



Artist Brief

LAKE ILLAWARRA ART TRAIL

Reddall Reserve, Lake Illawarra

EOI Number 2019/93

Shellharbour City Council is committed to implementing initiatives which will make the city a dynamic and vibrant place where creativity thrives. Council is seeking to commission a new artwork to extend the Lake Illawarra Art Trail, a public art project which responds to the lake, its history and its people.

Opportunity for Artists

Shellharbour City Council is seeking Expressions of Interest from artists interested in developing a sculptural public artwork that will engage the people of Shellharbour. The artwork should respond to and reflect the people, history and/or environment of Lake Illawarra. This project seeks to create community connections, activate spaces, add vibrancy and provide a visual celebration of place.

About the Area

Lake Illawarra is the second largest saltwater lake in NSW and covers an area of 35 square kilometres. Located between the Illawarra escarpment and the Pacific Ocean on the NSW South Coast, the water which flows into the lake is both fresh (from the escarpment) and salty (from ocean tides). The lake has been used as a resource for thousands of years, providing food, fresh water and beautiful spots for camping and recreation.

The Lake Illawarra foreshore has cultural and historical importance as a community gathering place. Historically, the area was (and still is) a prominent location for fishing, prawning, recreation and tourism. The foreshore also has numerous sites of Aboriginal heritage significance including one Dreamtime story place, shell middens, corroboree and camp sites.

The suburb of Lake Illawarra was home to 3,137 people in 2011, which represented 4.9% of the Shellharbour population. Of these, 3.5% of residents identify as Aboriginal or Torres Strait Islander. A further 18% of residents were born overseas, with 10% of these people born in countries where English is not the first language. In 2011, 10% of the population of Lake Illawarra were unemployed, compared to 6.8% in Shellharbour Local Government Area.

Background of the Lake Illawarra Art Trail Project

In late 2014, Council requested the establishment of an art trail along the Lake Illawarra foreshore, to the west of the Windang Bridge.

To date, the art trail consists of six artworks, each created by local artists or artists with a connection to the Illawarra region in collaboration with the community or in response to the local area. For more detailed information about each of these artworks please visit Council's website: <https://bit.ly/35ys5W0>. The trail is also accompanied by a mobile app, which gives detailed information about each artwork alongside recollections of the history of the area.

Artist Brief:

This opportunity is for a public art commission which will extend the Lake Illawarra Art Trail and increase vibrancy and activity in Reddall Reserve. The artwork must be sculptural or installation-based and may be a single piece or series of works. The artwork/s must be contemporary in style and have conceptual links to the surrounding area.

The artwork should:

- Create an opportunity for playful engagement and interaction;
- Build a sense of pride and ownership;
- Respond to the unique characteristics of site, place and people;
- Be visually bold (this may be achieved through colour, design and/or form);
- Improve amenity and activate spaces;
- Utilise materials and elements that are safe, robust and easy to maintain;
- Be sustainable in its design and fabrication;
- Be suitable for permanent outdoor display (15 years+);
- Demonstrate artistic excellence in concept, design and fabrication.

The Site

Reddall Reserve is a public space on the foreshore of Lake Illawarra and is unique in that it offers access to both ocean beaches and sheltered beaches along the Lake foreshore. It is adjacent to a main gateway road into the Local Government Area. The park is a significant regional destination and is currently activated as a community recreation and gathering space. The reserve is accessible by bicycle, foot or car, with designated car-parking, toilets and drinking water available. It is used by large numbers of Shellharbour residents and visitors on a daily basis and provides numerous amenities including children's playgrounds, outdoor exercise equipment, BBQs, kiosk and bicycle paths. The Reserve is also utilized by Council to host several large scale events throughout the year including the Australia Day Breakfast by the Lake and Cultural Treasures multicultural festival.

The Lake Illawarra foreshore has cultural and historical importance as a community gathering place. Historically, the area was (and still is) a prominent location for fishing, prawning, recreation and tourism. The foreshore also has numerous sites of Aboriginal heritage significance including one Dreamtime story place, shell middens, corroboree and camp sites.

The area of Reddall Reserve in which the sculpture/s would be placed allows for installation in a level grassed area visible from the road, path and surrounding facilities. The sculpture/s would enhance the physical environment of the park and add to existing place making elements identified in the recently adopted Reddall Reserve Master Plan. You can read more about the Master Plan and the context for the artwork installation, as well as view the two sites for public art here: <https://bit.ly/32ZpB1m>

Artist Responsibilities

Council requires the artist to:

- Coordinate the project within the agreed schedule and budget;
- Undertake the development and design of the artwork;
- Coordinate the development, fabrication and installation of the artwork within the timeframes and budget allocated;
- Develop and deliver the project in line with best practice community cultural development principles while undertaking consultation, research, creative development and design;
- Ensure that the artwork complies with Council's risk management, safety and construction standards, processes and procedures;
- Ensure that the artwork is suitable for the site with regard to materials, maintenance and public safety;
- Hold 'Australia Wide' or 'World Wide' public liability insurance (minimum cover \$20 million);
- Comply with Council's relevant Policies and Procedures, including Code of Conduct.
- The artwork should also be guided by the ambitions and actions outlined in Council's Arts and Cultural Development Strategy, *Make, Play, Grow 2015-2019: a strategy for a more creative Shellharbour*, available to view at: <https://bit.ly/2OKWR8s>.

Budget

The total budget for this project is \$45,000 (excluding GST). This is inclusive of:

- Artist fee;
- Research and development of concept and project plan including community consultation and project meetings with Council;
- All costs associated with design, fabrication and installation including materials, consultancies, transportation, insurances etc;
- Artist statement;
- Maintenance manual.
- Certifying the artwork's installation and compliance with all relevant Australian Standards.

There is no contingency within this project, and it is therefore the artist's responsibility to stringently conduct works within the allocated budget.

Draft Project Schedule

Expression of interest due (8 weeks)	10 January 2020
Artist shortlist (1 week)	16 January 2020
Artist engaged (3 weeks)	6 February 2020
Detailed design development due (8 weeks)	31 March 2020
Fabrication completed (22 weeks)	31 August 2020
Installation Complete (4 weeks)	30 September 2020
Submission of maintenance plan (4 weeks)	28 October 2020

The selected artist will be required to consult and liaise with council staff and undertake regular updates to Council as required. The project concept must be practical and achievable within the time schedule, although an agreement may be made with the successful artist to negotiate the final installation date if necessary.

Intellectual Property Rights

Copyright in material produced or developed for Council through community consultation and/or discussion with Council will have a shared copyright with these community members and Council.

Wherever Council reproduces images of the artwork or its design in electronic, print, or digital media the Council undertakes to acknowledge the project artist.

Privacy

Shellharbour City Council respects your privacy at all times. The information collected for this application will be used for the purpose of assessing your submission, subject always to the *Government Information (Public Access) Act 2009 (NSW)*. For more information please see our Privacy Management Plan on our website www.shellharbour.nsw.gov.au or contact our Privacy Officer on 02 4221 6111.

Applications

Interested artists are invited to submit an Expression of Interest for this project. Your submission should provide the following:

- Written description of artistic approach and style including relevance to site and brief, approximate scale and material (maximum 250 words);
- One page drawing/image to accompany written statement;
- Project budget breakdown including design, fabrication and installation;
- Portfolio images of previous projects completed;
- Current curriculum vitae including the contact details of two referees.

Expression of Interest submissions are to be received at the email address below by **4pm, Friday 10 January 2020**.

Late submissions will not be considered.

Evaluation Criteria

An Expression of Interest will be assessed on the below criteria:

- Artistic merit and conceptual integrity;
- Relevant experience, quality of previous projects and technical capabilities;
- Innovation in use of materials, response to site and project brief;
- Demonstration of thought given to durability and safety;
- Feasibility of the project within the timeframe and budget.

Contract

The successful applicant will be contracted under the Council's Public Art Design and Commission Agreement using the Arts Law Centre of Australia Base Document. Blank Public Art Design & Commission Agreement attached to this Artist Brief.

