

Mr Matthew Stewart
General Manager
Canterbury Bankstown City Council
PO Box 8
BANKSTOWN NSW 1885

ATTN: Mr Macpherson, Manager Governance and Public Officer

Our Ref: Z21/0025

Dear Mr Stewart

Corruption prevention recommendations made to Council in the report for Operation Dasha (*Investigation into the Conduct of Councillors of the Former Canterbury City Council and others*)

Thank you for your correspondence of 27 May 2021 enclosing your response to the recommendations made by the Commission in the above report.

The Commission acknowledges that Canterbury Bankstown City Council has chosen to set aside preparing a plan of action and has, instead, moved to fully adopt the recommendations made in the Operation Dasha report. The Commission commends Council for its swift response in implementing these recommendations.

With the recommendations having been fully implemented, the Commission will not be pursuing this matter further.

Council's response to the recommendations will be made publicly available on our website, www.icac.nsw.gov.au. Should your staff have any further questions, they are welcome to contact Mr Antony Pedroza, Senior Corruption Prevention Officer (Planning) at apedroza@icac.nsw.gov.au.

Yours sincerely,



Lewis Rangott
Executive Director, Corruption Prevention

3 August 2021



5 May 2021

Our Ref: GOVN- 46-15

Mr Philip Reed
 Chief Executive Officer
 Independent Commission Against Corruption
 GPO BOX 500
 SYDNEY NSW 2001

Dear Mr Reed

I refer to your letter of 24 March 2021 advising that the investigation into the former Canterbury City Council (Operation Dasha) was tabled in NSW Parliament and included 23 recommendations to reduce the occurrence of corrupt conduct and to promote the integrity and good reputation of public administration. Three of the recommendations were directed to Canterbury Bankstown Council.

A primary objective of the Canterbury Bankstown Council since merging was to establish a strong ethical culture, and ensuring we apply effective good governance principles – which support and guide Council's operations to ensure decisions are made in the best interests of the community. The three recommendations which directly apply to Council have either been implemented or applied in practice in managing relevant operations.

Council's response to the Commission's recommendations are addressed in the following table:

Comm Rec Number	Commission's Recommendation	Council's Action
3	That the City of Canterbury Bankstown Council ensures that it has a recruitment policy that applies to the appointment of senior staff, which is consistent with the relevant provisions of the Local Government Act 1993 ("the LGA").	Council's Recruitment and Selection Policy has been amended to reflect relevant legislation and Office of Local Government Guideline requirements concerning the appointment of Senior Staff. The policy is attached.



<p>21</p>	<p>That the City of Canterbury Bankstown Council develops standardised provisions for consultancy services agreements and a statement of business ethics for suppliers. The agreements and statement of business ethics should advise consultants about:</p> <ul style="list-style-type: none"> • how to make disclosures under the Public Interest Disclosures Act 1994; • the City of Canterbury Bankstown Council's ethical obligations; • their ethical responsibilities; • the jurisdiction of the ICAC Act. 	<p>Council adopted a comprehensive Statement of Business Ethics on 28 February 2017 that provides guidance to all members of the public, applicants, lobbyists, contractors, suppliers and others on doing business with Council.</p> <p>The policy is now updated to meet the Commission's recommendation regarding information about making Protected Disclosures and the jurisdiction of the ICAC. The policy is attached.</p> <p>Further, Council has also adopted a separate, comprehensive policy on making Protected Disclosures.</p> <p>Separately, Council's Consultancy Services Agreement has been updated to reflect ICAC's recommendations. A copy of the agreement is attached.</p>
<p>23</p>	<p>That the City of Canterbury Bankstown Council ensures that its development assessment procedures assess and verify compliance with design requirements for residential apartment developments, including provisions relating to design verification statements.</p>	<p>Council's current development assessment procedures verify compliance with relevant local and state level planning controls including design related requirements. This includes assessment and consideration of design verification statements for relevant development.</p> <p>Although less common, certain development applications also trigger assessment under relevant provisions of Commonwealth legislation.</p> <p>This is an ordinary and set process that all development assessment officers must follow when assessing and determining development under delegation. This process is also in place for development assessment reports forwarded to</p>



		<p>independent panels for determination.</p> <p>Prior to assessments being determined under delegation or forwarded to an independent Panel for determination, there are also a number of levels of internal review that are undertaken.</p> <p>All applications are peer reviewed as part of the determination process to ensure all processes have been followed and relevant considerations made during the assessment of the development application.</p> <p>The peer review process operates as a cross check to ensure Council's Code of Conduct requirements are satisfied. This peer review process is undertaken independent of the assessing officer.</p>
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It should further be noted that with respect to Recommendation 23, in 2018, an internal review of the development assessment process at the City of Canterbury Bankstown was completed. The review formed part of the approved Internal Audit Plan for 2018. The scope of the review was the end to end Canterbury Bankstown Development Assessment process and used a random sample of determined development applications. The ICAC Internal Audit Development Assessment Tool was utilised throughout the review.

The review considered development applications determined in the 12-month period to 1 October 2018 across the City. The audit observed that there are well established processes ensuring a controlled environment which was supported by a good level of compliance.

Should you require further information, please contact Council's Manager Governance and Public Officer, Brad McPherson on 97075737.

Yours sincerely

Matthew Stewart
General Manager



1.0 Purpose

This policy outlines Council's commitment to merit based best practice recruitment, selection and appointment of suitably qualified people into positions within the Council's organisation structure.

2.0 Scope

This policy applies to positions within Council that are required to be advertised in a manner sufficient to enable suitably qualified people to apply for the position, including senior staff positions. This policy is in accordance with the provisions contained in the NSW Local Government Act (1993), the current Local Government (State) Award (the Award) and the Anti-Discrimination Act (1977).

3.0 Terms and Definitions

Recruitment is the process of actively seeking out and finding applicants for a specific position and encouraging them to apply for the position.

Selection is the process undertaken to choose the best candidate from the pool of applicants and offering them the position.

Talent Management Officer (Talent) is the person assigned to coordinate the recruitment and selection process.

Interview Panel is the people conducting the interview/s as part of the selection process.

Recruitment Expert is someone with expertise in human resource management, recruitment and selection.

Subject Matter Expert is someone with expertise in a particular area or topic, such as leadership, change management or some other technical expertise.

Permanent Full-Time Position requires full-time ordinary hours to be worked (either 35 hours or 38 hours per week in accordance with the current Award on an ongoing basis for an indefinite period of time.

Permanent Part-Time Position requires a regular number of clearly defined hours and days to be worked, which are less than full-time ordinary hours.

Temporary/Fixed Term Position in accordance with the Award:

- a) Short-term basis for a specific task or project that has a definable work activity, or
- b) To perform duties associated with external funding where the length of the employment depends on the length of the funding, or
- c) To perform the duties associated with a vacant position until the vacant position is filled on a permanent basis, or
- d) To temporarily replace an employee on approved leave, secondment, workers compensation or acting in a different position or reduced work hours under a flexible work and leave arrangement, or
- e) To trial a new work area, or
- f) To perform seasonal work

Casual Position is required on a day-to-day basis and is not to replace a position on a permanent basis.

4.0 Policy Statement

Council is committed to the application of corporate standards and practices which eliminate bias, nepotism, cronyism and discrimination throughout the recruitment and selection process. This means that applicants are evaluated against selection criteria which is based on position requirements.

Recruitment and selection is undertaken in a manner that is consistent with Council's EEO policy and relevant legislation.



5.0 Policy Principles

The following principles underpin this policy and associated procedure:

1. The decision to fill a role is based on a business justification.
2. The objective of the recruitment process is to attract a broad range of high caliber applicants.
3. The objective of the selection process is to identify the most suitable candidate for the position on the basis of merit whereby selection is based on knowledge, skills, qualifications, experience, standard of relevant work performance and suitability for the position.
4. The selection process is consistent, transparent and equitable for internal and external applicants.
5. The selection process is compliant with the Award and relevant legislation.
6. The selection process for senior staff (General Manager) will be conducted in accordance with the Office of Local Government's Guidelines for the Appointment and Oversight of General Managers.
7. The selection process for senior staff (Directors) will be conducted in accordance with:
 - The requirements under the Local Government Act 1993, and the Office of Local Government Circular 19-17 for the Appointment and Dismissal of Senior Staff.
 - The requirements under Council's Recruitment, Selection and Appointment Procedure, specifically the requirement for the selection panel to include, as a minimum, the General Manager, recruitment expert and subject matter expert. Councillors are not members of the selection panel.
8. Selection decisions will withstand external scrutiny or review.

6.0 Monitoring and Review

6.1 Monitoring

Manager Human Resources monitors the application of this policy and will conduct a review in April 2024.

6.2 Variation

Council reserves the right to review, vary or revoke this policy at any time. Any variations to this policy will be administered in accordance with normal consultation practices.

7.0 Approval

7.1 Policy Owner

Manager Human Resources

7.2 Authorisation

Endorsed by General Manager on 22 April 2021.

8.0 Breaches

Team members found to have breached this policy may be subject to disciplinary action, up to and including termination of employment and/or summary dismissal in accordance with Council's Managing Performance Policy and Investigations Policy.



9.0 Related Documents

9.1 Laws and Standards

- Local Government Act 1993 (NSW)
- Local Government (State) Award
- Anti-discrimination Act (1977)
- Office of Local Government's Guidelines for the Appointment and Oversight of General Managers
- Office of Local Government Circular 19-17 for the Appointment and Dismissal of Senior Staff

9.2 Policies, Procedures

- EEO Policy (Policy36)
- Managing the Establishment Procedure (Proc418)
- Recruitment and Selection Procedure (Proc419)



1.0 INTRODUCTION

Canterbury-Bankstown Council (Council) conducts a range of business with private, public and non-profit sectors to deliver a range of services for the community, who expect a high ethical standard of behaviour from Council.

This Statement of Business Ethics provides guidance for all sectors of the community when conducting business with Council and explains the mutual obligations and role of all parties. This business may include the supply of goods and services, use of contractors and consultants, assessment of development applications and other general dealings.

Council officials and staff are required to comply with Council's standards of conduct, procedures and relevant legislation governing ethical behaviour. The same standard is expected of all individuals and organisations that deal with Council to reduce the risk of inappropriate business activities and actual, potential or perceived conflicts of interest occurring.

This Statement supports and complements Council's Good Governance Framework, of which Council's Code of Conduct is a central component. The mechanisms in both the Statement and the Code of Conduct aim to protect the integrity and reputation of Council and ensure that decision making is made in a fair and ethical manner.

2.0 KEY BUSINESS PRINCIPLES

Council is committed to ethical business practices, based on Council's values and the key principles contained within Council's Code of Conduct including: Leadership, Selflessness, Impartiality, Openness and Honesty.

As part of this commitment, Council will ensure:

- Business dealings will be ethical and transparent, and open to public scrutiny whenever possible.
- All Council decisions and considerations will be based on merit and made in a fair and impartial manner.
- Ethically manage potential conflicts of interest.

3.0 OUR MISSION AND VALUES

Canterbury-Bankstown Council has adopted a Corporate Vision, Mission and Values to guide the conduct of its officials and provide a foundation in its approach to delivering services to the community.

Vision

A leading organisation that collaborates and innovates.

Mission

To provide quality services to our community every day.



Values

- We care about our customers.
- We act with integrity.
- We work as one team.
- We are committed to safety.
- We continuously improve.

4.0 WHAT IS EXPECTED FROM YOU

Canterbury-Bankstown Council requires all members of the public, applicants, lobbyists, proponents, contractors, suppliers and anyone doing business with Council to:

- Act ethically, fairly and honestly in all dealings with Council.
- Declare actual, potential or perceived conflicts of interest as soon as possible.
- Respect the obligations of Councillors and staff to abide by Council's Code of Conduct.
- Be aware and comply with legislation, Council's policies and procedures as they pertain to the business before Council, and the conditions set out in documents supplied by Council.
- Provide accurate and reliable advice and information to Council when required.
- Prevent the disclosure of confidential information.
- Refrain from discussing Council business or information in the media.
- Assist Council to prevent unethical practices in our business relationships.
- Refrain from engaging in any form of collusive practice or offering Council officials inducements or incentives including gifts and benefits, designed to improperly influence the conduct of their business.
- Refrain from any action or contact that may be considered an attempt to influence a decision of Councillors or staff.
- Maintain records of all dealings with Council.

