



**STREETS AS SHARED SPACES
FUNDING AGREEMENT**

Little Timor Street Plaza

Department of Planning, Industry and Environment

And

Warrumbungle Shire Council

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This Funding Agreement is dated

2020

Parties

Name	Crown in right of the State of New South Wales through the Department of Planning, Industry and Environment (the Department)
ABN	ABN 20 770 707 468
Address	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

And

Name	Warrumbungle Shire Council a body politic of the State constituted under the <i>Local Government Act 1993</i> (the Recipient)
ABN	ABN 63 348 671 239
Address	14-22 John Street, Coonabarabran NSW 2357

Background

- The Streets as Shared Spaces Program is a grants funding program to support councils to test and pilot new and innovative ideas for streets as safe, shared public spaces.
- The focus of the Streets as Shared Spaces Program is to support quick response demonstration projects and strategic pilots which implement temporary measures to allow pedestrians to maintain physical distancing requirements safely, support jobs and boost business confidence in response to the COVID-19 pandemic, and which may build the case for more permanent changes.
- The Recipient has applied for funding for the Project through the Streets as Shared Spaces Program.
- The objective of this Agreement is to document the agreed outcomes for the Project and the terms for payment of the funding.

Operative Provisions

It is agreed:

In consideration of the mutual promises contained in this Agreement, the parties to this Agreement agree as follows:

1. Definitions and Interpretation

1.1 Dictionary: In this Agreement, unless the contrary intention requires:

“Agreement” means this Agreement including the Schedules and Annexures.

“Agreement Details” means those details in Schedule 1 to this Agreement.

“Business Day” means the day which is not a Saturday, Sunday or public holiday in Sydney, NSW.

“Changes” means the changes to the Proposal described in Item 2 of the Agreement Details.

“Commencement Date” means the date this Agreement is executed by both parties.

“Confidential Information” means any information and all other knowledge at any time disclosed (whether in writing or orally) to a party, or acquired by a party which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential; or
- (c) the party knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement;
- (e) is in a party's lawful possession without restriction in relation to disclosure before the date or receipt of the information from another party or a third party;
- (f) has been developed or acquired by a party independently of this Agreement;
- (g) is ascertainable through independent enquiries;
- (h) may be or is required to be disclosed pursuant to Premier's Memorandum No. 2007-01 Public Disclosure of Information arising from NSW Government Tenders and Contracts dated 8 January 2007, as amended or updated from time to time.

“Conflict of Interest” means an actual or perceived conflict between a person's public duty and their private or personal interest.

“Department” where the context permits, includes officers, delegates, employees and agents and successors of the Department of Planning, Industry and Environment (ABN 20 770 707 468).

“Department Material” means any material:

- (a) provided by the Department to the Recipient for the purposes of this Agreement; or
- (b) derived at any time from the Material referred to in paragraph (a).

“Existing Material” means all Material in existence prior to the Date of this Agreement;

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of, the Project Material.

“Funding Amount” means the Funding Amount specified in Item 3 of the Agreement Details.

“GST Law” means *A New Tax System (Goods & Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation.

“Intellectual Property” includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts;
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
- (d) Moral Rights as defined under the *Copyright Act 1968* (Cth).

“Material” means anything in relation to which Intellectual Property rights arise.

“Material Clause” means, clause 3.2 (Use of Funding Amount), clause 4 (Project), clause 8 (Compliance with Law) and clause 17.9 (Assignment) of this Agreement.

“Project Material” means any Material:

- (a) created by the Recipient for the purpose of this Agreement;
- (b) provided or required to be provided to the Department under the Agreement;
or
- (c) derived at any time from the Material referred to in paragraphs (a) or (b),

and includes

- (d) any Existing Material incorporated in the Material referred to in paragraphs (b) or (c); and
- (e) any Reports.

“Milestone” means each event or stage of the Project as described as a Milestone in Item 6 of the Agreement Details

“Proposal” means the proposal documentation provided by the Recipient at Annexure A.

“Project” means the Project as described in Item 2 of the Agreement Details.