Contact Details

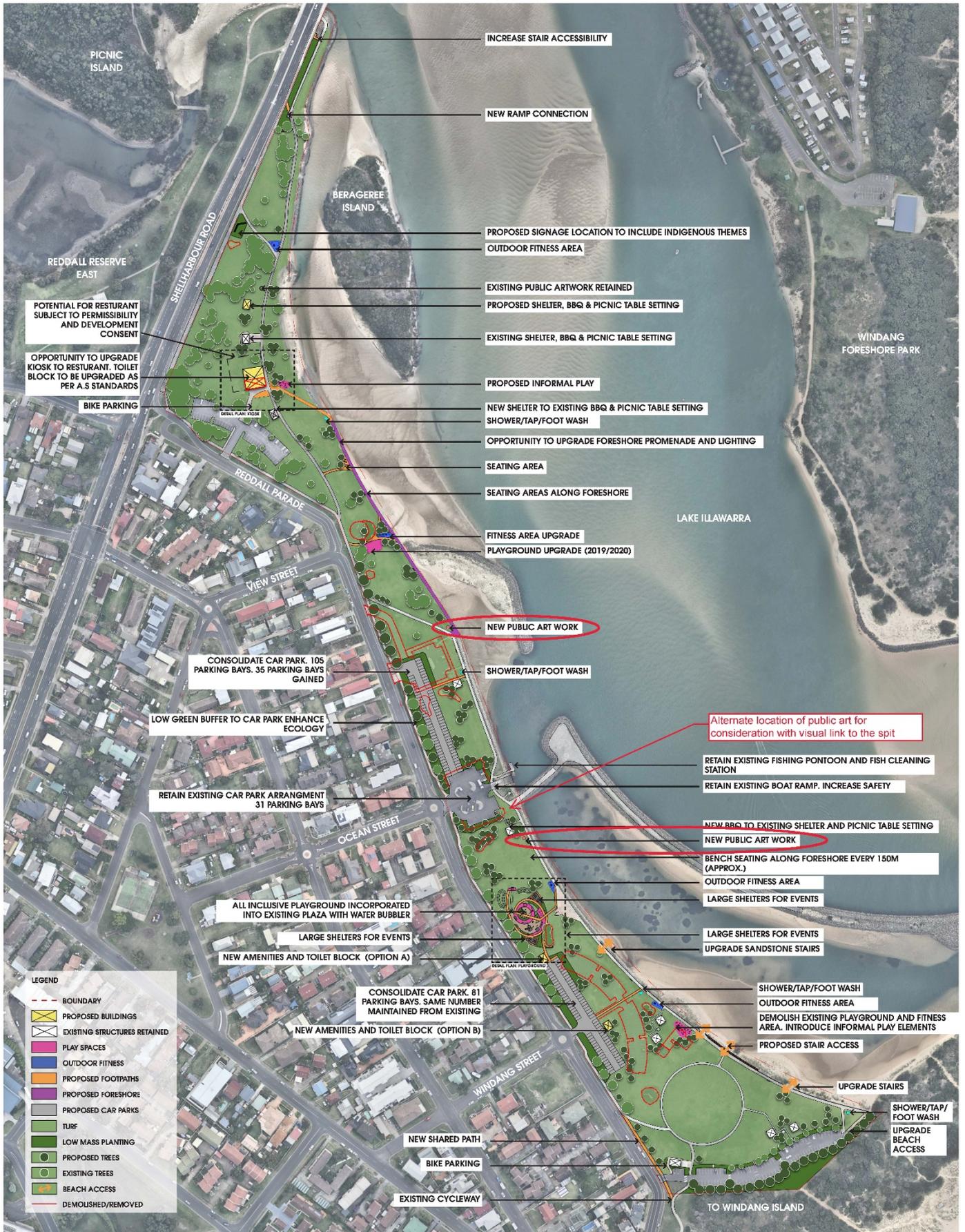
All submissions and enquiries should be directed to:

E quotations@shellharbour.nsw.gov.au

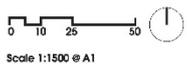
Site Reference Images



REDDALL RESERVE: MASTER PLAN



- PICNIC ISLAND
- REDDALL RESERVE EAST
- POTENTIAL FOR RESTURANT KIOSK TO RESTURANT, TOILET BLOCK TO BE UPGRADED AS PER A.S STANDARDS
- BIKE PARKING
- CONSOLIDATE CAR PARK. 105 PARKING BAYS. 35 PARKING BAYS GAINED
- LOW GREEN BUFFER TO CAR PARK ENHANCE ECOLOGY
- RETAIN EXISTING CAR PARK ARRANGMENT 31 PARKING BAYS
- ALL INCLUSIVE PLAYGROUND INCORPORATED INTO EXISTING PLAZA WITH WATER BUBBLER
- LARGE SHELTERS FOR EVENTS
- NEW AMENITIES AND TOILET BLOCK (OPTION A)
- CONSOLIDATE CAR PARK. 81 PARKING BAYS. SAME NUMBER MAINTAINED FROM EXISTING
- NEW AMENITIES AND TOILET BLOCK (OPTION B)
- NEW SHARED PATH
- BIKE PARKING
- EXISTING CYCLEWAY
- INCREASE STAIR ACCESSIBILITY
- NEW RAMP CONNECTION
- PROPOSED SIGNAGE LOCATION TO INCLUDE INDIGENOUS THEMES
- OUTDOOR FITNESS AREA
- EXISTING PUBLIC ARTWORK RETAINED
- PROPOSED SHELTER, BBQ & PICNIC TABLE SETTING
- EXISTING SHELTER, BBQ & PICNIC TABLE SETTING
- PROPOSED INFORMAL PLAY
- NEW SHELTER TO EXISTING BBQ & PICNIC TABLE SETTING
- SHOWER/TAP/FOOT WASH
- OPPORTUNITY TO UPGRADE FORESHORE PROMENADE AND LIGHTING
- SEATING AREA
- SEATING AREAS ALONG FORESHORE
- FITNESS AREA UPGRADE
- PLAYGROUND UPGRADE (2019/2020)
- NEW PUBLIC ART WORK
- SHOWER/TAP/FOOT WASH
- Alternate location of public art for consideration with visual link to the spit
- RETAIN EXISTING FISHING PONTOON AND FISH CLEANING STATION
- RETAIN EXISTING BOAT RAMP. INCREASE SAFETY
- NEW BBQ TO EXISTING SHELTER AND PICNIC TABLE SETTING
- NEW PUBLIC ART WORK
- BENCH SEATING ALONG FORESHORE EVERY 150M (APPROX.)
- OUTDOOR FITNESS AREA
- LARGE SHELTERS FOR EVENTS
- LARGE SHELTERS FOR EVENTS
- UPGRADE SANDSTONE STAIRS
- SHOWER/TAP/FOOT WASH
- OUTDOOR FITNESS AREA
- DEMOLISH EXISTING PLAYGROUND AND FITNESS AREA. INTRODUCE INFORMAL PLAY ELEMENTS
- PROPOSED STAIR ACCESS
- UPGRADE STAIRS
- SHOWER/TAP/FOOT WASH
- UPGRADE BEACH ACCESS
- TO WINDANG ISLAND
- WINDANG FORESHORE PARK
- LAKE ILLAWARRA
- SHELLHARBOUR ROAD
- BERAGEREE ISLAND
- REDDALL PARADE
- VIEW STREET
- OCEAN STREET
- WINDANG STREET



Conditions of the Expression of Interest (EOI)

Expression of Interest Title	EOI 2019/Reddall Reserve Public Art
Expression of Interest Number	EOI 2019/93
Issue Date	14 Nov 2019

Expression of Interest Closing Time and Lodgement Details

Expression of Interest Closing Date:	10 January 2020
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Expression of Interest Closing Time:	4:00 pm
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Expression of Interest Lodgement:	Responses are to be submitted via email to quotations@shellharbour.nsw.gov.au
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Contact Details – General Enquiries

Email:	quotations@shellharbour.nsw.gov.au
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Table of Contents

Table of Contents	2
1. Introduction	4
1.1 Purpose of this Conditions of the Expression of Interest (EOI)	4
1.2 Contact Officers	4
1.3 Details of Conditions	4
1.4 Definitions	4
2. Terms and Conditions	6
2.1 How to Prepare Your Expression of Interest Response	6
2.2 Amendments to the Request/Council Rights	6
2.3 Clarification of the Request	6
2.4 Respondents to inform themselves	7
2.5 Submissions	8
2.6 Lodgement of Submissions and Delivery Method	8
2.7 Conditions of Electronic Submission	8
2.8 Acceptance of Submissions	8
2.9 Rejection of Submissions	9
2.10 Late Submissions	9
2.11 Evaluation Methodology	9
2.12 General Evaluation Considerations	9
2.13 Mandatory Participation Criteria	10
2.14 Evaluation Criteria	10
2.15 Financial Capacity	11
2.16 Alternative or Non-Conforming Submissions	11
2.17 Departures, Clarifications and Assumptions	11
2.18 Submission Validity Period	11
2.19 Variation of Submission	11
2.20 Identity of the Respondent	12
2.21 Submitted Price	12
2.22 Conditions of Contract	12
2.23 Precedence of Documents	12
2.24 Ownership of Submissions	13
2.25 Registration or licensing of Contractors	13
2.26 WHS Obligations	13

3. Participation in the Expression of Interest Process	14
3.1 Jurisdiction	14
3.2 Costs of Submission	14
3.3 Canvassing of Officials	14
3.4 Confidentiality	14
3.5 Statement of Business Ethics	15
3.6 GIPA Requirements (where relevant)	15
3.7 Non Collusion	15
3.8 Publicity	16

1. Introduction

1.1 Purpose of this Conditions of the Expression of Interest (EOI)

This document is intended to provide Respondents with Information on the requirements and Council arrangements for the submission and evaluation of EOIs.