5.0 WHAT YOU CAN EXPECT FROM US

Councillors, staff and delegates are bound by Council's Code of Conduct and the documents contained within the Code of Conduct Framework. This means there is an expectation that Council staff will be courteous and act with transparency and integrity in all its interactions with members of the public.

Council will ensure that all policies, procedures and practices relating to the procurement of goods and services, use of contractors and consultants, assessment of development applications, and interactions with lobbyists are consistent with good practice and the highest standards of ethical conduct.

All approvals, decisions and procurement activities will be clearly documented to enable transparent and effective governance across the organisation. Council will assess all applications objectively, considering all relevant and material factors in determining a decision on matters that come before the Council.



6.0 WHY COMPLY WITH THIS STATEMENT

As all stakeholders are required to comply with this Statement, compliance will not place any party at a disadvantage. Stakeholders should be aware of the consequences of not complying with Council's ethical requirements when doing business with Council, and may include:

- Investigation, including referral of matters for criminal investigation where appropriate.
- Damage to reputation.
- Loss of future work or approval.
- Immediate termination of contract or order, at any stage.

Council officials who do not comply with this Statement will be considered in breach of Council's Code of Conduct and subject to disciplinary action under the Code.

7.0 DOING BUSINESS WITH COUNCIL

Gifts and benefits

Gifts must not be given in connection with any prospective business dealings. Council staff are not permitted to ask for any reward or incentive from external parties and are expected to decline such offers of gifts and benefits during the course of their work.

Council officials, who are involved in exercising regulatory and procurement processes, are prohibited under any circumstances to accept gifts, hospitality and benefits of any kind, where the staff are dealing with persons seeking a decision from Council, or who have sought a decision from Council within the previous 12 months.

In accordance with Council's Gifts and Benefits Policy, any offer or acceptance of a gift by Councillors or staff is required to be disclosed and recorded in Council's Gifts and Benefits Register.

Conflicts of interest and disclosure

Councillors and staff are required to disclose any actual, perceived or potential conflicts of interest, as well provide Council with any other related disclosures that may be required. Council extends this requirement to any applicants, business partners, contractors and suppliers.

Lobbying

Lobbying is a normal and, in some circumstances, an acceptable part of the democratic process. However, lobbying that is not fair and undermines public confidence in impartial decision-making falls outside the bounds of appropriate and lawful behaviour.

The lobbying of Councillors and staff in certain situations is not permissible. These situations may include, but are not limited to: tender process, engagement of services, development applications while under assessment, or a matter subject to legal action.



Attempts to influence Council decisions

Any action or contact that may be considered or perceived to be an attempt to influence a decision of Councillors or staff will constitute a breach of this Statement.

Any such attempt during the tender process will immediately disqualify the relevant tenderer or service provider. Council's Request for Tender or Quotation documentation will contain statements prohibiting proponents from approaching Councillors and Council officers not nominated as contact people during a tender process.

Use of Council equipment and resources and information

All Council equipment and resources should only be used for its proper official purpose; equipment remains the property of Council at all times.

Confidentiality

Any confidential information should be treated as such and should not be revealed to persons other than those with a genuine need and authority. Suppliers handling private information on behalf of Council are expected to adhere to Council's Privacy Management Plan.

Communication

All communication between parties should be made in a clear and cordial manner to minimise the risk of perception of inappropriate influence.

Secondary and post separation employment

Staff have a duty to maintain public trust and confidence, and not disclose confidential information obtained during the course of their employment or use this information to facilitate future employment opportunities. Staff are required to obtain written approval from Council to enter into any secondary employment arrangements.

Contractors and sub-contractors

All contracted and sub-contracted employees are expected to comply with this Statement. It is the responsibility of contractors to ensure sub-contractors they engage are aware of this Statement, as they are equally bound by it.

Intellectual property rights

In business relationships with Council, parties are expected to respect each other's intellectual property rights, and formally negotiate any access, licence or use of intellectual property.

Workplace safety

Workplace safety is of paramount importance to Council. It is expected that all parties who do business with Council comply with legislative and procedural safety requirements.

Political donations

The law requires that persons with a financial interest in, or who have made a submission in relation to, a Development Application or a planning instrument, disclose certain information about political donations and



other gifts that have been made to a Councillor or Council employee within the previous two years of the application or submission.

8.0 WHO TO CONTACT

If you have any questions about this statement or would like to report suspected corrupt or unethical conduct, please contact Council's General Manager or Public Officer/Public Interest Disclosures Coordinator.

Public officials reporting corrupt conduct, maladministration or serious waste of public funds are protected under the *Public Interest Disclosures Act 1994*. The Act protects public officials disclosing corruption-related matters from reprisal or detrimental action and ensure disclosures are dealt with.

The Independent Commission Against Corruption (ICAC) is an independent NSW body that can investigate allegations related to public officials on matters including but not limited to unethical or corrupt conduct.

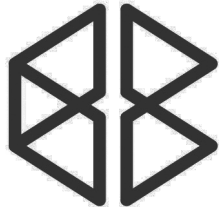
In accordance with s11 of the *Independent Commission Against Corruption (ICAC) Act 1988* (NSW), a principal officer of a NSW public authority, such as a local council, has a duty to report to the ICAC where there is reasonable suspicion that corrupt conduct has occurred or may occur. Alternatively, matters of unethical or corrupt conduct can be reported directly to the ICAC.

Reports of unethical or corrupt behaviour can also be made directly to:

- Independent Commission Against Corruption (ICAC) – 8281 5999 (concerning corrupt conduct)
- NSW Ombudsman – 9286 1000 (concerning maladministration)
- NSW Auditor General – 9275 7100 (concerning serious and substantial waste)
- Office of Local Government – 4428 4100

9.0 AUTHORISATION

Adopted by Canterbury-Bankstown Council on 28 February 2017.



**CANTERBURY
BANKSTOWN**

TERMS AND CONDITIONS OF CONSULTANCY AGREEMENT

CONSULTANCY AGREEMENT

PARTIES

THE COUNCIL & THE CONSULTANT as defined in **Schedule 2**.

BACKGROUND

- (1) The Council issued the Request For Tender for the provision of the Services.
- (2) In response to the Request For Tender the Consultant submitted the Tender to the Council.
- (3) The Council has accepted the Tender.
- (4) The parties wish to enter into this Agreement in order to confirm the appointment of the Consultant to provide the Services.

OPERATIVE PROVISIONS

1 DEFINITIONS

Unless the context otherwise requires the definitions and interpretational rules contained in **Schedule 1** apply in the interpretation of terms used in this Agreement.

2 POSITION OF THE COUNCIL

2.1 CONSENT AUTHORITY

The parties acknowledge that the Council is a consent authority with statutory rights and obligations.

2.2 NO FETTER OF PUBLIC POWERS

No term of this Agreement is to be construed or to operate so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a public consent authority.

2.3 READING DOWN OF PROVISIONS

If any provision of this Agreement would, or could likely, operate so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a public consent authority then that provision is, to the extent necessary for it not to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority:

- (1) be read down, if possible; or
- (2) severed from this Agreement.

3 TENDER PROCESS

3.1 AGREEMENT PURSUANT TO TENDER PROCESS

The parties acknowledge that this Agreement is being entered into as a result of a Tender process conducted by the Council.

3.2 AGREEMENT TO INCLUDE TENDER DOCUMENTS

The parties further acknowledge that the Tender Documents are deemed to be incorporated into this Agreement.

3.3 PRECEDENCE OF DOCUMENTS

In the event of any inconsistency between this Agreement and the Tender Documents those documents will be read in the following order of precedence:

- (1) this Agreement;
- (2) any previous documents varying the terms of the Tender;
- (3) the Tender; and
- (4) the Request for Tender.

4 CONSULTANCY

4.1 CONSULTANCY

On the Commencement Date:

- (1) the Council appoints the Consultant as its consultant to provide the Services; and
- (2) the Consultant accepts its appointment as a consultant and agrees to provide the Services to the Council.

4.2 TERM OF CONSULTANCY

Unless terminated earlier pursuant to the terms of this Agreement the Consultancy is to continue for the Term.

4.3 UNAUTHORISED RELATIONSHIP

- (1) No term of this Agreement is to be construed so as to give rise to an Unauthorised Relationship.
- (2) Each party must ensure that they do not conduct themselves so as to hold out, or otherwise represent, that an Unauthorised Relationship exists.
- (3) For the purpose of this clause an Unauthorised Relationship is any of the following relationships:
 - (a) joint venturers; or
 - (b) partners; or
 - (c) trustee and beneficiary; or
 - (d) employer and employee.

5 REMUNERATION

5.1 PAYMENT OF THE CONSULTANCY FEE

The Council must, during the Term, pay the Consultant in the manner set out in **Schedule 2**.

5.2 REVIEW OF CONSULTANCY FEE

If applicable, the Consultancy Fee will be reviewed in the manner set out in **Schedule 2**.

5.3 EXPENSES

- (1) The amounts payable by the Council to the Consultant are inclusive of:
 - (a) all Taxes; and
 - (b) all costs incurred by the Consultant in the course of performing the Services with the exception of the Expenses.
- (2) In addition to the Consultancy Fee the Council must pay the Expenses to the Consultant in the manner set out in **Schedule 2**.

5.4 RECORDS

The Consultant must:

- (1) keep adequate financial records relating to the provision of the Services and the Consultancy Fee; and
- (2) within thirty (30) days from the end of each financial year, provide to the Council a copy of its full accounts in respect of the provision of the Services and the Consultancy Fee up to the end of such financial year.

5.5 AUDIT OF RECORDS

- (1) The Council may give the Consultant seven (7) days notice that it, or an authorised agent, are to inspect all financial records held by the Consultant in relation to the provision of the Services and the Consultancy Fee.
- (2) On receipt of notice referred to in paragraph (1) the Consultant must make available to the Council or its representative, all books of accounts and records relating to the provision of the Services and the Consultancy Fee.
- (3) If an audit conducted by the Council in accordance with this clause reveals that the Consultant has been overpaid or underpaid then both the Council and the Consultant agree to adjust that amount.

5.6 DEDUCTION AND SET-OFF

The Council may deduct any amount owing to it by the Consultant from any part of the Consultancy Fee prior to it being paid to the Consultant.

5.7 CPI ADJUSTMENT

Firm for the initial 12 months of the contract, then subject to annual adjustment as per the National Consumer Price Index (CPI). The revised schedule of rates will then remain firm for each ensuing 12 month period. A claim for CPI adjustment may be submitted by the contractor to Council by the end of the first year of the contract. The revised schedule of prices must include all items as listed in the pricing schedule. The contractor shall provide thirty (30) days prior notification of any price adjustments. If the revised schedule of prices is not submitted within two (2) months of the end of the first year of the contract and each completed year of the contract thereafter, no further claims for CPI adjustment for that particular year will be accepted.

6 OBLIGATIONS OF THE CONSULTANT

6.1 PERFORMANCE

The Consultant must perform the Services:

- (1) using its best endeavours;
- (2) in the manner, and in accordance with the standards, set out in the Tender Documents; and
- (3) in a competent and professional manner to a standard that would be expected from a consultant with equivalent experience to the Consultant.

6.2 DEVOTION OF TIME

- (1) The Consultant is not obliged to allot a minimum amount of time to the performance of the Services.
- (2) Notwithstanding paragraph (1) the Consultant must devote such time to the performance of the Services as is sufficient to comply with clause 6.1.

6.3 REPRESENTATIONS

The Consultant must not:

- (1) make any representation or warranties concerning the Council or its activities without the prior approval of the Council; or
- (2) contract on behalf of or otherwise bind the Council without the prior approval of the Council.

