision of this contract will be read and construed independently of the other provisions so that if one or more are held to be invalid for any reason, then the remaining provisions will be held to be valid.

16.2 If a provision of this document is found to be void or unenforceable but would be valid if some part were deleted, the provision will apply with such modification as may be necessary to make it valid and effective.

#### **17 Dispute resolution**

17.1 In relation to any matter under this contract that may be in dispute, either the employee or Council may:

- (a) give written notice to each other of the particulars of any matter in dispute, and
  - (b) within 14 days of receiving a notice specified in subclause 17.1(a), a meeting will be convened between Council (along with any nominated representative of Council) and the employee (along with any nominated representative of the employee) in an attempt to resolve the dispute.
- 17.2 The employee and Council will attempt to resolve the dispute at the workplace level.
- 17.3 Upon failure to resolve the dispute at the workplace level, the employee and Council will:
- (a) refer the dispute to an independent mediator as agreed by the employee and Council, or otherwise as appointed by the Director-General,
  - (b) agree to participate in any mediation process in good faith, with such mediation to operate in a manner as agreed by the employee and Council, and
  - (c) acknowledge the right of either the employee or Council to appoint, in writing, another person to act on their behalf in relation to any mediation process.
- 17.4 The cost of the mediation service will be met by Council.
- 17.5 The employee and Council will each be responsible for meeting the cost of any advisor or nominated representative used by them.

## **18 Service of notices and communications**

- 18.1 Any communication, including notices, relating to this contract will be in writing and served on the employee or Council at their last known residential or business address in accordance with subclause 18.2.
- 18.2 Any written communication including notices relating to this contract is taken to be served:
- (a) when delivered or served in person, immediately,
  - (b) where served by express post at an address within New South Wales in the Express Post Network, on the next business day after it is posted,

- (c) where served by post otherwise in the ordinary course of postage, as set down in Australia Post's delivery standards, and
- (d) where sent by facsimile, within standard business hours otherwise on the next business day after it is sent.

## **19 Variations**

- 19.1 Where this contract provides that its terms may be varied, that variation will be by agreement in writing signed by the employee and Council.

**Note: See clauses 4.5, 6.1.3, 7.3, 8.6 and 19.2.**

- 19.2 Where the Director-General approves an amended or substitution standard form of contract for the employment of the general manager of a council, the provisions of this contract may be varied by agreement between the employee and Council to the extent that they are consistent with the provisions of that amended or substitution standard form of contract.

**Note: See section 338 of the Act.**

## **20 Other terms and conditions**

- 20.1 The employee and Council acknowledge that they have sought or had the opportunity to seek their own legal and financial advice prior to entering this contract.
- 20.2 In accordance with section 731 of the Act, nothing in this contract gives rise to any action, liability, claim or demand against the Minister, the Director-General or any person acting under their direction.

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**21 Signed by the employee and Council**

**COUNCIL:**

The Seal of

\_\_\_\_\_

[Council name]

[Seal]

affixed by authority of a resolution of Council.

Signed  
by Council

\_\_\_\_\_

Date

\_\_\_\_\_

Name of signatory  
in full [printed]

\_\_\_\_\_

Office held [printed]

\_\_\_\_\_

Signed by Witness

\_\_\_\_\_

Name of Witness  
in full [printed]

\_\_\_\_\_

**THE EMPLOYEE:**

Signed  
by the employee

\_\_\_\_\_

Date

\_\_\_\_\_

Name of employee  
in full [printed]

\_\_\_\_\_

Signed by Witness

\_\_\_\_\_

Name of Witness  
in full [printed]

\_\_\_\_\_

## Schedule A – Council policies

**Note: This Schedule may be varied during the term of this contract in accordance with subclauses 4.5 and 19.1 of this contract.**

This Schedule operates on and from

Date \_\_\_\_\_

For the purposes of subclause 4.5 of this contract, the following policies apply to the employee:

Signed by Council \_\_\_\_\_

Signed by the employee \_\_\_\_\_



**Schedule B - Duties and functions**

**Note: This Schedule may be varied during the term of this contract in accordance with subclauses 6.1.3 and 19.1 of this contract.**

This Schedule operates on and from

Date \_\_\_\_\_

In addition to the duties and functions specified in clause 6 of this contract, the employee will carry out the following duties and functions:

Signed by Council \_\_\_\_\_

Signed by the employee \_\_\_\_\_

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**Schedule C - Remuneration**

**Note: This Schedule may be varied during the term of this contract in accordance with subclauses 8.7 and 19.1 of this contract.**

This Schedule operates on and from

Date \_\_\_\_\_

**The Annual Total Remuneration Package is as follows:**

\$ \_\_\_\_\_

**The Total Remuneration Package is comprised of:**

<b>ANNUAL REMUNERATION</b>	<b>\$</b>

The employee agrees and acknowledges that deductions under subclause 8.2 of this contract are made principally for the benefit of the employee and that the Council relies on that statement in providing the non-cash benefits requested by the employee.

In the case of an employee who is a member of a defined benefit division of the Local Government Superannuation Scheme (or equivalent) compulsory employer superannuation contributions are the long term or "notional" employer contribution, as advised by the Actuary for the Local Government Superannuation Scheme from time to time.

The employee's superable salary will be the amount of the total remuneration package less the amount of compulsory superannuation contributions.

Signed by Council \_\_\_\_\_

Signed by the employee \_\_\_\_\_