1.2 Contact Officers

Respondents should not seek information from any person(s) or rely on any information provided by any person(s) other than the Contact Officers on the front page of this document. To directly contact any person other than the Contact Officer may eliminate a Respondent from the EOI or may be a termination event pursuant to the Contract.

1.3 Details of Conditions

Respondents must comply with Council's Terms & Conditions of EOI, which are set out in section 2 of this document.

Lodgement of an Expression of Interest is evidence of the Respondent's agreement to comply with the Terms & Conditions of EOI for the duration of any contract awarded as a result of the Expression of Interest process. If a Respondent fails to comply with the Council's Terms and Conditions of EOI, the Principal may take the failure into account when considering this or any subsequent Expression of Interest from the Respondent, and may pass over the Submission.

1.4 Definitions

Unless the context requires otherwise, the following terms used in this Request have the meanings ascribed to them as set out below:

Closing Time - means the closing time for the receipt of Submissions as set out on the Cover Page.

Conditions - means the Conditions of the Expression of Interest set out in this document.

Conforming Submission - means a Submission that complies with all sections of this Request.

Principal - means Council and/or Agency.

Cover Page - means the cover page of this Request.

Goods - means the item(s) that the Contractor is required to provide to the Principal under the contract as detailed in the Expression of Interest Document.

Late Submission - means a Expression of Interest received by the Council after the Closing Time.

Nominated Contact - means Council's "Nominated Contact Person" as set out on the Cover Page.

Non-Conforming Submission - means a Submission other than a Conforming Submission.

Period of Contract - means the contract duration as defined in the Conditions of Contract.

Principal's Representative - means the officer nominated by and representing the Principal for the purposes of the Contract.

Request - means the Principals documentation requesting the provision of goods/services/works from suitably qualified contractors.

Request for Expression of Interest / EOI - means the Principal's documentation requesting the provisions of goods/services/works from suitably qualified contractors.

Services - means the services which the contractor is required to provide to the Principal under the Contract as detailed in the Expression of Interest Documents.

Special Conditions of Contract – means contract conditions as supplied in the Request. This may refer to a referenced recognised standard contract such as an Australian Standards contract, gc21, etc or an attached contract document.

Specification/ Brief – means the document within the Request detailing the goods/services/works being requesting in the EOI.

Submission / Response – means the quotation provided by the Respondent in response to the EOI.

Successful Respondent - means the Respondent accepted by Council to provide the Goods/Services.

Expression of Interest Evaluation Committee – means the committee responsible for evaluating responses to this EOI.

Respondent - means the entity replying to the EOI.

Terms and Conditions of Agreement - means the contract formed by the acceptance of an EOI, and governed by the Conditions of Contract.

2. Terms and Conditions

2.1 How to Prepare Your Expression of Interest Response

- Carefully read all parts of this document.
- Ensure you understand the requirements.
- Complete and return the Expression of Interest/Returnable Schedules including all attachments. The submission must be written in English.
- Make sure you have responded to all of the Selection Criteria within your EOI submission
- Lodge your Expression of Interest before the Deadline.

2.2 Amendments to the Request/Council Rights

The Respondent must not alter or add to the Request documents unless required by these Conditions of the Expression of Interest (EOI).

Without limiting its rights at law or otherwise, Council reserves the right in its absolute discretion at any time to do one or any combination of the following prior to the closing date by notice to each Respondent:

- Defer the closing date or any other date under this EOI; or
- Vary, amend, change or modify any aspect of this EOI, in which case Council will issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this EOI and any such addendum will become part of this EOI;
- Prior to or after the closing date, by notice to each Respondent, issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this EOI and any such addendum will become part of this EOI;
- Evaluate Submissions as Council sees appropriate in the context of its requirements for the procurement;
- Cease to proceed with the process outlined in this Request or subsequent process;
- Accept all or part of a Submission;
- Reject any Submission;
- Accept an alternate Submission;
- Obtain further information from Respondents with respect to its Response for the purposes of clarification or explanation of its Response. This includes holding interviews with some or all Respondents, including any personnel nominated by the Respondent in the Response.

All Submissions lodged will become the property of Council and on no account will they be returned to Respondents. Council is not bound to accept the lowest or any Submission.

2.3 Clarification of the Request

If the Respondent has any doubt as to the meaning of any part of this Request or the scope of the work/specification required they should seek to clarify points of doubt or difficulty with the Contact Officer before submitting a Submission.

The Principal reserves the right not to answer requests for clarifying information made within five business days prior to the Deadline. Alternatively, when submitting its Submission the Respondent may include a statement of the interpretation upon which it relies and upon which the Expression of Interest has been prepared.

2.4 Respondents to inform themselves

The Information in this Request has been provided in good faith. It is intended only as an explanation of the Principal's requirements and is not intended to form the basis of a Respondent's decision on whether to enter into any contractual relationship with the Principal.

The Information provided does not purport to be all-inclusive or to contain all information that a prospective contractor may require. Respondents and their advisers must take their own steps to verify information which they use and must make an independent assessment of the opportunity described in this Request after making such investigation and taking such professional advice as they deem necessary.

Respondents will be deemed to have:

- examined the Request and any other information available in writing to Respondents for the purpose of submitting;
- examined all further information relevant to the risks, contingencies, and other circumstances having an effect on its Submission which is obtainable by the making of reasonable enquires;
- satisfied themselves as to the correctness and sufficiency of its Submission including submitted prices which will be deemed to cover the cost of complying with this Request and of all matters and things necessary for the due and proper performance and completion of the work described therein; and
- satisfied themselves they have a full set of the Request documents and all relevant attachments which includes all pages which are numbered consecutively and that all supplements referred to are also included.

None of the Principal, the Principal's members, directors, officers, employees, agents or advisers make any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the Information.

Neither the Principal nor their professional advisers shall be liable for any loss or damage arising as a result of reliance on the Information nor for any expenses incurred by Respondents at any time.

Any advisers or agents appointed by the Principal, whether legal, financial, technical or other, will not be responsible to anyone other than the Principal for providing advice in connection with the Request.

The Respondent represents and warrants that:

- the Respondent submits its Submission in good faith;
- no information provided by or on behalf of the Respondent to Council is or will be false or misleading;
- it has no conflict of interest at the date of submitting its Submission. The Respondent will immediately inform Council of it becoming aware of any actual or potential conflict of interest;
- it has not colluded in any way with any other Respondent including in an attempt to "price fix" or decrease the competition of the EOI in any way. Evidence of collusive

practices may lead to the rejection of some or all Submissions and the Respondents involved in such practices may be barred from engaging with Council in the future and may be reported to the Australian Competition and Consumer Commission; and

- it has not directly approached or attempted to influence any elected or staff member of Council.

2.5 Submissions

Submit all information called for in the Expression of Interest documents.

Where applicable, refer to each Addendum and state that the Expression of Interest allows for the instructions given in the Addendum.

General information about the Respondent, such as brochures, advertising, product or company information or marketing brochures or presentations other than those expressly requested, are to be sent with the Expression of Interest submission, is not required with the Expression of Interest unless expressly requested in the Request. If required the Expression of Interest Evaluation Committee will request these materials separately.

2.6 Lodgement of Submissions and Delivery Method

The Expression of Interest must be lodged by the closing date and time and by the method as outlined on the front cover page of this EOI.

2.7 Conditions of Electronic Submission

Submissions lodged electronically will be treated in accordance with the *NSW Electronic Transactions Act 2000*, and given no lesser level of confidentiality, probity and attention than Submissions lodged by other means.

Council may not consider Expression of Interest responses that cannot be evaluated due to being incomplete or corrupt.

Files must be checked by a reputable virus scanning application prior to submission and be found to be free from virus malicious code or other properties (including executable code) that may compromise Councils IT environment.

Files submitted must be in PDF format, a format able to be read, formatted, displayed and printed by Microsoft Word or any other format required by the EOI documents.

2.8 Acceptance of Submissions

Unless otherwise stated in this Request, Submissions may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Submissions and may reject any or all Submissions and may waive any irregularities therein.