6.4 WORK HEALTH & SAFETY

- (1) The Consultant must ensure that it complies with all relevant work health and safety requirements, including those in force under the following:
 - (a) the *Work Health & Safety Act (NSW) 2011*;
 - (b) the *Work Health & Safety Regulations (NSW) 2017*;
 - (c) any relevant Australian Standards and Industry Codes of Practice; and
 - (d) the Council's work health and safety policies.
- (2) The Consultant is responsible for the health and safety of its employees and contractors and must ensure that they are fit to perform their duties and present no danger to others.
- (3) The Consultant will immediately notify the Council if it is charged with non-compliance with any of the work health and safety requirements set out in paragraph (1).

6.5 NOTIFICATION OF CHANGE IN CONTROL

The Consultant must immediately notify Council in writing of any proposed or other:

- (1) Change in Control;
- (2) any other analogous action including any action to reconstruct or amalgamate itself.

In the event that there is a change in control of the Consultant, Council will have the right to terminate this agreement subject to 30 days prior written notice.

6.6 ASSIGNMENT

- (1) The Consultant may not assign its rights under this Agreement without the prior written approval of the Council.
- (2) In the event that during the term of this Contract the Principal in its capacity as a local government entity is required to amalgamate with another Council (**Amalgamation**) the parties agree that:
 - (a) unless otherwise prescribed by statute, on the date of Amalgamation, the Principal's interest in this Contract is assigned to the Amalgamated Entity;
 - (b) the Contractor's prior approval to that assignment is not required; and
 - (c) if requested by the Principal the Contractor must enter into a Deed of Assignment which confirms that assignment.

6.7 IDENTIFICATION

Any officer, employee or consultant of the Consultant must:

- (1) wear identification badges, or a uniform that allows them to be clearly identified as representatives of the Consultant while performing the Services on premises occupied by the Council; and
- (2) sign in and out of Council premises attended by them in the course of providing the Services.

6.8 ETHICAL REQUIREMENTS

The Parties agree that they will conduct themselves and take all reasonable steps to ensure their staff conduct themselves to the following ethical standards throughout the term of this Agreement:

- (1) They will declare any actual, potential or perceived conflicts of interest, as soon as possible;
- (2) Be aware and comply with applicable legislation regarding corruption and other unethical conduct including, without limitation, the *Independent Commission Against Corruption Act 1988* (see <https://www.icac.nsw.gov.au/>) and the *Public Interest Disclosures Act 1994* <https://legislation.nsw.gov.au/view/html/2013-04-03/act-1994-092> ;
- (3) Not offer staff and/or officials of the other party any inducements or incentives including gifts and benefits, designed to improperly influence the administration of this Agreement; and
- (4) [Subject to the nature of the consultancy service being provided, the Council Project Officer should consider any additional requirements and add these into this section when applicable.]

Further, Council staff and officials will adhere to the [Code of Conduct](#) and any breach of this code should be reported to Council. Similarly complaints regarding Council's service standards or the quality and/or range of Council services provided can be reported using [Council's Complaints Management Policy](#).

7 KEY PERSONS

7.1 APPLICATION

This clause applies if the Request For Tender required the Consultant to submit details of the personnel who will perform the Services.

7.2 CONSULTANT'S PERSONNEL

- (1) The Consultant must:
 - (a) ensure that its personnel, including the Key Personnel, supply the Services in accordance with the terms of this Agreement; and

- (b) ensure that it employs a sufficient number of appropriately qualified personnel in order to allow it to provide the Services in accordance with this Agreement.
- (2) The Consultant must employ only such persons in respect of this Agreement who:
 - (a) are skilled and experienced in the provision of services of a similar nature to the Services; and
 - (b) hold all licences permits and authorities (where applicable) necessary to allow them to provide the Services.
- (3) The Consultant must, where possible, ensure that the Services are provided by the Key Personnel.
- (4) If one or more of the Key Personnel are unable to perform the Services for any reason the Consultant must immediately advise the Council of:
 - (a) the reasons for that inability; and
 - (b) the details of any replacement(s) of the relevant Key Personnel.

7.3 AUTHORISED REPRESENTATIVES

- (1) On or before the date of this Agreement the parties must nominate their Authorised Representatives to represent them in any discussion or negotiation regarding the terms or operation of this Agreement.
- (2) The Consultant's Authorised Representative must have the power and authority to provide such consents as are required and to issue instructions for the fulfilment of the terms of this Agreement.

8 SUBCONTRACTORS

- (2) The Consultant must only use those subcontractors to provide the Services that are:
 - (a) included in the Tender; or
 - (b) are approved by the Council.
- (3) The Consultant will bear all responsibility for any fees charged by any sub-contractor engaged by it to provide the Services.
- (4) The Consultant:
 - (a) must ensure that any subcontractor engaged to provide the Services is aware of the terms of this Agreement that are relevant to the sub-contractor's performance of any part of the Services; and
 - (b) will not be relieved of its liabilities and obligations under this Agreement by sub-contracting any part of the Services and will be responsible for all the sub-contractors' acts or omissions in performing the Services; and
 - (c) must ensure that it has the right to terminate any sub-contract in the event that this Agreement is terminated.
- (5) Any subcontractor engaged to perform part of the Services must comply with the insurance requirements set out in clause 14.2.
- (6) The Consultant must provide the Council with evidence that paragraph (5) has been complied with upon being requested to do so by the Council. If the Consultant fails to provide the Council with such confirmation, then the Council may direct that the relevant sub-contractor cease performing any of the Services.

9 OBLIGATIONS OF THE COUNCIL

9.1 DOCUMENTATION

The Council must provide the Consultant with reasonable:

- (1) access to information held by the Council that is not subject to any obligations of confidentiality on the part of the Council; and
- (2) directions in relation to the performance of the Services;

so as to facilitate the Consultant in performing the Services in accordance with the terms of this Agreement.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 OWNERSHIP

Title to the Intellectual Property remains vested at all times in the Council.

10.2 VARIATION OR IMPROVEMENT TO THE INTELLECTUAL PROPERTY

Title to any amendment to or alteration to the Intellectual Property (whether made by the Consultant or the Council) vests absolutely in the Council.

10.3 LICENCE

The Council grants to the Consultant a non-exclusive fee free licence to use such parts of the Intellectual Property as are reasonably necessary for the performance of the Consultant's obligations under this Agreement.

10.4 RESTRICTED CONDUCT

The Consultant agrees that it must not:

- (1) except as expressly authorised by the terms of this Agreement disclose the Intellectual Property (or any part of the Intellectual Property) received by it from the Council to:
 - (a) any person, related body corporate or body corporate with whom it has an understanding or affiliation; and
 - (b) any other person (whether governmental, corporate or individual) except in accordance with the terms of this Agreement; and
- (2) do any act or thing that leads, or may lead, to:
 - (a) a reduction in the value of the Intellectual Property; or
 - (b) the Intellectual Property being brought into disrepute or otherwise adversely affected; or
 - (c) it holding itself out as being entitled to any proprietary interest in the Intellectual Property.

10.5 DISCLOSURE

The Consultant is absolutely liable to the Council for any loss or damage (of whatever nature) arising from disclosure of the Intellectual Property where such disclosure:

- (1) was made by the Consultant or persons obtaining the Intellectual Property through the Council; and
- (2) the disclosure was not made in accordance with the terms of this Agreement.

10.6 ASSISTANCE IN THE EVENT OF INFRINGEMENT OF RIGHTS TO INTELLECTUAL PROPERTY

- (1) If the Consultant becomes aware of a person using the Intellectual Property without the apparent approval of the Council then it must immediately notify the Council.
- (2) The Consultant must, if requested by the Council and at the Council's expense, do all such acts necessary to assist the Council in protecting its interest in the Intellectual Property.

11 CONFIDENTIALITY

11.1 NON-DISCLOSURE

- (1) A party must not disclose Confidential Information disclosed to it by the other party except:
 - (a) with the prior written consent of the disclosing party; or
 - (b) in accordance with the terms of this Agreement.
- (2) A party may not unreasonably withhold its consent to disclosure in accordance with paragraph (1)(a) where:
 - (a) the requested disclosure is made for the purpose of facilitating the proper performance of a party's obligations under this Agreement; and
 - (b) the disclosure is to be made to persons who:
 - (i) reasonably require the disclosure of the information; and
 - (ii) are subject to a duty of confidentiality on the same or similar terms to that contained in this clause.

11.2 USE OF CONFIDENTIAL INFORMATION

A party may use, copy, reproduce or otherwise deal with the Confidential Information disclosed to it only:

- (1) during the Term; and
- (2) in accordance with the terms of this Agreement; and
- (3) in a manner that is related to the proper and lawful conduct and performance of its obligations under this Agreement.

11.3 EXCEPTIONS TO NON-DISCLOSURE

A party may disclose Confidential Information that has been disclosed to it:

- (1) where such disclosure is made to those of its employees, advisers, related bodies corporate and shareholders who:
 - (a) have a need to know (and only to the extent each has a need to know); and
 - (b) are aware and agree that the information that is to be disclosed must be kept confidential; or
- (2) which, at the time of disclosure, is within the public domain or after disclosure comes into the public domain other than by a breach or breaches by any party (whether the party to this Agreement or a third party) of any obligation owed to the other party; or
- (3) where:
 - (a) required by law or any order of any court, tribunal, authority, regulatory body or the rules of any securities exchange (whether in Australia or elsewhere) to be disclosed; and
 - (b) the party ensures that information is disclosed only to the extent reasonably and lawfully required.

11.4 RETURN OF CONFIDENTIAL INFORMATION

On expiry or earlier termination of the Term each party must:

- (1) return to the other party all hard copy documents (whether in original or copied form) comprising or containing Confidential Information which has been disclosed to them by the other party; and
- (2) except where to do so would contravene any legal obligation destroy all electronic files containing Confidential Information including all cache, back-up or archive copies of electronic files containing Confidential Information.

11.5 DURATION OF CONFIDENTIALITY OBLIGATIONS

Unless otherwise agreed by the parties in writing the obligation of confidentiality set out in this Agreement operates indefinitely and does not terminate on the expiry or earlier termination of this Agreement.

12 DISPUTE RESOLUTION

12.1 NOTICE OF DISPUTE

If a party believes that there is a dispute, then:

- (1) that party must give notice in writing to the other party stating that there is a Dispute; and
- (2) the notice referred to in paragraph (1) must outline:
 - (a) what the party believes the dispute to be; and
 - (b) what the party wants to achieve; and
 - (c) what the party believes will settle the Dispute.

12.2 CONSULTATION BETWEEN THE PARTIES

Within fourteen (14) days of a notice served in accordance with clause 12.1 the representatives of the parties must meet in order to resolve the Dispute.

12.3 SETTLEMENT OF DISPUTE AND MEDIATION

- (1) If the Dispute cannot be resolved by the parties within fourteen (14) days of the notification under clause 12.2 then the Dispute must be submitted to mediation by a mediator selected:
 - (a) by the parties; or
 - (b) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.
- (2) Any costs incurred in the mediation of the Dispute are to be borne equally by the parties.

12.4 ARBITRATION

- (1) If the parties are unable to resolve the Dispute in accordance with clause 12.3 then the Dispute must be referred to arbitration.
- (2) The parties must agree to the appointment of an arbitrator with experience in resolving disputes of a similar nature to the Dispute. If agreement cannot be reached regarding the appointment of an arbitrator, the parties agree to the appointment of an arbitrator nominated by the President of the Australian Commercial Disputes Centre. The arbitration will, when conducted by an arbitrator appointed by the President of the Australian Commercial Disputes Centre be conducted:
 - (a) by a single arbitrator; and
 - (b) in accordance with the arbitration rules of the Australian Commercial Disputes Centre; and
 - (c) in English; and
 - (d) in Sydney, Australia.
- (3) The parties must do all such acts and things as are necessary to facilitate the expeditious hearing of the Dispute by the arbitrator.
- (4) The costs of the arbitrator are to be borne:
 - (a) as ordered by the arbitrator; or
 - (b) in the absence of a direction from the arbitrator – equally by the parties.
- (5) The decision of the arbitrator (in the absence of an error of law) is binding on both parties. Accordingly, neither party is, after completion of the arbitration, entitled to commence proceedings to litigate the Dispute in any court of competent jurisdiction.