“Project Acquittal Report” means the project acquittal report described in Item 5 of the Agreement Details.

“Project Commencement Date” means the date specified in Item 2 of the Agreement Details as the Project Commencement Date.

“Project Completion Date” means the date specified in Item 2 of the Agreement Details as the Project Completion Date.

“Report” means any report that is to be provided to the Department as stipulated in Item 5 of the Agreement Details.

“Representatives” means the Department Representative or Recipient Representative identified in Item 1 of the Agreement Details, as the context requires.

“Tax Invoice Requirements” means an invoice rendered in accordance with the [insert details].

“Term” means the duration of this Agreement, beginning on the Commencement Date and ending on the earlier of:

- (a) the date that the Funding Amount has been paid in full and the Department has confirmed in writing that it is satisfied that all obligations of the Recipient have been discharged; or
- (b) the date this Agreement is terminated in accordance with its terms.

“Unexpended Funding” means any part of the Funding Amount paid to the Recipient that is unspent at the Project Completion Date.

1.2 **Interpretation:** Except where the context otherwise requires:

- (a) a singular number includes a reference to a plural number and vice versa;
- (b) a gender includes a reference to the other genders and each of them;
- (c) any person or company will mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- (d) words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents;
- (e) any organisations, associations, societies, groups or bodies will, in the event of them ceasing to exist or being reconstituted, renamed or replaced or if the powers or functions of any of them are transferred to any other entity, body or group, refer respectively to any such entity, body or group, established or constituted in lieu thereof or succeeding to similar powers or functions;
- (f) statutes, regulations, ordinances or by-laws will be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (g) a month will be construed as a reference to a calendar month;
- (h) “includes” and “including” mean by way of example but without limitation;
- (i) monetary references are references to Australian currency;
- (j) where any time limit is pursuant to this Agreement falls on a Saturday, Sunday or public holiday in the State of New South Wales then that time limit will be deemed to have expired on the next Business Day;
- (k) where the parties are comprised of more than one person, each of the parties

obligations will bind those persons jointly and severally and will be enforceable against them jointly and severally;

- (l) the headings used in this Agreement are for convenience only and will not affect the interpretation of this Agreement;
- (m) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it; and
- (n) where there occurs a reference to the doing of anything by the Department including giving any notice, consent, direction or waiver, this may be done by any officer the Department duly authorises.

2. Term

2.1 This Agreement commences on the Commencement Date and will continue for the Term.

3. Provision of Funding Amount

3.1 Payment of Funding Amount

- (a) Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Department will provide, or enable the provision of, the Funding Amount to the Recipient at the times and in the manner specified in Item 4 of the Agreement Details.
- (b) Prior to the Department making any payment in accordance with this clause, the Recipient must provide to the Department:
 - (i) a valid tax invoice in accordance with the Tax Invoice Requirements for the relevant portion of the Funding Amount requested; and
 - (ii) any evidence of compliance required by the Department to the Department's satisfaction.
- (c) The Recipient agrees that the Department is not responsible for the provision of additional money to meet any expenditure relating to the Project or otherwise.

3.2 Use of Funding Amount

The Recipient must only use the Funding Amount for the Project (and not for any other purpose) and in accordance with the terms and conditions of this Agreement.

3.3 Co-operation on the Project

The Recipient agrees to work co-operatively with the Department and relevant NSW Government departments and agencies in carrying out the Project.

3.4 Right to recall Funding Amount

Without limiting the Department's rights under this Agreement, the Department may by notice in writing recover some or all of the Funding Amount from the Recipient (as a debt due and payable on demand) in any of the circumstances set out in Column A in the table below, but only to the extent set out in Column B in the table below:

	Column A: Circumstance in which some or all of the Funding Amount may be recovered by the Department	Column B: Extent to which Funding Amount may be recovered by the Department
(a)	The Recipient is paid more than the Funding Amount.	Only to the extent of the overpayment of the Funding Amount.
(b)	The Recipient abandons the Project.	Only to the extent of any part of the Funding Amount paid to the Recipient that is unspent at the date of the Department's notice.
(c)	There is Unexpended Funding.	Only to the extent of any Unexpended Funding.
(d)	The Recipient breaches this Agreement (including, without limitation, by spending the Funding Amount on any activity or project that does not constitute the Project) and fails to remedy that breach if capable of remedy within a reasonable time following receipt of a written request from the Department.	Only to the extent that any part of the Funding Amount has been spent by the Recipient in breach of this Agreement.
(e)	The Recipient does not complete the Project by the Project Completion Date unless otherwise agreed by both parties	Only to the extent of any Unexpended Funding.
(f)	The Recipient does not commence the Project by the Project Commencement Date unless otherwise agreed by both parties	The Funding Amount.
(g)	If this Agreement is terminated for any reason.	Only to the extent of any part of the Funding Amount paid to the Recipient that is unspent on the date of the notice of termination and any part of the Funding Amount that was spent in breach of this Agreement.

4. Project

4.1 Conduct of the Project

The Recipient must:

- (a) commence the Project no later than the Project Commencement Date;
- (b) complete the Project no later than the Project Completion Date; and
- (c) complete the Project in a manner consistent with the Proposal as amended by the Changes.

4.2 Milestones

The Recipient must complete, to the satisfaction of the Department:

- (a) each Milestone; and
- (b) each obligation or requirement imposed by each Milestone,

on or before the date specified for the completion of that Milestone in Item 6 of the Agreement Details or as otherwise agreed in writing between the parties.

4.3 Project Reporting

- (a) The Recipient agrees to:
 - (i) liaise with and provide information to the Department as reasonably notified by the Department, including at any Milestone; and
 - (ii) comply with all of the Department's reasonable requests, directions, monitoring or reporting requirements.
- (b) The Recipient must provide to the Department the Reports specified in Item 5 of the Agreement Details in the manner and timeframe specified.
- (c) All Reports must be signed by a delegated officer of the Recipient.

4.4 Project Completion

- (a) Following completion of the Project the Recipient must provide the Project Acquittal Report to the Department in accordance with the requirements in Item 5 of the Agreement Details.
- (b) The Project Acquittal Report must be signed by a delegated officer of the Recipient.
- (c) Where any final payment of the Funding Amount is to be paid following completion of the Project, the Recipient agrees and acknowledges that the Department will not make the final payment until after the Project Acquittal Report has been provided to the Department's satisfaction in accordance with clause 4.4 (a).
- (d) In relation to conducting a review and final evaluation of the Project, the Recipient agrees to:
 - (i) provide all reasonable assistance required by the Department;
 - (ii) respond to all of the Department's reasonable requests; and

- (iii) provide any information the Department reasonably requires.

5. Project Responsibility

The Recipient acknowledges and agrees that it is solely responsible for delivering and completing the Project in accordance with the terms and conditions of this Funding Agreement, and will not be relieved of that responsibility because of any:

- (a) involvement by the Department or other NSW Government agency or department in the performance of the Project;
- (b) subcontracting of the Project; or
- (c) payment of the Funding Amount (or any part of it) to the Recipient.

6. Acknowledgement

- 6.1 The Recipient must acknowledge the Funding Amount received from the Department for the Project in accordance with the NSW Government's Funding Acknowledgement Guidelines for recipients of NSW Government infrastructure grants (available at <https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/fa6fd6d77a/Funding-Acknowledgement-Guidelines-for-Recipients-of-NSW-Government-Grants.pdf>).
- 6.2 The Recipient must, unless the Department agrees otherwise, use the NSW Government's Waratah logo as set out at <https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/0c7b202631/NSW-Government-Brand-Guidelines.pdf> in conjunction with all acknowledgements of NSW Government support in accordance with the Funding Acknowledgement Guidelines.
- 6.3 The Recipient must provide the Department with at least 30 Business Days' notice of any proposed announcements, launches or public events relating to the Project, and provide an opportunity for a representative of the NSW Government to attend and speak at the launch or event.
- 6.4 The Department may, in its sole discretion, issue public communications on the provision of the Funding Amount to the Recipient and details of the Project (including its progress and outcomes). Where practicable to do so, the Department will give notice of such communications and their content to the Recipient.
- 6.5 If the Department determines that the Project (or any part of it) is not consistent with the purposes for which the Recipient was funded, and the Department gives the Recipient written notice of this, the Recipient must promptly remove the Department's acknowledgement and logo from all programs, promotional material and other printed or electronic material and publications relating to the Project and return any portion of the Funding Amount which has been received by the Recipient but remains unspent as at the date of the Department's notice.