Acceptance of submission with a whole of life cost in excess of \$500,000 can only be approved by the passing of a Council resolution. Once a Council resolution has been issued accepting a submission, written notification will be provided to the successful Respondent notifying, and detailing to the extent, that the submission has been accepted.

A Submission shall be accepted (and for all purposes shall be deemed to be accepted) when a Council resolution has been passed detailing the conditions (if any) of the acceptance of a submission and a subsequent Notice of Acceptance will be provided to the Respondent; or is delivered by prepaid post; or sent by facsimile to the facsimile number given by the

Respondent; or sent by email or some other electronic means to the address furnished in the Offer Form. In the latter case, the time of posting shall be deemed to be the time of acceptance.

No legal or other obligation will arise between a Respondent and the Principal in relation to the conduct or outcome of the Expression of Interest process unless and until that Council Resolution has been issued and subsequently the Respondent has received written notification from the Principal of the acceptance of the Submission.

In the event that the whole of life cost of the contract is not estimated to exceed \$500,000, the relevant Procurement Delegate will be the body responsible for the acceptance of a submission.

Unless otherwise stated in this Request, Submissions may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Submission and may reject any or all Submissions submitted and may waive any irregularities therein.

The Submission and the acceptance thereof shall constitute a binding contract between the Principal and the Respondent on and subject to the terms of the:

- Formal Instrument of Agreement;
- General Conditions of Contract and any Special Conditions of Contract;
- The Specification; and
- Respondent's Offer Form via the Response Schedules.

2.9 Rejection of Submissions

A Submissions will be rejected without consideration of its merits in the event that:

- a) it is not submitted before the closing date and time; or
- b) it is not submitted at the place specified in the Request.

2.10 Late Submissions

Late Submission will not be considered.

2.11 Evaluation Methodology

Expression of Interest Responses will be evaluated against the evaluation criteria set out in the Request.

2.12 General Evaluation Considerations

Information provided by the Respondent in its response to the Request will be the basis of the evaluation of these criteria. Respondents are advised to respond clearly to all of the requirements listed in the Request.

Those evaluation criteria designated as Mandatory Participation Criteria are evaluation criteria that **MUST** be met by the Respondent. A Submission that fails to fully comply with those evaluation criteria may be excluded the Submission without further consideration.

Technical and Commercial evaluation criteria are evaluation criteria which will be taken into account by the Expression of Interest Evaluation Committee when conducting an overall value for money assessment of the Submission. Failure to fully comply with those evaluation criteria may reduce the Respondent's overall score but will not result in the exclusion of the Submission from further consideration.

Council may, in its sole discretion, seek clarification from any Respondent regarding information contained in the Submission and may do so without notification to any other Respondent.

A Respondent may be invited to a one-on-one evaluation conference in order to review and clarify the Submission and to enable Council to interview key personnel identified in the Submission.

In general Submissions will be evaluated for:

- The capability of the Respondent to meet the functional and technical requirements as outlined in this EOI;
- The overall value for money of the solution;
- The Respondent's previous experience performing similar services in Australia and its demonstrated capability to provide services of comparable complexity and size;
- The additional benefits and value add the Respondent has provided in its response;
- Overall suitability of the Respondent and Sub-contractors, its probity, financial standing, reputation and quality assurance system in place;
- Proposed conditions of Contract;
- Respondent's ability and capacity to meet the requirements;
- Quality of Referee reports; and
- Other issues relating to the fitness for purpose of the products offered including sub-contractors, Repsonednet's Quality Standard and Quality Assurance System.

Specifically, the Response will be assessed against the Mandatory Participation Criteria, the Technical and Commercial Evaluation Criteria detailed in the Request.

The quality and the format of the Response will be taken into account in evaluating the Response.

Council is not bound or required to accept the lowest price, or any Response, whether or not it is a Conforming Response.

2.13 Mandatory Participation Criteria

If Mandatory Participation Criteria are to be specified they will be detailed in the Request.

Each Submission will be assessed on a Yes/No basis (in effect, a Pass / Fail scenario) as to whether the compliance criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Submission from consideration.

2.14 Evaluation Criteria

Submissions will be assessed against both Commercial (Pricing etc.) and Technical (Non-Price) Criteria.

Submissions will be assessed using a weighted scoring process based on information provided with the Submission.

The criteria used in the evaluation of Submissions will be detailed in the Request.

2.15 Financial Capacity

Respondents must have sufficient financial capacity to perform the services required under the Agreement.

As part of its response, Respondents are to give consent to the Council to complete a financial risk assessment review by its appointed credit rating agency or representative.

In submitting a Response, the Respondent will be taken to have consented the Principal accessing this financial viability / risk assessment and information, including any personal information contained therein.

Respondents who are identified as a financial risk as a result of these reviews may, at Council's discretion, be passed over and removed from further participation in the evaluation process.

2.16 Alternative or Non-Conforming Submissions

The Principal reserves the right to accept an Alternative or Non-Conforming Submission.

If a Respondent wishes to submit an Alternative or Non-Conforming Submission it must also:

- a) Submit a conforming Submission
- b) Submit an unmarked copy of the Alternative or Non-Conforming Submission; and
- c) Submit a copy of the non-conforming Submission in a marked up form, which identifies all departures from the conforming Submission. The detail provided must fully describe and price any conditions, qualifications, or departures from the specification for the Alternative or Non-Conforming Submission.

Council may, at its absolute discretion, consider an Alternative or Non-Conforming Submission; however it is not obliged to do so.

2.17 Departures, Clarifications and Assumptions

The Respondent is to declare and detail any Departures, Clarifications or Assumptions that have been taken into account and included in its response to the EOI.

These Departures, Clarifications or Assumptions can address any conditions or positions in the Conditions of Contract or requirements as detailed in the Specification supplied that are material to the response.

Submissions will be accepted as accepting and complying with all terms and conditions of the Request, the Conditions of Contract and the Specification unless expressly noted in the Submission.

2.18 Submission Validity Period

All Submissions will remain valid and open for acceptance for a minimum period of ninety (90) days from the closing date and time or forty-five (45) days from the Principal's decision for determining the EOI, whichever is the later unless extended by mutual agreement between the Principal and the Respondent(s) in writing. Respondents may withdraw its Submission at any time after the expiration of the Submission Validity Period.

2.19 Variation of Submission

- a) Before the Principal accepts any of the received Submission to Contract, a person who has submitted a Submission may, subject to subparagraphs below, vary the Submission:

- i. by providing the Principal with further information by way of explanation or clarification, or
 - ii. by correcting a mistake or anomaly.
- b) Such a variation may be made either:
 - i. at the request of the Principal, or
 - ii. with the consent of the Principal at the request of the Respondent, but only if, in the circumstances, it appears reasonable to the Principal to allow the Respondent to provide information or correction.
- c) If a Submission is varied in accordance with this paragraph, the Principal will notify in writing all other Respondents that have the same or similar characteristics as the varied Submission, and provide them with the opportunity of varying its Submission in a similar way.
- d) The Principal will not consider a variation of a Submission if the variation would substantially alter the original Submission.

2.20 Identity of the Respondent

The identity of the Respondent and the Contractor is fundamental to the Principal. The Respondent will be the individual, individuals, corporation or corporations named as the Respondent in whose execution appears on the Offer Form in this Request.

2.21 Submitted Price

The price outlined in the Submission must quote all prices inclusive of GST.

The price submitted will be net and what the Principal will be required to pay pursuant to the Contract and must include all costs associated with the Contract.

The price submitted should be firm for the duration of the contract.

The Respondent must provide its Australian Business Number (ABN), or, if it does not have an ABN, the reason for not having one.

Payments between Council and the Contractor will be exclusively in Australian dollars (AUD).

2.22 Conditions of Contract

Shellharbour City Council Supply of Goods and Services – Terms and Conditions (available at https://cdn.shellharbour.nsw.gov.au/sites/default/files/Working_here_documents/procurement-terms-conditions_0.pdf) apply to this EOI. Where required, additions and/or departures to these terms and conditions will be provided under Special Conditions of Contract. Special Conditions of Contract will be provided for in the Request as a reference to a recognised standard contract or as and attached contract document.

Respondents will be deemed to have been made, on the basis of, and to incorporate the Shellharbour City Council Supply of Goods and Services – Terms and Conditions and any Special Conditions of Contract.

2.23 Precedence of Documents

In the event of any conflict or inconsistency between any clauses of documents comprising the EOI, the following order of priority will apply:

Special Conditions of Contract;

Specification;

Conditions of the Expression of Interest;

Shellharbour City Council Supply of Goods and Services – Terms and Conditions

2.24 Ownership of Submissions

All documents, materials, articles and information submitted by the Respondent as part of or in support of a Submission will become property of the Principal and will not be returned to the Respondent at the conclusion of the Expression of Interest process. The Respondent will be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

The Respondent does not acquire intellectual property rights in the Request documents. Respondents shall not reproduce any of the Request documents in any material form (including photocopying or storage in any medium by electronic means) without the written permission of the Principal other than for use strictly for the purpose of preparing Submissions.