12.5 EXCLUSIVITY OF DISPUTE RESOLUTION PROCEDURE

- (1) Both parties must adhere to the dispute resolution procedure set out in this Agreement.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

13 MISCELLANEOUS

13.1 GENERAL WARRANTIES

Each party warrants to the other that:

- (1) the execution and delivery of this Agreement by it has been properly authorised by all necessary action – corporate or otherwise; and
- (2) it has lawful authority and (as relevant) full corporate power to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement; and
- (3) this Agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms by appropriate legal remedy; and
- (4) it is able to pay its debts as and when they fall due; and
- (5) it has adequate resources (both financial and otherwise) to perform and otherwise carry out its obligations under this Agreement; and

- (6) this Agreement and completion of the transactions contemplated in it do not conflict with or result in a breach of or default under any provision of its constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
- (7) it has entered into this Agreement in its personal capacity and, where relevant, in its capacity as trustee of any trust and that this document is binding on it in each such capacity; and
- (8) that the entry into and performance of its obligations under, and the transactions contemplated by, this Agreement is for its commercial benefit and is in its commercial interest and, in relation to any of its activities as a trustee, is for the benefit of the beneficiaries of any trust for which it is the trustee.

13.2 INSURANCE

- (1) The Consultant must hold and maintain the following policies of insurance during the term of this Agreement:
 - (a) a broad form public liability policy for the amount set out in **Schedule 2** on a single occurrence basis; and
 - (b) insurance against any Claim arising by virtue of any legislation relating to workers compensation, or any common law Claim, brought by any person employed by it in the performance of the Services; and
 - (c) professional indemnity insurance in respect of all Claims for professional negligence arising as a result of the Services for a sum not less than the amount set out in **Schedule 2** on a single occurrence basis; and
 - (d) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the Services; and
 - (e) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the performance of the Services.
- (2) The policies referred to in paragraphs (1)(a), (1)(d) and (1)(e) must note the interest of the Council as principal, must include a cross liability clause and a subrogation waiver.
- (3) The Consultant must provide the Council with a certified copy of any certificate of currency for any of the policies of insurance referred to in paragraph (1) within two (2) days of being requested to do so by the Council.
- (4) If any policy is cancelled either by the Consultant or the insurer the Consultant must notify the Council immediately.
- (5) Where an injury, death, damage or other loss occurs arising out of the services provided, which may give rise to a claim, the Contractor must notify the Council immediately.
- (6) The Consultant must provide Council copies of renewal certificates of currency within seven (7) business days from receipt of such certificates from the insurer.

13.3 INDEMNITY

The Consultant indemnifies the Council against any Claim brought against it to the extent that the Claim relates to the acts or omissions of the Consultant.

13.4 REPORTING SUSPICIOUS CONDUCT

The Consultant may report any conduct of Council to which the *Public Interest Disclosures Act 1994* applies in accordance with Council's [Public Interest Disclosures Policy](#).

Where the conduct may be corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988*, the conduct may also be reported to the Independent Commission Against Corruption (see <https://www.icac.nsw.gov.au/>)

14 TERMINATION

14.1 AUTOMATIC TERMINATION

This Agreement terminates automatically and without the need for notice upon any party becoming subject to an Insolvency Event.

14.2 TERMINATION FOR BREACH

Where a party is:

- (1) in breach of their obligations under this Agreement; and
- (2) fails to rectify that breach within twenty-one (21) days of receiving notice from the other party to do so;

then the other party may terminate this Agreement immediately by giving notice in writing to the party in default.

15 ADMINISTRATIVE PROVISIONS

15.1 NOTICES

- (1) Any notice, consent or other communication under this Agreement shall be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address; or
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by email to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by email to a person's email address, on the day of transmission if a business day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address or email address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

15.2 ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

15.3 WAIVER

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

15.4 COOPERATION

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

15.5 COUNTERPARTS

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

15.6 AMENDMENT

This Agreement may only be amended or supplemented in writing signed by the parties.

15.7 UNENFORCEABILITY

If a Court finds that any provision of this Agreement is invalid or unenforceable then, if possible, that provision is to be deemed to be removed or severed from this Agreement but only to the extent of the invalidity or unenforceability. Nothing in this clause effects the validity of the relevant clause in any other jurisdiction, or the validity of the balance of this Agreement.

15.8 POWER OF ATTORNEY

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

15.9 JOINT PARTIES

If two or more parties are included within the same defined term in this Agreement:

- (1) a liability of those parties under this Agreement is a joint liability of all of them and a several liability of each of them; and
- (2) a right given to those parties under this Agreement is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

15.10 GOVERNING LAW

The law in force in the State of New South Wales governs this Agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

16 ACCESS TO INFORMATION

- (1) Consultant to provide information on request
 - (a) Subject to paragraph (2), within seven (7) days of receiving a written request from the Council, the Consultant must provide the Council with access to the following information contained in records held by the Consultant:
 - (i) information that relates directly to the satisfaction of the Services;
 - (ii) any information collected by the Consultant from members of the public to whom it provides, or offers to provide, under this document; and
 - (iii) information received by the Consultant from the Council to enable it to satisfy the Services,
 - (b) For the purposes of this clause, information does not include:
 - (i) information that discloses or would tend to disclose the Consultant's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Consultant is prohibited from disclosing to the Council by provision made by or under any Law; or
 - (iii) information that, if disclosed to the Council, could reasonably be expected to place the Consultant at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.
 - (c) If requested to do so by the Council, the Contractor will provide copies of any Information at the Consultant's own expense.
- (2) Failure to provide information

Any failure by the Consultant to comply with this clause is a breach of an essential term of this document.

- (3) Compliance with GIPA Act

The Consultant and the Council acknowledge each party is required to comply with the provisions of the *Government Information (Public Access) Act 2009* (NSW) with respect to any Information.

16.2 COUNCIL'S STATUTORY POWERS AND DISCRETIONS

- (1) No Fetter
 - (a) No part of this document is intended to operate to fetter, in any unlawful manner:
 - (i) the power of the Council to make any Law; or
 - (ii) the exercise by the Council of any statutory power or discretion,
- (all referred to in this document as a **Discretion**).

- (2) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;
 - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision will be severed from this document and the remainder of this document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties in relation to the provisions of this document which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgement.
- (3) Where a Law permits the Council to contract out of a provision of that Law, or gives the Council power to exercise a Discretion, then if the Council has in this document contracted out of a provision or exercised a Discretion under this document, then to that extent this document is not to be taken to be inconsistent with that Law.

16.3 RELEVANT CODES AND POLICIES

- (1) Failure to comply with Codes and Policies

If the Contractor fails to comply with any policies or Codes (such as Council's Code of Conduct and Statement Business Ethics):

- (a) included or referred to in the Tender Documentation; or
- (b) adopted by the Council from time to time and notified in writing to the Contractor,

then Council may terminate this Contract immediately by notice in writing to the Contractor.

17 SPECIAL CONDITIONS OF CONTRACT

In the event that any of the provisions of Clauses 1-17 (inclusive) conflict with any Special Conditions stated in this clause then the Special Conditions shall take precedence to the extent of such conflict.

The following Special Conditions will apply to the Contract.

17.1 CONSULTANT'S WARRANTIES

(insert special conditions if any.)

- (1) The Consultant warrants it will:
- (a) provide the Services in a prompt, competent, professional and timely manner to a standard that would be expected from a professional organisation with equivalent experience to that of the Consultant.
 - (b) provide sufficient authorised, experienced and appropriately trained and qualified consultants and/or employees to properly provide the Services during the term of the contract."

(2) Performance Review

- (a) For the purposes of this clause, Performance Reviews may involve, but are not limited to, a review of the Contractor's compliance and performance having regard to the terms and conditions of this Agreement and specifically the warranties in clause 17.1
- (b) Council will, at its discretion, conduct Performance Reviews at reasonable times during the term of this Agreement.
- (c) If, in the reasonable opinion of Council, a Performance Review is unsatisfactory, Council may, without prejudice to any right of action or remedy otherwise available to it serve a Dispute Notice in writing to the Contractor specifying the unsatisfactory aspects of the Performance Review.
- (d) If the unsatisfactory aspects of the Performance Review are not remedied within the period of time specified by Council in its Dispute Notice, Council may terminate the Agreement.
- (e) If a party is in breach of this contract without having served a Dispute Notice and such breach is capable of rectification the party not in breach may give notice in writing requiring the party in default to rectify the breach within fourteen (14) days. If the breach is not rectified, or a Dispute Notice is not served, within that period by the party allegedly in default then the party alleging the breach may by notice in writing then terminate the contract with immediate effect.

(3) Construction Phase

- (a) Please note that the successful consultant for this brief is excluded from submitting or subcontracting for the construction phase. Also the successful consultant is excluded from advising any other 3rd party which may submit for the construction phase of the works.

SCHEDULE 1: DEFINED TERMS AND INTERPRETATION

DEFINITIONS

Agreement	means this agreement.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government; or(2) department of any federal, state or local government; or(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Commencement Date	means the later of: <ol style="list-style-type: none">(1) the date the Consultant was engaged to provide the Services in accordance with the Tender Documents; or(2) the date of this Agreement.
Completion Date	means "Completion Date" as set out in Schedule 2 .
Confidential Information	means: <ol style="list-style-type: none">(1) this Agreement; and(2) financial information: information regarding costs, profits, markets, sales and other financial information; and(3) business information: information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers; and(4) personal information: any personal information relating to the officers (as defined in s 9 of the <u>Corporations Act 2001</u>), partners, employees, agents, contractors or clients of the disclosing party; and(5) information obtained through performance: all information which becomes known to a party as a consequence of it performing the obligations under this Agreement including (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party; and(6) technical information: information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and

- (7) **disclosed information:** any other information disclosed by a disclosing party that:
- (a) is identified as being confidential; or
 - (b) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

Consultancy means the appointment of the Consultant as the consultant of the Council in accordance with the terms of this Agreement.

Consultancy Fee means “Consultancy Fee” as set out in **Schedule 2**.

Consultant means “Consultant” as set out in **Schedule 2**.

Council means “Council” as set out in **Schedule 2**.

Dispute means a dispute notified in accordance with the terms of 12.1

Expenses means the “Expenses” set out in **Schedule 2**.

Indemnity means the indemnity granted under clause 13.3.

Insolvency Event means the happening of any of these events:

- (1) Application which is not withdrawn or dismissed within 14 days is made to a court for an order or an order is made that a body corporate be wound up; or
- (2) An application which is not withdrawn or dismissed within 14 days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of party / entity arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (5) A body corporate is or states that it is insolvent; or
- (6) As a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or

- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (10) A receiver, manager or receiver and manager is appointed to the Party / entity; or
- (11) A body corporate becomes an externally administered body corporate within the meaning of the Corporations Act; or
- (12) A claim is filed in a court against a person that is not defended, released or otherwise settled within 28 days of the date of its filing at the court; or
- (13) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property

means all intellectual property rights conferred by law including (without limitation):

- (1) patents, designs, formulas, plans, specifications or other documents created in connection with the Services; and
- (2) copyright, trademark, trade business, party / entity names, business names, websites, URLs or email addresses; and
- (3) all other proprietary rights and all other intellectual property defined in Article 2 of the Convention establishing the World Intellectual Property Organisation (July 1967).

Key Personnel

means the “Key Personnel” identified in the Tender, or as set out in **Schedule 2**.

Performance Review

means the periodical review of the service provided by the consultant and may include meetings with the contractor to discuss performance of contractual obligations.

Request For Tender

means the request for Tender made by the Council in relation to the Services.

Services

means the services to be provided by the Consultant as set out in the Tender Documents.

Taxes

means any tax, duty, impost, fee, levy or other charge imposed by any Authority.

Tender

means the Tender lodged by the Consultant with the Council in response to the Request For Tender.

Tender Documents

means:

- (1) the Tender;
- (2) the Request For Tender; and
- (3) any documentation amending the terms of the documents referred to above.

Term

means “Term” as set out in **Schedule 2**.

Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement.
variations or replacements	a document (including this Agreement) includes any variation or replacement of it.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this Agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day, which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.
agreement	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
gender	a reference to one gender extends and applies to the other and neuter gender.

SCHEDULE 2: DETAILS

Council	Name	Canterbury-Bankstown Council
	Address	66-72 Rickard Road BANKSTOWN NSW 2200
	ABN	45 985 891 846
	Telephone	(02) 9707 XXXX
	Facsimile	(02) 9707 XXXX
	Email	xxx@cbcity.nsw.gov.au
	Representative/Contact	
Consultant	Name	
	Address	
	ABN	
	Telephone	
	Facsimile	
	Email	
	Representative/Contact	
Commencement Date		
Completion Date		
Extension Options	Option to extend the contract for a further two periods each of up to one year in duration.	
Consultancy Fee	Amount	
	Payment Frequency	(e.g. monthly, quarterly, milestones)
	Method of Review	(e.g. CPI movement)
	Frequency of Review	(e.g. annually)
Expenses	Expenses Payable	
	Method of Calculation	
Key Personnel		
Public Liability Insurance	\$20 million	
Professional Indemnity Insurance	\$? Liaise with risk department	

Antony Pedroza

From: Brad McPherson <Brad.McPherson@cbcity.nsw.gov.au>
Sent: Tuesday, 20 July 2021 2:42 PM
To: Antony Pedroza
Subject: HPRM: RE: Op Dasha - Canterbury Bankstown Council Implementation action plan query [DLM=Sensitive]
Attachments: ICAC-Statement of business ethics.pdf; ICAC-Consultancy Contract_v2 (004).docx
Record Number: D10771571

Hello Antony

Council has updated its Statement of Business Ethics (section 8) and the Consultancy Agreement (section 6.8) to align with the two bullet points in your email below.

Please let me know if you require further information.

Regards

Brad



Brad McPherson - Manager Governance
T 9707 5737
E brad.mcpherson@cbcity.nsw.gov.au
www.cbcity.nsw.gov.au



@ourcbcity
Like & follow us



From: Antony Pedroza <apedroza@icac.nsw.gov.au>
Sent: Monday, 12 July 2021 12:39 PM
To: Brad McPherson <Brad.McPherson@cbcity.nsw.gov.au>
Subject: RE: Op Dasha - Canterbury Bankstown Council Implementation action plan query [DLM=Sensitive]

Hello Brad

Thank you for the additional information.

In terms of any misunderstanding, it is very likely that I was unclear when we spoke and in my subsequent email to you.

You are correct, and I acknowledge, that both documents include information about the jurisdiction of the ICAC and making public interest disclosures. Where my query to you arose from is that, as per the recommendation, neither document clearly advises consultant of the effect the ICAC Act and *Public Interest Disclosures Act 1994* (the “PID Act”) has on them.

It is our understanding that the definition of “public official” in those statutory acts would mean

- Consultants would be eligible to making a public interest disclosure under the PID Act
- The ICAC could investigate the consultant for corrupt conduct where that conduct constitutes or involves “reasonable grounds for dismissing, dispensing or otherwise terminating their services”.

As an aside, the last point has an implication for council. Namely, this is section 11 duty of disclosure to the Commission in circumstances where there is a reasonable suspicion of corrupt conduct by a consultant’s that council is currently or has formerly engaged.

If council wishes

Regards,

Antony Pedroza MPIA | Senior Corruption Prevention Officer (Planning)
Corruption Prevention Division
NSW Independent Commission Against Corruption
Level 7, 255 Elizabeth Street Sydney NSW 2000 | GPO Box 500 Sydney NSW 2001
tel: +61 2 8281 5810 | fax: +61 2 9264 5364 | web: www.icac.nsw.gov.au | twitter: @nswicac

From: Brad McPherson <Brad.McPherson@cbcity.nsw.gov.au>
Sent: Friday, 9 July 2021 9:16 AM
To: Antony Pedroza <apedroza@icac.nsw.gov.au>
Subject: FW: Op Dasha - Canterbury Bankstown Council Implementation action plan query [DLM=Sensitive]

Hello Antony

Thank you for your email below. Our response to the issues raised in the email are addressed below.

Recommendation 23

A copy of the audit report requested is attached.

Recommendation 21

I think there has been a misunderstanding regarding Council’s response to this recommendation. The recommendation states:

That the City of Canterbury Bankstown Council develops standardised provisions for consultancy services agreements and a statement of business ethics for suppliers. The agreements and statement of business ethics should advise consultants about:

- *how to make disclosures under the Public Interest Disclosures Act 1994;*
- *the City of Canterbury Bankstown Council’s ethical obligations;*
- *their ethical responsibilities;*
- *the jurisdiction of the ICAC Act.*

In summary, Council’s response to ICAC regarding the recommendation was:

- While Council's current version of the Statement of Business Ethics included details of Council's ethical obligations and the ethical responsibilities of the people we do business with, the Statement of Business Ethics does not advise consultants and others about the jurisdiction of the ICAC Act and how to make disclosures under the Public Interest Disclosures Act 1994. Accordingly, in response to ICAC's recommendation, Council amended its Statement of Business Ethics (page 5) to provide information on the jurisdiction of ICAC and about making a public interest disclosure
- Separately, in response to ICAC's recommendation, Council also updated its existing Consultancy Services Agreement (section 6.8, page 6) to reflect ICAC's recommendations.

The Statement of Business Ethics and Consultancy Services agreement are attached.

Recommendation 3

Council acknowledges that the definition of subject matter expert in the Recruitment and Selection policy could better target the requirement of having a person on the interview panel with relevant expertise in the area from which Council is seeking to recruit. Therefore, Council proposes to amend the definition to read as follows:

"is someone with relevant expertise in the position Council is recruiting for, together with leadership, change management or some other technical expertise."

Please let me know if you require further information.

Regards

Brad



Brad McPherson - Manager Governance
 T 9707 5737 M 0434 565 827
 E brad.mcpherson@cbcity.nsw.gov.au
www.cbcity.nsw.gov.au



@ourcbcity
 Like & follow us



From: Antony Pedroza <apedroza@icac.nsw.gov.au>
Sent: Friday, 25 June 2021 3:39 PM
To: Brad McPherson <Brad.McPherson@cbcity.nsw.gov.au>
Cc: Giselle Tocher <gtocher@icac.nsw.gov.au>
Subject: Op Dasha - Canterbury Bankstown Council Implementation action plan query [DLM=Sensitive]

Hi Brad

Thank you for taking the time on Wednesday to clarify council's letter of 7 May 2021 regarding the recommendations from Operation Dasha.

As we discussed and agreed in relation to recommendation 23, could you please provide me with a copy of the internal audit document referred to in your letter? As I mentioned, it is our preference to have some form of verification for the purposes of determining subsequent steps for the Implementation Action Plan process.

I also thought I'd take the opportunity to confirm the other 2 matters we discussed.

Firstly, I understand that council's position is that it is adopting recommendation 21 but without developing new standardised provisions for consultancy service agreements and a statement of business ethics. I understand from you that that it is council's view that its current policies already satisfy recommendation 21 and, as such, no change is required.

Secondly, council may wish to review the definition of "subject matter expert" in council's recruitment policy as it could be open to future misuse because

- It is quite open ended about who is a subject matter expert
- It does not explicitly require the "subject matter expert" have relevant expertise for the position council is recruiting for.

If you have any further queries or wish to talk further, please feel free to email or call me.

Regards

Antony Pedroza MPIA | Senior Corruption Prevention Officer (Planning)
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NSW Independent Commission Against Corruption
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1.0 INTRODUCTION

Canterbury-Bankstown Council (Council) conducts a range of business with private, public and non-profit sectors to deliver a range of services for the community, who expect a high ethical standard of behaviour from Council.

This Statement of Business Ethics provides guidance for all sectors of the community when conducting business with Council and explains the mutual obligations and role of all parties. This business may include the supply of goods and services, use of contractors and consultants, assessment of development applications and other general dealings.

Council officials and staff are required to comply with Council's standards of conduct, procedures and relevant legislation governing ethical behaviour. The same standard is expected of all individuals and organisations that deal with Council to reduce the risk of inappropriate business activities and actual, potential or perceived conflicts of interest occurring.

This Statement supports and complements Council's Good Governance Framework, of which Council's Code of Conduct is a central component. The mechanisms in both the Statement and the Code of Conduct aim to protect the integrity and reputation of Council and ensure that decision making is made in a fair and ethical manner.

2.0 KEY BUSINESS PRINCIPLES

Council is committed to ethical business practices, based on Council's values and the key principles contained within Council's Code of Conduct including: Leadership, Selflessness, Impartiality, Openness and Honesty.

As part of this commitment, Council will ensure:

- Business dealings will be ethical and transparent, and open to public scrutiny whenever possible.
- All Council decisions and considerations will be based on merit and made in a fair and impartial manner.
- Ethically manage potential conflicts of interest.

3.0 OUR MISSION AND VALUES

Canterbury-Bankstown Council has adopted a Corporate Vision, Mission and Values to guide the conduct of its officials and provide a foundation in its approach to delivering services to the community.

Vision

A leading organisation that collaborates and innovates.

Mission

To provide quality services to our community every day.



Values

- We care about our customers.
- We act with integrity.
- We work as one team.
- We are committed to safety.
- We continuously improve.

4.0 WHAT IS EXPECTED FROM YOU

Canterbury-Bankstown Council requires all members of the public, applicants, lobbyists, proponents, contractors, suppliers and anyone doing business with Council to:

- Act ethically, fairly and honestly in all dealings with Council.
- Declare actual, potential or perceived conflicts of interest as soon as possible.
- Respect the obligations of Councillors and staff to abide by Council's Code of Conduct.
- Be aware and comply with legislation, Council's policies and procedures as they pertain to the business before Council, and the conditions set out in documents supplied by Council.
- Provide accurate and reliable advice and information to Council when required.
- Prevent the disclosure of confidential information.
- Refrain from discussing Council business or information in the media.
- Assist Council to prevent unethical practices in our business relationships.
- Refrain from engaging in any form of collusive practice or offering Council officials inducements or incentives including gifts and benefits, designed to improperly influence the conduct of their business.
- Refrain from any action or contact that may be considered an attempt to influence a decision of Councillors or staff.
- Maintain records of all dealings with Council.

5.0 WHAT YOU CAN EXPECT FROM US

Councillors, staff and delegates are bound by Council's Code of Conduct and the documents contained within the Code of Conduct Framework. This means there is an expectation that Council staff will be courteous and act with transparency and integrity in all its interactions with members of the public.

Council will ensure that all policies, procedures and practices relating to the procurement of goods and services, use of contractors and consultants, assessment of development applications, and interactions with lobbyists are consistent with good practice and the highest standards of ethical conduct.

All approvals, decisions and procurement activities will be clearly documented to enable transparent and effective governance across the organisation. Council will assess all applications objectively, considering all relevant and material factors in determining a decision on matters that come before the Council.



6.0 WHY COMPLY WITH THIS STATEMENT

As all stakeholders are required to comply with this Statement, compliance will not place any party at a disadvantage. Stakeholders should be aware of the consequences of not complying with Council's ethical requirements when doing business with Council, and may include:

- Investigation, including referral of matters for criminal investigation where appropriate.
- Damage to reputation.
- Loss of future work or approval.
- Immediate termination of contract or order, at any stage.

Council officials who do not comply with this Statement will be considered in breach of Council's Code of Conduct and subject to disciplinary action under the Code.

7.0 DOING BUSINESS WITH COUNCIL

Gifts and benefits

Gifts must not be given in connection with any prospective business dealings. Council staff are not permitted to ask for any reward or incentive from external parties and are expected to decline such offers of gifts and benefits during the course of their work.