2.25 Registration or licensing of Contractors

Where an Act requires that a contractor (as defined by the Act) be registered or licensed to carry out the work described in the Request, the Respondent shall state in the appropriate Response Schedule, its registration or licence number. The Expression of Interest may not be considered if the Respondent fails to provide such registration or license number.

2.26 WHS Obligations

Lodgement of a Expression of Interest will itself be an acknowledgement and representation of requirements in relation to WHS, which the Respondent will comply with all relevant legislation and agrees to provide periodic evidence of compliance, and give access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.

3. Participation in the Expression of Interest Process

3.1 Jurisdiction

The Project, the EOI and the final Contract Documents will be governed by the law of NSW. By lodging a Submission the Respondent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of NSW.

3.2 Costs of Submission

Respondents remain responsible for all costs incurred by them in connection with its Submission whether before or after the submission date and whether incurred directly by them or their advisers regardless of whether such costs arise as a direct or indirect consequence of amendments made to the Request by the Principal. For the avoidance of doubt, the Principal shall have no liability whatsoever to Respondents for the costs of any negotiations conducted in the event that the Principal decides not to accept any Submissions.

3.3 Canvassing of Officials

Any Respondent who solicits or attempts to solicit support for its Submission or otherwise seeks to influence the outcome of the Expression of Interest process by:

- a) offers of any inducement, fee, or reward, to any member or officer of the Principal, or any person acting as an adviser for the Principal; or
- b) canvasses any persons referred to in this document; or
- c) contacting any member or officer of the Principal about the Request or any process relating thereto, except as authorised by this Request including (but without limitation) for the purposes of discussing the possible employment transfer of the Respondent member or officer,

may be disqualified from involvement in the EOI process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Respondent may attract), at the Principal's discretion.

3.4 Confidentiality

The Principal makes information available on condition that it is treated as confidential by the Respondent and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a Submission to be made, for example by disclosure by a Respondent to its insurers or professional advisers, provided they have each given an undertaking at the time of receipt of the relevant information (and for the benefit of the Principal) to keep such information confidential. Other than specified above, or as required by law, and save insofar as the information is in the public domain, Respondents shall not make any of the Information available to any other parties in any circumstances without the prior written consent of the Principal nor use it for any purpose other than that for which it is intended.

3.5 Statement of Business Ethics

Council is committed to the highest standards of honesty, fairness and integrity in all its business dealings. Council's Statement of Business Ethics sets out the standards of behaviour that Council expects from its private sector partners. These standards of behaviour relate to fair, ethical and honest dealings with Council, and ensuring that the best level of service is provided to the community. This document is available on Council's internet site (<http://www.shellharbour.nsw.gov.au>). Breaches of this Statement may constitute grounds for termination of this contract.

3.6 GIPA Requirements (where relevant)

Where the arrangement involves the Respondent providing services on behalf of Council, s 121 of the GIPA Act requires that the following be included in any contract, and this will be part of the contract with Council:

1. The Contractor must, within seven (7) days of receiving a written request by the Agency, provide the Agency with immediate access to the following information contained in records held by the Contractor:
 - a. information that relates directly to the performance of the services provided to the Agency by the Contractor pursuant to the Contract;
 - b. information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and
 - c. information received by the Contractor from the Agency to enable it to provide the services pursuant to the Contract.
2. For the purposes of sub-clause (1), information does not include:
 - a. information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - b. information that the Contractor is prohibited from disclosing to the Agency by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - c. information that, if disclosed to the Agency, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Agency, whether at present or in the future.
3. The Contractor will provide copies of any of the information in sub-clause (1), as requested by the Agency, at the Contractor's own expense.

Any failure by the Contractor to comply with any request pursuant to sub clause (1) or (3) will be considered a breach of an essential term and will allow the Agency to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of the Agency, then the termination will take effect seven (7) days after receipt of the notice.

3.7 Non Collusion

Any Respondent who:

- a) fixes or adjusts the amount of its Submission by or in accordance with any agreement or arrangement with any other Respondents; or

- b) enters into any agreement or arrangement with any other Respondent that it shall refrain from Responding or as to the amount of any Submission to be submitted; or
- c) causes or induces any person to enter such agreement or to inform the Respondent of the amount or approximate amount of any rival Submission for the Contract; or
- d) canvasses any of the persons previously discussed in connection with the Expression of Interest or the outcome of the Expression of Interest process; or
- e) offers, agrees, or does; pay any sum of money, inducement or valuable consideration. This being directly or indirectly to any person for doing, having done, causing, or caused to be done in relation to any other Expression of Interest or proposed Expression of Interest any act or omission; or
- f) communicates to any person other than the Principal the amount or approximate amount of its proposed Submission (except where such disclosure made in confidence in order to obtain quotations necessary for the preparation of the Submission, for insurance or contract guarantee bonds and/or performance bonds or professional advice required for the preparation of a Submission),

may, at the discretion of the Principal, be disqualified from any further involvement in this Expression of Interest process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Respondent may attract).

3.8 Publicity

Respondents must obtain the written approval from the Contact Officer before any disclosures relating to the Expression of Interest or the contract are made to the press or in any other public domain. Respondents must not undertake any publicity activities with any part of the media in relation to the Expression of Interest or contract without the agreement of the Principal, including agreement on the format and content of any publicity.

END OF CONDITIONS OF THE EXPRESSION OF INTEREST (EOI)



PUBLIC ART DESIGN & COMMISSION AGREEMENT
LAKE ILLAWARRA ART TRAIL – REDDALL RESERVE, LAKE ILLAWARRA

EOI NUMBER 2019/93

NOVEMBER 2019

ARTS LAW CENTRE OF AUSTRALIA BASE DOCUMENT

PUBLIC ART DESIGN AND COMMISSION AGREEMENT

THIS IS AN AGREEMENT BETWEEN

Name:

ABN:

Of Address: (Artist)

AND

Name: Shellharbour City Council

ABN: 78 392 627 134

Of Address: (Council)

Council's Representative:

RECITALS

- A. The Council has prepared a brief for the creation of a public artwork, a copy of which is attached to this agreement as Annexure 1 (**Brief**).
- B. Based on the Brief, the Artist will prepare two (2) concept designs for the public artwork (**Concept Designs**), for the Council to review and provide feedback. The Artist will present the Concept Designs to an internal Council panel.
- C. The Artist will produce a more detailed design (**Design**) based on the Brief, the chosen Concept Design and feedback received to create an artwork as described in the Design on the terms of this agreement.
- D. The Artist has agreed to produce a Design and an artwork (**Work**) on the terms of this agreement.
- E. The Artist has agreed to document in photographs all processes during the creation of the Work for future use by Council.

THE PARTIES AGREE AS FOLLOWS

STAGE 1: CONCEPT DESIGN

1. Concept Design

1.1. The Artist agrees to:

- a) develop one (1) original Concept Design for the artwork based on the Brief;
- b) create a record of the Concept Design in the form of a drawing;
- c) deliver the Concept Design to the Council by 10 January 2019 for selection. The Concept Designs will be presented to an internal Council panel on 14 January 2019. The rejected Concept Design is to remain the property of the Artist and the selected Concept Design will become the property of Council; and
- d) develop the concept design and subsequent final design in accordance with Clause 13 Environmental Considerations

STAGE 2: DESIGN DEVELOPMENT

2. Design

- 2.1. The Artist agrees to:
 - a) develop an original Design for the artwork based on the Brief and the selected Concept Design;
 - b) create a record of the Design in the form of a drawing; and
 - c) deliver the Design to the Council by 31 March 2019
- 2.2. Where the Brief contains information relating to:
 - a) the proposed use;
 - b) intended life; or
 - c) the proposed site and location (**Site**)of the Work, the Artist must take those matters into consideration when developing the Design, including without limitation the suitability of the materials to be used and their durability given the proposed use and location of the Work.
- 2.3. Within fourteen (14) calendar days of the Artist submitting the Design to the Council under clause c), the Council must either:
 - a) accept the Design under clause 3;
 - b) request changes to the Design under clause 4; or
 - c) reject the Design under clause 5.
- 2.4. The Council confirms and agrees that:
 - a) the Brief contains all relevant information relating to the intended life and use of the Work and the environment where the Work will be located.

3. Acceptance of the Design

- 3.1. The Council may accept the Design by notifying the Artist in writing within the time specified in clause 2.3.
- 3.2. In accepting the Design, the Council agrees that:
 - a) the Design is suitable given the intended life of the Work and the environment where the Work will be located; and
 - b) any maintenance issues such as vandalism and the removal of graffiti have been taken into consideration before accepting the Design.
- 3.3. The Design is deemed accepted if the Council does not either:
 - a) expressly accept the Design in writing under clause 3.1;
 - b) request changes to the Design under clause 4; or
 - c) reject the Design under clause 5.

4. Changes to the Design

- 4.1. Prior to accepting the Design, Council may request amendments to the Design on a maximum of two (2) occasions.
- 4.2. The Council:
 - a) must request changes under clause 4.1 by written notice specifying the changes (**Amendment Notice**), delivered to the Artist within the time specified in clause 3.1;

- b) may not request any change to the Design that is substantially different from the Brief, the chosen Concept Design or the final Design as submitted; and
 - c) must pay the Artist a fee of \$500 for each further Design produced by the Artist to incorporate the changes requested by the Council, beyond the agreed Amendments provided in clause 8.1.
- 4.3. Within fourteen (14) calendar days of receiving the Amendment Notice, the Artist must:
- a) provide detail regarding any time frame impacts (calendar days) to the completion date;
 - b) within the timeframe stipulated in 4.3.a. prepare an amended Design addressing each of the changes identified in the Amendment Notice and submit it to the Council; or
 - c) notify the Council that the Artist is not prepared to modify the Design.
- 4.4. Within fourteen (14) calendar days of the Artist submitting the amended Design to the Council or notifying the Council under clause c), the Council must:
- a) accept the Design by notifying the Artist in writing. Clause 3.2 applies;
 - b) request further changes to the Design under this clause, provided that the total number of changes requested does not to exceed the maximum number specified in clause 4.1; or
 - c) reject the amended Design under with clause 5.
- 4.5. The amended Design last submitted by the Artist to the Council is deemed accepted if the Council does not either:
- a) expressly accept the Design in writing under clause a); or
 - b) reject the Design under clause 5.

5. Rejection of the Design

- 5.1. The Council may reject the Design by notifying the Artist in writing within the time specified in clause 2.3 or clause 4.4.
- 5.2. Subject to clause 5.3, the Council must pay the Artist the Stage 1 fee for design development specified in the Schedule (**Design Development Fee**) if the Council rejects the Design under this clause.
- 5.3. The Council is not required to pay the Design Development Fee to the Artist if the Design rejected under clause 5.1 (**Rejected Design**):
 - a) was delivered to the Council more than seven (7) calendar days after the due date under clause c); or
 - b) did not conform to, or was substantially different from, the chosen Concept Design or the Design first submitted under clause 2.1, except to the extent such differences were as a result of changes requested by the Council.

STAGE 3: CREATION OF THE WORK

6. The Work

- 6.1. Upon acceptance of the Design, the Artist must:
 - a) produce an artwork as described in, and in accordance with, the Design (**Work**);
 - b) ensure that the Work is produced in accordance with the timeline detailed in the Schedule or such other timeframe as is agreed by the parties (**Timeline**);
 - c) notify the Council when the Work is completed and ready for installation; and

- d) provide the Council with reasonable access to view the Work after completion.
- 6.2. If the Artist must produce the Work on the Site or on the Council's premises or on the premises of the Council's employees, agents or contractors, the Council will arrange for the Artist and the Artist's employees and agents to have full and free access to those premises at all reasonable times for the purpose of producing the Work.
- 6.3. Within fourteen (14) calendar days of receiving notification of the Work's completion under clause 6.1.c, the Council must view the Work and either:
 - a) accept the Work under clause 7;
 - b) request changes to the Work under clause 8; or
 - c) reject the Work under clause 9.
- 6.4. The Council acknowledges that the Artist will apply aesthetic skill and judgment in the creation of the Work.

7. Acceptance of the Work

- 7.1. The Council may accept the Work by notifying the Artist in writing within the time specified in clause 6.3.
- 7.2. The Work is deemed accepted if the Council does not either:
 - a) expressly accept the Work in writing under clause 7.1;
 - b) request changes to the Work under clause 8; or
 - c) reject the Work under clause 9.

8. Changes to the Work

- 8.1. Prior to accepting the Work, the Council may request Amendments to the Work on a maximum of one (1) occasion.
- 8.2. The Council:
 - a) must request changes under clause 8.1 by written notice specifying the changes (**Amendment Notice**), delivered to the Artist within the time specified in clause 6.3 ;
 - b) may not request the Artist to make any change to the Work which is substantially different from the Design; and
 - c) agrees to pay the Artist a fee of \$130 per hour for each change undertaken by the Artist to the Work at the Council's request, beyond the agreed Amendments provided in clause 8.1.
- 8.3. Within fourteen (14) calendar days of receiving the Amendment Notice, the Artist must:
 - a) provide detail regarding any time frame impacts (calendar days) to the completion date;
 - b) within the timeframe stipulated in 8.3.a. amend the Work to incorporate the changes requested by the Council, notify the Council that the changes have been completed and provide the Council with reasonable access to view the amended Work; or
 - c) notify the Council that the Artist is not prepared to modify the Work.
- 8.4. Within fourteen (14) calendar days of receiving the Artist's notice under clause a), the Council must view the Work and either:
 - a) accept the Work under clause 7;
 - b) request further Amendments to the Work under clause 8.1, provided that the total number of Amendments requested does not exceed the maximum number specified in clause 8.1; or
 - c) reject the Work under clause 9.

- 8.5. The amended Work last submitted by the Artist to the Council is deemed accepted if the Council does not either:
- a) expressly accept the Work in writing under clause a); or
 - b) reject the Work under clause 9.

9. Rejection of the Work

- 9.1. The Council may only reject the Work if:
- a) the Work is not executed substantially in accordance with the Design;
 - b) within the time specified in clause 6.3, the Council notifies the Artist in writing of the reasons why the Council considers that the Work is not executed substantially in accordance with the Design;
 - c) where practicable, the Council has given the Artist the opportunity to alter the Work to address the Council's concerns by requesting appropriate changes to the Work;
 - d) the Council has agreed to vary the Timeline to give the Artist a reasonable time to make any changes; and
 - e) changes have been requested and the Artist has failed to make the necessary changes within the time specified.

10. Obligations of the Artist

- 10.1. The Artist will:
- a) be responsible for all the costs of materials and any scaffolding or other works required to create the Work unless and to the extent expressly provided for in the Commission;
 - b) inform herself or himself of Council's requirements in respect of the Work;
 - c) comply with any directions of Council with respect to performance of any work so as to minimise inconvenience to members of the public and avoid any health or safety hazard;
 - d) consult regularly with Council throughout the performance of the Contract to ensure that the Work is meeting Council's requirements.
 - e) document in photographs all processes during the creation of the Work for future use by Council.
- 10.2. The Contractor understands and accepts that, whilst the Council will leave artistic freedom to the Contractor in the creation of the Work, the Council has social responsibilities to a diverse and multicultural community. The Contractor accepts and agrees as a condition of this commission that the Work must not contain any content that is defamatory, overtly sexually offensive or offensive to any racial or religious group, even if the Contractor is well-intentioned, to which it has not agreed in writing in the Commission. Notwithstanding any other provision of this Contract, if Council concludes on reasonable grounds that any part of the Work includes content which is defamatory, sexually offensive or offensive to any racial or religious group to which it has not agreed in writing in the Commission, Council may without any liability to the Contractor whatsoever cover over, deface or remove such offensive matter, or remove the Work from the Location, as Council may in its sole discretion determine.
- 10.3. The Contractor will allow Council, upon reasonable notice, to inspect or authorise the inspection of the location where the works under this Contract are being carried out and will provide access to such location to enable progress on the Commission and compliance with the obligations of the Artist under this Contract.

STAGE 4: INSTALLATION OF THE WORK

11. Delivery and installation

11.1. If the Work is not created on the Site

- a) the Artist will arrange for the delivery of the Work to the Site within twenty one (21) calendar days of the Council accepting the Work;
- b) the Artist will pay for the installation of the Work on the Site.

12. Security & Safety Concerns for the Artist and Others

12.1. The Artist must ensure that in carrying out the Commission:

- a) when using Council's premises or facilities, the Contractor complies with all rules, directions and procedures including those relating to security and workplace health and safety;
- b) when performing any work under this Contract in a public place, the Contractor takes care with respect to all such works so as to ensure that all personnel engaged by the Contractor to assist him or her and all members of the public and any other persons who may be nearby are not harmed or exposed to any hazardous materials which are used by the Contractor or any person engaged by the Contractor;
- c) the Contractor will comply with all laws, including but not limited to occupational health, safety and rehabilitation management laws and regulations.