Council officials, who are involved in exercising regulatory and procurement processes, are prohibited under any circumstances to accept gifts, hospitality and benefits of any kind, where the staff are dealing with persons seeking a decision from Council, or who have sought a decision from Council within the previous 12 months.

In accordance with Council's Gifts and Benefits Policy, any offer or acceptance of a gift by Councillors or staff is required to be disclosed and recorded in Council's Gifts and Benefits Register.

Conflicts of interest and disclosure

Councillors and staff are required to disclose any actual, perceived or potential conflicts of interest, as well provide Council with any other related disclosures that may be required. Council extends this requirement to any applicants, business partners, contractors and suppliers.

Lobbying

Lobbying is a normal and, in some circumstances, an acceptable part of the democratic process. However, lobbying that is not fair and undermines public confidence in impartial decision-making falls outside the bounds of appropriate and lawful behaviour.

The lobbying of Councillors and staff in certain situations is not permissible. These situations may include, but are not limited to: tender process, engagement of services, development applications while under assessment, or a matter subject to legal action.



Attempts to influence Council decisions

Any action or contact that may be considered or perceived to be an attempt to influence a decision of Councillors or staff will constitute a breach of this Statement.

Any such attempt during the tender process will immediately disqualify the relevant tenderer or service provider. Council's Request for Tender or Quotation documentation will contain statements prohibiting proponents from approaching Councillors and Council officers not nominated as contact people during a tender process.

Use of Council equipment and resources and information

All Council equipment and resources should only be used for its proper official purpose; equipment remains the property of Council at all times.

Confidentiality

Any confidential information should be treated as such and should not be revealed to persons other than those with a genuine need and authority. Suppliers handling private information on behalf of Council are expected to adhere to Council's Privacy Management Plan.

Communication

All communication between parties should be made in a clear and cordial manner to minimise the risk of perception of inappropriate influence.

Secondary and post separation employment

Staff have a duty to maintain public trust and confidence, and not disclose confidential information obtained during the course of their employment or use this information to facilitate future employment opportunities. Staff are required to obtain written approval from Council to enter into any secondary employment arrangements.

Contractors and sub-contractors

All contracted and sub-contracted employees are expected to comply with this Statement. It is the responsibility of contractors to ensure sub-contractors they engage are aware of this Statement, as they are equally bound by it.

Intellectual property rights

In business relationships with Council, parties are expected to respect each other's intellectual property rights, and formally negotiate any access, licence or use of intellectual property.

Workplace safety

Workplace safety is of paramount importance to Council. It is expected that all parties who do business with Council comply with legislative and procedural safety requirements.

Political donations

The law requires that persons with a financial interest in, or who have made a submission in relation to, a Development Application or a planning instrument, disclose certain information about political donations and



other gifts that have been made to a Councillor or Council employee within the previous two years of the application or submission.

8.0 WHO TO CONTACT

If you have any questions about this statement or would like to report suspected corrupt or unethical conduct, please contact Council's General Manager or Public Officer/Public Interest Disclosures Coordinator.

Public officials reporting corrupt conduct, maladministration or serious waste of public funds are protected under the *Public Interest Disclosures Act 1994*. The Act protects public officials disclosing corruption-related matters from reprisal or detrimental action and ensure disclosures are dealt with. Public Official includes an individual who is an employee or otherwise in the service of a public authority (for example consultant or contractor).

The Independent Commission Against Corruption (ICAC) is an independent NSW body that can investigate allegations related to public officials on matters including but not limited to unethical or corrupt conduct. The ICAC can investigate consultants for corrupt conduct where that conduct constitutes or involves reasonable grounds for dismissing, dispensing or otherwise terminating their services

In accordance with s11 of the *Independent Commission Against Corruption (ICAC) Act 1988 (NSW)*, a principal officer of a NSW public authority, such as a local council, has a duty to report to the ICAC where there is reasonable suspicion that corrupt conduct has occurred or may occur. Alternatively, matters of unethical or corrupt conduct can be reported directly to the ICAC.

Reports of unethical or corrupt behaviour can also be made directly to:

- Independent Commission Against Corruption (ICAC) – 8281 5999 (concerning corrupt conduct)
- NSW Ombudsman – 9286 1000 (concerning maladministration)
- NSW Auditor General – 9275 7100 (concerning serious and substantial waste)
- Office of Local Government – 4428 4100

9.0 AUTHORISATION

Adopted by Canterbury-Bankstown Council on 27 April 2021.



TERMS AND CONDITIONS OF CONSULTANCY AGREEMENT

CONSULTANCY AGREEMENT

PARTIES

THE COUNCIL & THE CONSULTANT as defined in **Schedule 2**.

BACKGROUND

- (1) The Council issued the Request For Tender for the provision of the Services.
- (2) In response to the Request For Tender the Consultant submitted the Tender to the Council.
- (3) The Council has accepted the Tender.
- (4) The parties wish to enter into this Agreement in order to confirm the appointment of the Consultant to provide the Services.

OPERATIVE PROVISIONS

1 DEFINITIONS

Unless the context otherwise requires the definitions and interpretational rules contained in **Schedule 1** apply in the interpretation of terms used in this Agreement.

2 POSITION OF THE COUNCIL

2.1 CONSENT AUTHORITY

The parties acknowledge that the Council is a consent authority with statutory rights and obligations.

2.2 NO FETTER OF PUBLIC POWERS

No term of this Agreement is to be construed or to operate so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a public consent authority.

2.3 READING DOWN OF PROVISIONS

If any provision of this Agreement would, or could likely, operate so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a public consent authority then that provision is, to the extent necessary for it not to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority:

- (1) be read down, if possible; or
- (2) severed from this Agreement.

3 TENDER PROCESS

3.1 AGREEMENT PURSUANT TO TENDER PROCESS

The parties acknowledge that this Agreement is being entered into as a result of a Tender process conducted by the Council.

3.2 AGREEMENT TO INCLUDE TENDER DOCUMENTS

The parties further acknowledge that the Tender Documents are deemed to be incorporated into this Agreement.

3.3 PRECEDENCE OF DOCUMENTS

In the event of any inconsistency between this Agreement and the Tender Documents those documents will be read in the following order of precedence:

- (1) this Agreement;
- (2) any previous documents varying the terms of the Tender;
- (3) the Tender; and
- (4) the Request for Tender.

4 CONSULTANCY

4.1 CONSULTANCY

On the Commencement Date:

- (1) the Council appoints the Consultant as its consultant to provide the Services; and
- (2) the Consultant accepts its appointment as a consultant and agrees to provide the Services to the Council.

4.2 TERM OF CONSULTANCY

Unless terminated earlier pursuant to the terms of this Agreement the Consultancy is to continue for the Term.

4.3 UNAUTHORISED RELATIONSHIP

- (1) No term of this Agreement is to be construed so as to give rise to an Unauthorised Relationship.
- (2) Each party must ensure that they do not conduct themselves so as to hold out, or otherwise represent, that an Unauthorised Relationship exists.
- (3) For the purpose of this clause an Unauthorised Relationship is any of the following relationships:
 - (a) joint venturers; or
 - (b) partners; or
 - (c) trustee and beneficiary; or
 - (d) employer and employee.

5 REMUNERATION

5.1 PAYMENT OF THE CONSULTANCY FEE

The Council must, during the Term, pay the Consultant in the manner set out in **Schedule 2**.

5.2 REVIEW OF CONSULTANCY FEE

If applicable, the Consultancy Fee will be reviewed in the manner set out in **Schedule 2**.

5.3 EXPENSES

- (1) The amounts payable by the Council to the Consultant are inclusive of:
 - (a) all Taxes; and
 - (b) all costs incurred by the Consultant in the course of performing the Services with the exception of the Expenses.
- (2) In addition to the Consultancy Fee the Council must pay the Expenses to the Consultant in the manner set out in **Schedule 2**.

5.4 RECORDS

The Consultant must:

- (1) keep adequate financial records relating to the provision of the Services and the Consultancy Fee; and
- (2) within thirty (30) days from the end of each financial year, provide to the Council a copy of its full accounts in respect of the provision of the Services and the Consultancy Fee up to the end of such financial year.

5.5 AUDIT OF RECORDS

- (1) The Council may give the Consultant seven (7) days notice that it, or an authorised agent, are to inspect all financial records held by the Consultant in relation to the provision of the Services and the Consultancy Fee.
- (2) On receipt of notice referred to in paragraph (1) the Consultant must make available to the Council or its representative, all books of accounts and records relating to the provision of the Services and the Consultancy Fee.
- (3) If an audit conducted by the Council in accordance with this clause reveals that the Consultant has been overpaid or underpaid then both the Council and the Consultant agree to adjust that amount.

5.6 DEDUCTION AND SET-OFF

The Council may deduct any amount owing to it by the Consultant from any part of the Consultancy Fee prior to it being paid to the Consultant.

5.7 CPI ADJUSTMENT

Firm for the initial 12 months of the contract, then subject to annual adjustment as per the National Consumer Price Index (CPI). The revised schedule of rates will then remain firm for each ensuing 12 month period. A claim for CPI adjustment may be submitted by the contractor to Council by the end of the first year of the contract. The revised schedule of prices must include all items as listed in the pricing schedule. The contractor shall provide thirty (30) days prior notification of any price adjustments. If the revised schedule of prices is not submitted within two (2) months of the end of the first year of the contract and each completed year of the contract thereafter, no further claims for CPI adjustment for that particular year will be accepted.

6 OBLIGATIONS OF THE CONSULTANT

6.1 PERFORMANCE

The Consultant must perform the Services:

- (1) using its best endeavours;
- (2) in the manner, and in accordance with the standards, set out in the Tender Documents; and
- (3) in a competent and professional manner to a standard that would be expected from a consultant with equivalent experience to the Consultant.

6.2 DEVOTION OF TIME

- (1) The Consultant is not obliged to allot a minimum amount of time to the performance of the Services.
- (2) Notwithstanding paragraph (1) the Consultant must devote such time to the performance of the Services as is sufficient to comply with clause 6.1.

6.3 REPRESENTATIONS

The Consultant must not:

- (1) make any representation or warranties concerning the Council or its activities without the prior approval of the Council; or
- (2) contract on behalf of or otherwise bind the Council without the prior approval of the Council.

6.4 WORK HEALTH & SAFETY

- (1) The Consultant must ensure that it complies with all relevant work health and safety requirements, including those in force under the following:
 - (a) the *Work Health & Safety Act (NSW) 2011*;
 - (b) the *Work Health & Safety Regulations (NSW) 2017*;
 - (c) any relevant Australian Standards and Industry Codes of Practice; and
 - (d) the Council's work health and safety policies.
- (2) The Consultant is responsible for the health and safety of its employees and contractors and must ensure that they are fit to perform their duties and present no danger to others.
- (3) The Consultant will immediately notify the Council if it is charged with non-compliance with any of the work health and safety requirements set out in paragraph (1).

6.5 NOTIFICATION OF CHANGE IN CONTROL

The Consultant must immediately notify Council in writing of any proposed or other:

- (1) Change in Control;
- (2) any other analogous action including any action to reconstruct or amalgamate itself.

In the event that there is a change in control of the Consultant, Council will have the right to terminate this agreement subject to 30 days prior written notice.

6.6 ASSIGNMENT

- (1) The Consultant may not assign its rights under this Agreement without the prior written approval of the Council.

- (2) In the event that during the term of this Contract the Principal in its capacity as a local government entity is required to amalgamate with another Council (**Amalgamation**) the parties agree that:
 - (a) unless otherwise prescribed by statute, on the date of Amalgamation, the Principal's interest in this Contract is assigned to the Amalgamated Entity;
 - (b) the Contractor's prior approval to that assignment is not required; and
 - (c) if requested by the Principal the Contractor must enter into a Deed of Assignment which confirms that assignment.

6.7 IDENTIFICATION

Any officer, employee or consultant of the Consultant must:

- (1) wear identification badges, or a uniform that allows them to be clearly identified as representatives of the Consultant while performing the Services on premises occupied by the Council; and
- (2) sign in and out of Council premises attended by them in the course of providing the Services.

6.8 ETHICAL REQUIREMENTS

The Parties agree that they will conduct themselves and take all reasonable steps to ensure their staff conduct themselves to the following ethical standards throughout the term of this Agreement:

- (1) They will declare any actual, potential or perceived conflicts of interest, as soon as possible;
- (2) Be aware and comply with applicable legislation regarding corruption and other unethical conduct including, without limitation, the *Independent Commission Against Corruption Act 1988* (see <https://www.icac.nsw.gov.au/>) and the *Public Interest Disclosures Act 1994* <https://legislation.nsw.gov.au/view/html/2013-04-03/act-1994-092> ;
- (3) Not offer staff and/or officials of the other party any inducements or incentives including gifts and benefits, designed to improperly influence the administration of this Agreement; and
- (4) [Subject to the nature of the consultancy service being provided, the Council Project Officer should consider any additional requirements and add these into this section when applicable.]

Further, Council staff and officials will adhere to the [Code of Conduct](#) and any breach of this code should be reported to Council. Similarly complaints regarding Council's service standards or the quality and/or range of Council services provided can be reported using [Council's Complaints Management Policy](#).

Public officials reporting corrupt conduct, maladministration or serious waste of public funds are protected under the Public Interest Disclosures Act 1994. The Act protects public officials disclosing corruption-related matters from reprisal or detrimental action and ensure disclosures are dealt with. A public official is an individual who is an employee of or otherwise in the service of the public authority (for example a consultant or contractor).

The ICAC can investigate consultants for corrupt conduct where that conduct constitutes or involves reasonable grounds for dismissing, dispensing or otherwise terminating their services.

7 KEY PERSONS

7.1 APPLICATION

This clause applies if the Request For Tender required the Consultant to submit details of the personnel who will perform the Services.

7.2 CONSULTANT'S PERSONNEL

- (1) The Consultant must:

- (a) ensure that its personnel, including the Key Personnel, supply the Services in accordance with the terms of this Agreement; and
- (b) ensure that it employs a sufficient number of appropriately qualified personnel in order to allow it to provide the Services in accordance with this Agreement.
- (2) The Consultant must employ only such persons in respect of this Agreement who:
 - (a) are skilled and experienced in the provision of services of a similar nature to the Services; and
 - (b) hold all licences permits and authorities (where applicable) necessary to allow them to provide the Services.
- (3) The Consultant must, where possible, ensure that the Services are provided by the Key Personnel.
- (4) If one or more of the Key Personnel are unable to perform the Services for any reason the Consultant must immediately advise the Council of:
 - (a) the reasons for that inability; and
 - (b) the details of any replacement(s) of the relevant Key Personnel.

7.3 AUTHORISED REPRESENTATIVES

- (1) On or before the date of this Agreement the parties must nominate their Authorised Representatives to represent them in any discussion or negotiation regarding the terms or operation of this Agreement.
- (2) The Consultant's Authorised Representative must have the power and authority to provide such consents as are required and to issue instructions for the fulfilment of the terms of this Agreement.

8 SUBCONTRACTORS

- (2) The Consultant must only use those subcontractors to provide the Services that are:
 - (a) included in the Tender; or
 - (b) are approved by the Council.
- (3) The Consultant will bear all responsibility for any fees charged by any sub-contractor engaged by it to provide the Services.
- (4) The Consultant:
 - (a) must ensure that any subcontractor engaged to provide the Services is aware of the terms of this Agreement that are relevant to the sub-contractor's performance of any part of the Services; and
 - (b) will not be relieved of its liabilities and obligations under this Agreement by sub-contracting any part of the Services and will be responsible for all the sub-contractors' acts or omissions in performing the Services; and
 - (c) must ensure that it has the right to terminate any sub-contract in the event that this Agreement is terminated.
- (5) Any subcontractor engaged to perform part of the Services must comply with the insurance requirements set out in clause 13.2.

- (6) The Consultant must provide the Council with evidence that paragraph (5) has been complied with upon being requested to do so by the Council. If the Consultant fails to provide the Council with such confirmation, then the Council may direct that the relevant sub-contractor cease performing any of the Services.

9 OBLIGATIONS OF THE COUNCIL

9.1 DOCUMENTATION

The Council must provide the Consultant with reasonable:

- (1) access to information held by the Council that is not subject to any obligations of confidentiality on the part of the Council; and
- (2) directions in relation to the performance of the Services;

so as to facilitate the Consultant in performing the Services in accordance with the terms of this Agreement.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 OWNERSHIP

Title to the Intellectual Property remains vested at all times in the Council.

10.2 VARIATION OR IMPROVEMENT TO THE INTELLECTUAL PROPERTY

Title to any amendment to or alteration to the Intellectual Property (whether made by the Consultant or the Council) vests absolutely in the Council.

10.3 LICENCE

The Council grants to the Consultant a non-exclusive fee free licence to use such parts of the Intellectual Property as are reasonably necessary for the performance of the Consultant's obligations under this Agreement.

10.4 RESTRICTED CONDUCT

The Consultant agrees that it must not:

- (1) except as expressly authorised by the terms of this Agreement disclose the Intellectual Property (or any part of the Intellectual Property) received by it from the Council to:
 - (a) any person, related body corporate or body corporate with whom it has an understanding or affiliation; and
 - (b) any other person (whether governmental, corporate or individual) except in accordance with the terms of this Agreement; and
- (2) do any act or thing that leads, or may lead, to:
 - (a) a reduction in the value of the Intellectual Property; or
 - (b) the Intellectual Property being brought into disrepute or otherwise adversely affected; or
 - (c) it holding itself out as being entitled to any proprietary interest in the Intellectual Property.

10.5 DISCLOSURE

The Consultant is absolutely liable to the Council for any loss or damage (of whatever nature) arising from disclosure of the Intellectual Property where such disclosure:

- (1) was made by the Consultant or persons obtaining the Intellectual Property through the Council;
and
- (2) the disclosure was not made in accordance with the terms of this Agreement.

10.6 ASSISTANCE IN THE EVENT OF INFRINGEMENT OF RIGHTS TO INTELLECTUAL PROPERTY

- (1) If the Consultant becomes aware of a person using the Intellectual Property without the apparent approval of the Council then it must immediately notify the Council.
- (2) The Consultant must, if requested by the Council and at the Council's expense, do all such acts necessary to assist the Council in protecting its interest in the Intellectual Property.

11 CONFIDENTIALITY

11.1 NON-DISCLOSURE

- (1) A party must not disclose Confidential Information disclosed to it by the other party except:
 - (a) with the prior written consent of the disclosing party; or
 - (b) in accordance with the terms of this Agreement.
- (2) A party may not unreasonably withhold its consent to disclosure in accordance with paragraph (1)(a) where:
 - (a) the requested disclosure is made for the purpose of facilitating the proper performance of a party's obligations under this Agreement; and
 - (b) the disclosure is to be made to persons who:
 - (i) reasonably require the disclosure of the information; and
 - (ii) are subject to a duty of confidentiality on the same or similar terms to that contained in this clause.

11.2 USE OF CONFIDENTIAL INFORMATION

A party may use, copy, reproduce or otherwise deal with the Confidential Information disclosed to it only:

- (1) during the Term; and
- (2) in accordance with the terms of this Agreement; and
- (3) in a manner that is related to the proper and lawful conduct and performance of its obligations under this Agreement.

11.3 EXCEPTIONS TO NON-DISCLOSURE

A party may disclose Confidential Information that has been disclosed to it:

- (1) where such disclosure is made to those of its employees, advisers, related bodies corporate and shareholders who:
 - (a) have a need to know (and only to the extent each has a need to know); and
 - (b) are aware and agree that the information that is to be disclosed must be kept confidential; or
- (2) which, at the time of disclosure, is within the public domain or after disclosure comes into the public domain other than by a breach or breaches by any party (whether the party to this Agreement or a third party) of any obligation owed to the other party; or
- (3) where:
 - (a) required by law or any order of any court, tribunal, authority, regulatory body or the rules of any securities exchange (whether in Australia or elsewhere) to be disclosed; and
 - (b) the party ensures that information is disclosed only to the extent reasonably and lawfully required.

11.4 RETURN OF CONFIDENTIAL INFORMATION

On expiry or earlier termination of the Term each party must:

- (1) return to the other party all hard copy documents (whether in original or copied form) comprising or containing Confidential Information which has been disclosed to them by the other party; and
- (2) except where to do so would contravene any legal obligation destroy all electronic files containing Confidential Information including all cache, back-up or archive copies of electronic files containing Confidential Information.

11.5 DURATION OF CONFIDENTIALITY OBLIGATIONS

Unless otherwise agreed by the parties in writing the obligation of confidentiality set out in this Agreement operates indefinitely and does not terminate on the expiry or earlier termination of this Agreement.

12 DISPUTE RESOLUTION

12.1 NOTICE OF DISPUTE

If a party believes that there is a dispute, then:

- (1) that party must give notice in writing to the other party stating that there is a Dispute; and
- (2) the notice referred to in paragraph (1) must outline:
 - (a) what the party believes the dispute to be; and
 - (b) what the party wants to achieve; and
 - (c) what the party believes will settle the Dispute.

12.2 CONSULTATION BETWEEN THE PARTIES

Within fourteen (14) days of a notice served in accordance with clause 12.1 the representatives of the parties must meet in order to resolve the Dispute.

12.3 SETTLEMENT OF DISPUTE AND MEDIATION

- (1) If the Dispute cannot be resolved by the parties within fourteen (14) days of the notification under clause 12.2 then the Dispute must be submitted to mediation by a mediator selected:
 - (a) by the parties; or
 - (b) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.
- (2) Any costs incurred in the mediation of the Dispute are to be borne equally by the parties.

12.4 ARBITRATION

- (1) If the parties are unable to resolve the Dispute in accordance with clause 12.3 then the Dispute must be referred to arbitration.
- (2) The parties must agree to the appointment of an arbitrator with experience in resolving disputes of a similar nature to the Dispute. If agreement cannot be reached regarding the appointment of an arbitrator, the parties agree to the appointment of an arbitrator nominated by the President of the Australian Commercial Disputes Centre. The arbitration will, when conducted by an arbitrator appointed by the President of the Australian Commercial Disputes Centre be conducted:
 - (a) by a single arbitrator; and
 - (b) in accordance with the arbitration rules of the Australian Commercial Disputes Centre; and
 - (c) in English; and
 - (d) in Sydney, Australia.
- (3) The parties must do all such acts and things as are necessary to facilitate the expeditious hearing of the Dispute by the arbitrator.
- (4) The costs of the arbitrator are to be borne:
 - (a) as ordered by the arbitrator; or
 - (b) in the absence of a direction from the arbitrator – equally by the parties.
- (5) The decision of the arbitrator (in the absence of an error of law) is binding on both parties. Accordingly, neither party is, after completion of the arbitration, entitled to commence proceedings to litigate the Dispute in any court of competent jurisdiction.

12.5 EXCLUSIVITY OF DISPUTE RESOLUTION PROCEDURE

- (1) Both parties must adhere to the dispute resolution procedure set out in this Agreement.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

13 MISCELLANEOUS

13.1 GENERAL WARRANTIES

Each party warrants to the other that:

- (1) the execution and delivery of this Agreement by it has been properly authorised by all necessary action – corporate or otherwise; and
- (2) it has lawful authority and (as relevant) full corporate power to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement; and
- (3) this Agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms by appropriate legal remedy; and
- (4) it is able to pay its debts as and when they fall due; and
- (5) it has adequate resources (both financial and otherwise) to perform and otherwise carry out its obligations under this Agreement; and

- (6) this Agreement and completion of the transactions contemplated in it do not conflict with or result in a breach of or default under any provision of its constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
- (7) it has entered into this Agreement in its personal capacity and, where relevant, in its capacity as trustee of any trust and that this document is binding on it in each such capacity; and
- (8) that the entry into and performance of its obligations under, and the transactions contemplated by, this Agreement is for its commercial benefit and is in its commercial interest and, in relation to any of its activities as a trustee, is for the benefit of the beneficiaries of any trust for which it is the trustee.