12.2. Without limiting paragraph (a), in relation to installation at the Location, if applicable, the Artist must:

- a) before commencement of the Commission, and where or to the extent that the works to be performed under this Contract will involve significant physical labour, submit to Council an occupational health and safety management plan for the carrying out of the Commission which:
 - i. identifies the potential risk of injury to workers (including subcontractors or any other person deemed to be a worker), any visitors to the Location and members of the public in the vicinity of the Location and establishes controls for ensuring that the risk of injury is minimised;
 - ii. identifies any equipment to be used and standard operation procedures required to operate such equipment or to complete the works to be performed under this Contract in a safe manner;
 - iii. identifies safe systems of work to be implemented during the Commission;
 - iv. identifies clear guidelines for responding to occupational health and safety incidents arising from the Commission and specifies the qualified person to manage those incidents and procedures to notify affected parties and authorities;
 - v. where any subcontractor or other person is to be engaged to perform work, establishes training programs which ensure that people engaged in the Commission are aware of the risks of personal injury and the measures taken to minimise those risks; and
 - vi. identifies all measures which will be implemented in order to comply with all occupational health and safety laws applicable to the work to be performed;
- b) where or to the extent that the works to be performed under this Contract will involve significant physical labour, develop, document, implement and maintain occupational health and safety rules which conform to occupational health and safety laws applicable to the work to be performed, and which are approved by Council;

- c) immediately report in writing to Council all incidents involving injury or potential injury to the Contractor or any of his or her employees, agents or subcontractors which injury arises during the performance of the Commission.

12.3 The Artist will ensure that his or her subcontractors comply with the requirements referred to in this clause.

COMMON PROVISIONS

13 Environmental Considerations

13.1 The Contractor undertakes to.

- a) consider environmental impacts in its design of products including:
 - reducing the environmental impact,
 - increasing the service life,
 - labelling for consumer information/protection,
 - developing new and environmentally preferable products
- b) adopt initiatives in relation to reducing environmental impacts including
 - use of paper,
 - energy conservation,
 - employee travel/car fleets,
 - transport/distribution of inputs/goods/services,
 - solid waste production,
 - water conservation

14 Delay

- 14.1 All stages of the process of creation, amendment and installation of the Design and the Work will be completed in accordance with the Timeline unless:
 - a) the parties agree otherwise in writing; or
 - b) there is a delay due to circumstances beyond the control of the Artist, including but not limited to the non-availability of necessary materials, shipping delays, labour strikes or natural disasters.
- 14.2 If a delay occurs as a result of circumstances described in clause a), each party agrees to take all reasonable steps to minimise its losses as a consequence of that delay.
- 14.3 If a delay under clause a) has extended more than twenty one (21) calendar days, either party may terminate this agreement by fourteen (14) calendar days written notice to the other party.

15 Payment

- 15.1 The Artist is to give the Council a written claim for payment when a Milestone stated in the Schedule (**Commission Fee**) is reached. The claim is to identify the Milestone, the amount claimed, how the amount is calculated, deductions to which the Principal is entitled and when additions are claimed, the basis of the claim. Additions are extra costs or other amounts to which the Contractor is entitled under the Contract.
- 15.2 When a Milestone is reached, the amount which the Artist is entitled to claim and be paid is the sum of:
 - a) for work for which the Council accepted a lump sum, the portion stated in the Schedule for the Milestone;

- b) for any additions for which the Council has approved an amount in writing;
 - c) less payments previously made, costs payable by the Artist to the Council and deductions to which the Council is entitled.
- 15.3 Within 10 business days after receipt of the Artist's claim, the Council is to provide to the Artist a payment schedule identifying the claim to which it relates and stating the payment, if any, which the Council will be making. If the payment is to be less than the amount claimed by the Artist the payment schedule is to indicate why it is less
- 15.4 The Council agrees to pay the Artist the total fee specified in the Schedule (**Commission Fee**) in instalments in accordance with the Schedule and clauses 15.1 and 15.2.
- 15.5 For the purposes of this clause a business day is any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.
- 15.6 Any claim by the Artist on the Council is to be made within 28 days after the date of the Council's acceptance of the Work under Clause 7. All claims whatsoever by the Artist against the Council made after that time are barred.
- 15.7 Payment is to be made:
- a) within 20 business days after receipt of the Artist's written payment claim.
- 15.8 Unless stated otherwise, all payments by the Council to the Artist are to be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Artist. No payment is due to the Artist until details of the nominated account (name of financial institution, account name and account number) are notified in writing to the Council.
- The Artist is to promptly notify the Council in writing of any changes to the nominated account and the Council is not responsible for any payments made into a previously nominated account before notification of such change is received by the Council.
- 15.9 Payment is not evidence of the value of work or an admission of liability or that the work is satisfactory but is a payment on account only.
- 15.10 Within 40 days after Completion (where there is no Post Completion Period), or at the end of any Post Completion Period, the Principal is to issue a final payment schedule accounting for the amount due less any amounts payable by the Contractor to the Principal and, where there is a Post Completion Period, the release of the retention amount.

16 Goods and Services Tax

- 16.1 The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).
- 16.2 If a party is liable to pay GST in respect of any good or service supplied under this agreement, that party will invoice the other party for the GST amount payable for the good or service and will ensure that the invoice is a GST compliant invoice.
- 16.3 The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

17 Title and copyright

- 17.1 The Artist warrants that the Design and the Work:
- a) are the Artist's original work;
 - b) do not to the best of the Artist's knowledge infringe the copyright or moral rights of any third party; and
 - c) are unique works of the Artist developed exclusively for the commission under this agreement.

- 17.2 Subject to clauses 18 and 26, title in the Design and the Work will not pass to the Council until:
- a) the Council has accepted the Design and the Work;
 - b) the Work has been delivered; and
 - c) all payments due to the Artist under this agreement have been made.
- 17.3 The Artist retains all copyright in any material submitted or presented to the Council under, or in relation to, this agreement, including but not limited to the Concept Design, the Design and the Work, however the Artist grants the Council a non-exclusive licence of the copyright in the Work for the term of the copyright.
- 17.4 Subject to the provisions of clause 18, the Artist agrees that Council may make and use images of the work and creation process without additional payment to the Artist;
- a) to promote or market the Work;
 - b) in the Council's financial and annual reports, multimedia presentation and materials advertising and promoting Shellharbour City and its civic and regional activities, and any other business of Council;
 - c) display in any book, magazine, catalogue, postcards or other publication;
 - d) reporting the news, criticism and review; and
 - e) application or reproduction in any electronic medium (including but not limited to any website or social media platform of Council, including websites dedicated to particular cultural and other events)
- and to authorise others to do so.

18 Death or incapacity of the Artist

- 18.1 In the event of the death or incapacity of the Artist, the Council will pay the Artist or the Artist's estate any instalments of the Commission Fee due under this agreement at the date of death or incapacity.
- 18.2 In the event of the death or incapacity of the Artist prior to the acceptance of the Work by the Council, the Council will pay the Artist or the Artist's estate an amount calculated as:
- a) the amount of the Commission Fee (including any instalment payable under clause 18.1) less any instalments already paid to the Artist,
 - b) less the reasonable costs of the Council in respect of the completion of the Work by other artists or crafts persons.
- 18.3 The amount under clause 18.2 must not be less than the amount of any expenses incurred by the Artist in relation to the Work as at the date of the Artist's death or incapacity which are not covered by instalments of the Commission Fee already paid to the Artist or payable under clause 18.1.
- 18.4 Subject to the payments in clauses 18.1 and 18.2, the Council:
- a) will become the owner of the Work in the condition in which the Work stands at the date of death or incapacity; and
 - b) may engage another artist or craftsperson to complete the Work in accordance with the Design.
- 18.5 If the Council engages another artist or craftsperson to complete the Work:
- a) copyright in the Work will belong jointly to the Artist or the Artist's estate and the other artists or craftspersons who complete the Work;
 - b) the Artist or the Artist's estate may demand the removal of any notice displayed with the Work, which identifies the Artist with the Work.

19 Risk of loss or damage

- 19.1 If the Work is created on the Site, the Artist will bear the risk of loss of, or damage to, the Work until installation is complete and will take out and maintain insurance against loss or damage during that period.
- 19.2 If the Work is not created on the Site:
- 19.3 the Artist will bear the risk of loss of, or damage to, the Work until it is delivered to the Council and will take out and maintain insurance against loss or damage during that period;
- 19.4 the Council will bear the risk of loss of, or damage to, the Work during installation and will take out and maintain insurance against loss or damage during that period.
- 19.5 the Council will bear the risk of loss of, or damage to, the Work after installation and will take out and maintain insurance against loss or damage for the period until title to the Work passes to the Council under clause 17.