13.2 INSURANCE

- (1) The Consultant must hold and maintain the following policies of insurance during the term of this Agreement:
 - (a) a broad form public liability policy for the amount set out in **Schedule 2** on a single occurrence basis; and
 - (b) insurance against any Claim arising by virtue of any legislation relating to workers compensation, or any common law Claim, brought by any person employed by it in the performance of the Services; and
 - (c) professional indemnity insurance in respect of all Claims for professional negligence arising as a result of the Services for a sum not less than the amount set out in **Schedule 2** on a single occurrence basis; and
 - (d) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the Services; and
 - (e) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the performance of the Services.
- (2) The policies referred to in paragraphs (1)(a), (1)(d) and (1)(e) must note the interest of the Council as principal, must include a cross liability clause and a subrogation waiver.
- (3) The Consultant must provide the Council with a certified copy of any certificate of currency for any of the policies of insurance referred to in paragraph (1) within two (2) days of being requested to do so by the Council.
- (4) If any policy is cancelled either by the Consultant or the insurer the Consultant must notify the Council immediately.
- (5) Where an injury, death, damage or other loss occurs arising out of the services provided, which may give rise to a claim, the Contractor must notify the Council immediately.
- (6) The Consultant must provide Council copies of renewal certificates of currency within seven (7) business days from receipt of such certificates from the insurer.

13.3 INDEMNITY

The Consultant indemnifies the Council against any Claim brought against it to the extent that the Claim relates to the acts or omissions of the Consultant.

13.4 REPORTING SUSPICIOUS CONDUCT

The Consultant may report any conduct of Council to which the *Public Interest Disclosures Act 1994* applies in accordance with Council's [Public Interest Disclosures Policy](#).

Where the conduct may be corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988*, the conduct may also be reported to the Independent Commission Against Corruption (see <https://www.icac.nsw.gov.au/>)

14 TERMINATION

14.1 AUTOMATIC TERMINATION

This Agreement terminates automatically and without the need for notice upon any party becoming subject to an Insolvency Event.

14.2 TERMINATION FOR BREACH

Where a party is:

- (1) in breach of their obligations under this Agreement; and
- (2) fails to rectify that breach within twenty-one (21) days of receiving notice from the other party to do so;

then the other party may terminate this Agreement immediately by giving notice in writing to the party in default.

15 ADMINISTRATIVE PROVISIONS

15.1 NOTICES

- (1) Any notice, consent or other communication under this Agreement shall be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address; or
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by email to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by email to a person's email address, on the day of transmission if a business day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address or email address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

15.2 ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

15.3 WAIVER

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

15.4 COOPERATION

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

15.5 COUNTERPARTS

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

15.6 AMENDMENT

This Agreement may only be amended or supplemented in writing signed by the parties.

15.7 UNENFORCEABILITY

If a Court finds that any provision of this Agreement is invalid or unenforceable then, if possible, that provision is to be deemed to be removed or severed from this Agreement but only to the extent of the invalidity or unenforceability. Nothing in this clause effects the validity of the relevant clause in any other jurisdiction, or the validity of the balance of this Agreement.

15.8 POWER OF ATTORNEY

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

15.9 JOINT PARTIES

If two or more parties are included within the same defined term in this Agreement:

- (1) a liability of those parties under this Agreement is a joint liability of all of them and a several liability of each of them; and
- (2) a right given to those parties under this Agreement is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

15.10 GOVERNING LAW

The law in force in the State of New South Wales governs this Agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

- (1) Consultant to provide information on request
 - (a) Subject to paragraph (2), within seven (7) days of receiving a written request from the Council, the Consultant must provide the Council with access to the following information contained in records held by the Consultant:
 - (i) information that relates directly to the satisfaction of the Services;
 - (ii) any information collected by the Consultant from members of the public to whom it provides, or offers to provide, under this document; and
 - (iii) information received by the Consultant from the Council to enable it to satisfy the Services,
 - (b) For the purposes of this clause, information does not include:
 - (i) information that discloses or would tend to disclose the Consultant's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Consultant is prohibited from disclosing to the Council by provision made by or under any Law; or
 - (iii) information that, if disclosed to the Council, could reasonably be expected to place the Consultant at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.
 - (c) If requested to do so by the Council, the Contractor will provide copies of any Information at the Consultant's own expense.
- (2) Failure to provide information

Any failure by the Consultant to comply with this clause is a breach of an essential term of this document.

- (3) Compliance with GIPA Act

The Consultant and the Council acknowledge each party is required to comply with the provisions of the *Government Information (Public Access) Act 2009* (NSW) with respect to any Information.

16.2 COUNCIL'S STATUTORY POWERS AND DISCRETIONS

- (1) No Fetter
 - (a) No part of this document is intended to operate to fetter, in any unlawful manner:
 - (i) the power of the Council to make any Law; or
 - (ii) the exercise by the Council of any statutory power or discretion,
- (all referred to in this document as a **Discretion**).

- (2) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;
 - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision will be severed from this document and the remainder of this document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties in relation to the provisions of this document which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgement.
- (3) Where a Law permits the Council to contract out of a provision of that Law, or gives the Council power to exercise a Discretion, then if the Council has in this document contracted out of a provision or exercised a Discretion under this document, then to that extent this document is not to be taken to be inconsistent with that Law.

16.3 RELEVANT CODES AND POLICIES

- (1) Failure to comply with Codes and Policies

If the Contractor fails to comply with any policies or Codes (such as Council's Code of Conduct and Statement Business Ethics):

- (a) included or referred to in the Tender Documentation; or
- (b) adopted by the Council from time to time and notified in writing to the Contractor,

then Council may terminate this Contract immediately by notice in writing to the Contractor.

17 SPECIAL CONDITIONS OF CONTRACT

In the event that any of the provisions of Clauses 1-17 (inclusive) conflict with any Special Conditions stated in this clause then the Special Conditions shall take precedence to the extent of such conflict.

The following Special Conditions will apply to the Contract.

17.1 CONSULTANT'S WARRANTIES

(insert special conditions if any.)

- (1) The Consultant warrants it will:
 - (a) provide the Services in a prompt, competent, professional and timely manner to a standard that would be expected from a professional organisation with equivalent experience to that of the Consultant.
 - (b) provide sufficient authorised, experienced and appropriately trained and qualified consultants and/or employees to properly provide the Services during the term of the contract."

(2) Performance Review

- (a) For the purposes of this clause, Performance Reviews may involve, but are not limited to, a review of the Contractor's compliance and performance having regard to the terms and conditions of this Agreement and specifically the warranties in clause 17.1
- (b) Council will, at its discretion, conduct Performance Reviews at reasonable times during the term of this Agreement.
- (c) If, in the reasonable opinion of Council, a Performance Review is unsatisfactory, Council may, without prejudice to any right of action or remedy otherwise available to it serve a Dispute Notice in writing to the Contractor specifying the unsatisfactory aspects of the Performance Review.
- (d) If the unsatisfactory aspects of the Performance Review are not remedied within the period of time specified by Council in its Dispute Notice, Council may terminate the Agreement.
- (e) If a party is in breach of this contract without having served a Dispute Notice and such breach is capable of rectification the party not in breach may give notice in writing requiring the party in default to rectify the breach within fourteen (14) days. If the breach is not rectified, or a Dispute Notice is not served, within that period by the party allegedly in default then the party alleging the breach may by notice in writing then terminate the contract with immediate effect.

(3) Construction Phase

- (a) Please note that the successful consultant for this brief is excluded from submitting or subcontracting for the construction phase. Also the successful consultant is excluded from advising any other 3rd party which may submit for the construction phase of the works.

SCHEDULE 1: DEFINED TERMS AND INTERPRETATION

DEFINITIONS

Agreement	means this agreement.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government; or(2) department of any federal, state or local government; or(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Commencement Date	means the later of: <ol style="list-style-type: none">(1) the date the Consultant was engaged to provide the Services in accordance with the Tender Documents; or(2) the date of this Agreement.
Completion Date	means "Completion Date" as set out in Schedule 2 .
Confidential Information	means: <ol style="list-style-type: none">(1) this Agreement; and(2) financial information: information regarding costs, profits, markets, sales and other financial information; and(3) business information: information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers; and(4) personal information: any personal information relating to the officers (as defined in s 9 of the <u>Corporations Act 2001</u>), partners, employees, agents, contractors or clients of the disclosing party; and(5) information obtained through performance: all information which becomes known to a party as a consequence of it performing the obligations under this Agreement including (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party; and(6) technical information: information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and

- (7) **disclosed information:** any other information disclosed by a disclosing party that:
- (a) is identified as being confidential; or
 - (b) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

Consultancy means the appointment of the Consultant as the consultant of the Council in accordance with the terms of this Agreement.

Consultancy Fee means "Consultancy Fee" as set out in **Schedule 2**.

Consultant means "Consultant" as set out in **Schedule 2**.

Council means "Council" as set out in **Schedule 2**.

Dispute means a dispute notified in accordance with the terms of 12.1

Expenses means the "Expenses" set out in **Schedule 2**.

Indemnity means the indemnity granted under clause 13.3.

Insolvency Event means the happening of any of these events:

- (1) Application which is not withdrawn or dismissed within 14 days is made to a court for an order or an order is made that a body corporate be wound up; or
- (2) An application which is not withdrawn or dismissed within 14 days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of party / entity arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (5) A body corporate is or states that it is insolvent; or
- (6) As a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or

- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (10) A receiver, manager or receiver and manager is appointed to the Party / entity; or
- (11) A body corporate becomes an externally administered body corporate within the meaning of the Corporations Act; or
- (12) A claim is filed in a court against a person that is not defended, released or otherwise settled within 28 days of the date of its filing at the court; or
- (13) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property

means all intellectual property rights conferred by law including (without limitation):

- (1) patents, designs, formulas, plans, specifications or other documents created in connection with the Services; and
- (2) copyright, trademark, trade business, party / entity names, business names, websites, URLs or email addresses; and
- (3) all other proprietary rights and all other intellectual property defined in Article 2 of the Convention establishing the World Intellectual Property Organisation (July 1967).

Key Personnel

means the “Key Personnel” identified in the Tender, or as set out in **Schedule 2**.

Performance Review

means the periodical review of the service provided by the consultant and may include meetings with the contractor to discuss performance of contractual obligations.

Request For Tender

means the request for Tender made by the Council in relation to the Services.

Services

means the services to be provided by the Consultant as set out in the Tender Documents.

Taxes

means any tax, duty, impost, fee, levy or other charge imposed by any Authority.

Tender

means the Tender lodged by the Consultant with the Council in response to the Request For Tender.

Tender Documents

means:

- (1) the Tender;
- (2) the Request For Tender; and
- (3) any documentation amending the terms of the documents referred to above.

Term

means “Term” as set out in **Schedule 2**.

Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement.
variations or replacements	a document (including this Agreement) includes any variation or replacement of it.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this Agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day, which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.
agreement	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
gender	a reference to one gender extends and applies to the other and neuter gender.

SCHEDULE 2: DETAILS

Council	Name	Canterbury-Bankstown Council
	Address	66-72 Rickard Road BANKSTOWN NSW 2200
	ABN	45 985 891 846
	Telephone	(02) 9707 XXXX
	Facsimile	(02) 9707 XXXX
	Email	xxx@cbc.city.nsw.gov.au
	Representative/Contact	
Consultant	Name	
	Address	
	ABN	
	Telephone	
	Facsimile	
	Email	
	Representative/Contact	
Commencement Date		
Completion Date		
Extension Options	Option to extend the contract for a further two periods each of up to one year in duration.	
Consultancy Fee	Amount	
	Payment Frequency	(e.g. monthly, quarterly, milestones)
	Method of Review	(e.g. CPI movement)
	Frequency of Review	(e.g. annually)
Expenses	Expenses Payable	
	Method of Calculation	
Key Personnel		
Public Liability Insurance	\$20 million	
Professional Indemnity Insurance	\$? Liaise with risk department	