20 Insurance

- 20.1 The Artist will be responsible for maintaining worker's compensation insurance in relation to any work or other act associated with the performance of this agreement carried out by the Artist's employees or agents.
- 20.2 The Artist will be responsible for maintaining public liability insurance cover in relation to any work or other act associated with the performance of this agreement carried out on the Artist's premises or on the premises of the Artist's employees.
- 20.3 The Council will be responsible for maintaining public liability insurance cover in relation to any work or other act associated with the performance of this agreement carried out on the Council's premises or on the premises of the Council's employees or agents or otherwise in connection with the Work following delivery and/or installation.

21 Defects liability

- 21.1 A defects liability period will extend for a period of 12 months from the date of acceptance of the Work.
- 21.2 The Artist will rectify, without charge to the Council, latent defects in the Work that become apparent during this period.
- 21.3 This clause will not apply to damage or deterioration which results from fair wear and tear, the inherent characteristics of the materials used to create the Work or the Site's environment.
- 21.4 The rights granted under this clause are in addition to any rights that a party may have at law.

22 Attribution

- 22.1 Subject to clauses 18.5, 24.2 and 25.3, the Council will permanently display a notice in a reasonably prominent position near the installed Work, which identifies the Artist and the Work.
- 22.2 Subject to clauses 18.5, 24.2 and 25.3, the Council will permanently display a notice in a reasonably prominent position near the installed Work, which identifies the custodial interest of the local Aboriginal and Torres Strait Islander Community in the Work.

23 Maintenance

- 23.1 Within thirty (30) calendar days of the installation of the Work on the Site, the Artist will provide the Council with a written manual containing comprehensive instructions for the proper cleaning, operation and maintenance of the Work (**Manual**).

- 23.2 The Manual will include:
- a) a description of the materials used and any installed services or equipment and their mode of operation;
 - b) an inspection, testing and maintenance program detailing the routine required to maintain the Work throughout its intended lifespan;
 - c) “as installed” drawings for the Work and all related equipment and services; and
 - d) a list of major sub-contractors with appropriate contact details.
- 23.3 The Council will ensure that the Work is properly maintained and protected from damage in accordance with the Artist’s instructions in the Manual.

24 Repairs and restoration

- 24.1 The Council will give the Artist, by written notice to the Artist, first option to carry out any repairs or restoration to the Work. This option will lapse if the Artist does not signify an intention to carry out such repairs or restoration work within fourteen (14) calendar days after receiving the Council’s notice. The Council will pay the Artist a fee for repairs and restoration work undertaken by the Artist at standard commercial rates.
- 24.2 The Artist reserves the right to demand the removal of any notice displayed with the Work, which identifies the Artist with the Work if the Artist does not perform the Work’s repairs or restoration.
- 24.3 Council will respond to acts of vandalism and carry out repairs to the extent that it can within its current budget allocation for maintenance. Council may consult with the artist on methods of rectification depending on the extent of damage caused

25 Alteration, relocation or resale

- 25.1 The Council will not destroy, damage, alter or modify the Work in any way whatsoever without the Artist’s prior written consent. Such written consent may not be unreasonably withheld.
- 25.2 The Council may remove or relocate the Work provided that the Council complies with the procedures set out in section 195AT of the *Copyright Act 1968* (Cth). If this is to occur, the Council must inform the Artist fourteen (14) days before its removal or relocation to allow the Artist sufficient opportunity to document the work in situ at its original site.
- 25.3 If the Council breaches clause 25.1 or 25.2, the Artist may, at the Council’s expense, demand that the Council remove any notice displayed with the Work which identifies the Artist with the Work. The remedy under this clause is in addition to any other remedies available to the Artist.
- 25.4 If the Council intends to sell or otherwise dispose of the Work, the Artist or the Artist’s estate will be given the first option to make a suitable offer for the Work.
- 25.5 If the Council sells the Work to a third party during the term of the Artist’s copyright in respect of the Work, the Council agrees to pay the Artist or the Artist’s estate a resale royalty:
- a) in accordance with any applicable artists resale royalty scheme in effect under Australian law at the time of such sale; or
 - b) if Australian law does not provide for such a royalty at the time of sale, in an amount of 5% of the sale price exclusive of GST or \$20,000, whichever is smaller.

26 Termination

- 26.1 The Artist may terminate this agreement immediately by written notice to the Council if the Council:
- a) is more than fourteen (14) calendar days late in making any payment under clause 15; or
 - b) is in breach of clauses 6.2, 9.1, 17, 20 or 25 and has failed to remedy the breach within fourteen (14) calendar days of receiving written notice of the breach.
- 26.2 This agreement is automatically terminated:
- a) if the Council becomes insolvent, is declared bankrupt, has a liquidator appointed or goes into administration, voluntary or otherwise;
 - b) following rejection of the Design under clause 5; or
 - c) following rejection of the Work under clause 9.1.
- 26.3 In the event of termination under clause 26.1 or 1.1.a), the Artist will be entitled to receive and retain payment of:
- a) all instalments of the Commission Fee due in the period up to the date of termination; and
 - b) if the Work has not been completed, the amount of any reasonable expenses incurred by the Artist in relation to the Work as at the date of termination which are not covered by instalments of the Commission Fee already due to the Artist.
- 26.4 In the event of termination under clause, 26.1 or 1.1.a), any rights of copyright licensed to, or conferred on the Council under clause 17 will cease immediately.
- 26.5 In the event of termination under clause 1.1.c), the Artist:
- a) will reimburse to the Council all amounts paid to the Artist under this agreement other than the Design Development Fee; and
 - b) has the sole right to complete, exhibit, sell and otherwise deal with the Preliminary Design, the Design and the Work.
- 26.6 In the event of termination for delay under clause 13 following acceptance of the Design, the Council may either:
- a) seek reimbursement from the Artist of the Commission Fee less the amount of the Design Development Fee. Subject to that reimbursement, the Artist has the sole right to complete, exhibit, sell and otherwise deal with the Preliminary Design, the Design and the Work; or
 - b) where the Work is substantially completed, pay the Artist the amounts specified in clauses 1.1.a) and 1.1.b). Subject to that payment, the Council will own the Work in the condition in which the Work then stands and may engage other artists or crafts persons to complete the Work in accordance with the Design.
- 26.7 Subject to clause 1.1.a), if this agreement is terminated prior to acceptance of the Work, the Artist will retain title to, and copyright in, the Preliminary Design, the Design and the Work, and the Artist will have sole right to complete, exhibit and sell the Preliminary Design, the Design and the Work.

27 Disputes

- 27.1 If a dispute or disagreement (**Dispute**) arises between the parties in connection with this agreement:
- a) either party must notify the other party in writing about the Dispute; and

- b) each party must refrain from starting any litigation or arbitration in relation to the Dispute until the parties have complied with this clause.
- 27.2 The parties should meet within 14 calendar days after receipt of the notice of dispute and hold good faith discussions to attempt to resolve the Dispute.
- 27.3 If the Dispute is not resolved within 28 calendar days after receipt of the notice of dispute, the parties agree to submit the dispute to mediation.
- 27.4 If the parties are not able to agree to a mediator or mediation process within 35 calendar days after receipt of the notice of dispute, the parties must submit the Dispute to mediation according to the Arts Law Centre Mediation guidelines current at that time (**Guidelines**). These guidelines are part of this agreement.
- 27.5 If the parties are unable to resolve the Dispute within 7 calendar days of commencing mediation or such later time as may be agreed during the mediation, either party may refer the matter to arbitration or commence litigation.
- 27.6 The parties must continue to perform their respective obligations under this agreement despite the existence of a Dispute.

28 General provisions

- 28.1 The parties acknowledge that the Artist is an independent contractor and that nothing in this agreement creates any relationship of partnership or employment between the parties.
- 28.2 A notice required to be given under this agreement may be delivered by hand, or sent by pre-paid post or fax to the address of the party indicated at the top of this agreement. Notices are taken to have been served when received, or within 2 calendar days of having been sent, whichever occurs first.
- 28.3 Subject to clause 18, neither party may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld.
- 28.4 Subject to clause 28.6, this agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this agreement and has no further effect.
- 28.5 Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.
- 28.6 This agreement may only be modified by a written amendment signed by the parties.
- 28.7 Invalidity of any clause of this agreement will not affect the validity on any other clause except to the extent made necessary by the invalidity.
- 28.8 This agreement is governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.

EXECUTED AS AN AGREEMENT

Signed by the Artist:	Signed by the Council:
Signature:	Signature:
Name (PRINT):	Name (PRINT):
Date:	Date:

Counter-Signed by the Council:

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Signature:

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Date:

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ANNEXURE 1: THE BRIEF