7. GST

7.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

- 7.2 Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the supply.

- 7.3 If:
- (a) GST is imposed on a supply the Recipient makes to the Department under this Agreement; and
 - (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

the Department will pay the Recipient an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Agreement in relation to that supply.

- 7.4 The Recipient must be registered under the GST Law at the time of making any supply under this Agreement on which GST is imposed.
- 7.5 If the Recipient is not registered as required under clause 7.4, the Recipient will not be entitled to receive any additional amount as provided under clause 7.3.
- 7.6 If for any reason the Department pays the Recipient an amount under this clause 7 which is more than the GST imposed on the supply, the Recipient must repay the excess to the Department on demand or the Department may set off the excess against other amounts due to the Recipient.
- 7.7 Subject to this clause, any invoice rendered by the Recipient in connection with a supply under this Agreement must conform to the requirements for a tax invoice under the GST Law as set out in the Tax Invoice Requirements.

8. Compliance with law

- 8.1 The Recipient agrees:
- (a) to comply with all applicable standards, laws, regulations, policies and guidelines for the Project;
 - (b) to ensure compliance by any organisation(s) or person(s) engaged to contribute to or work on the Project with all applicable standards, laws, regulations and policies; and
 - (c) not to do anything that would cause the Department to breach its obligations under any legislation.

8.2 The Recipient must hold all rights, permissions, approvals and consents required to conduct and carry out the Project and otherwise fulfil its obligations under this Agreement.

8.3 The Recipient must obtain all necessary statutory approvals in relation to the Project, and the Department may at its sole discretion suspend payment of any part of the Funding Amount until it is provided with evidence that the Recipient has obtained all such statutory approvals.

9. Indemnity and release

9.1 The Recipient hereby indemnifies and keeps indemnified the Department from and against any liability or loss (including reasonable legal costs and expenses), which is suffered or incurred by the Department associated with or relating to the use of the Recipient of the Funding Amount and/or the carrying out of the Project.

9.2 The liability of the Recipient to indemnify the Department under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act

or omission of the Department caused or contributed to the liability or loss.

- 9.3 The indemnity contained in this clause is a continuing obligation of the Recipient separate and independent of any other responsibility of the Recipient and will continue beyond the Term.
- 9.4 The Recipient agrees to release and discharge the Department from any action, proceedings, claim or demand which, but for this provision, might be brought against or made upon the Department, except to the extent that any unlawful, wrongful, wilful or negligent act or omission of the Department caused or contributed to the liability or loss

10. Confidentiality

- 10.1 Subject to clauses 10.2 and 10.3, each party must keep the Confidential Information of each other party in confidence and not disclose the Confidential Information to any person without the other party's prior written consent.
- 10.2 A party may disclose the Confidential Information of another party to their personnel and legal and professional advisors provided they ensure that the recipient:
- (a) keeps the Confidential Information confidential; and
 - (b) does not use the Confidential Information except for the purposes of this Agreement.
- 10.3 Either party may disclose the Confidential Information of the other if so required by law, an order of either House of the New South Wales Parliament, or a court of competent jurisdiction.

11. Changes

- 11.1 Written agreement between the parties must be obtained for any variation to:
- (a) this Agreement; and
 - (b) any of the matters outlined in the Schedule to this Agreement.

12. Termination

- 12.1 The Department may by giving the Recipient 20 Business Days written notice terminate this Agreement if any one or more of the following occurs:
- (a) the Recipient breaches a Material Clause of this Agreement in a manner that, in the Department's reasonable opinion, is not capable of remedy;
 - (b) the Recipient breaches a Material Clause of this Agreement that in the Department's reasonable opinion is capable of remedy and the Recipient has failed to comply with a notice from the Department to remedy the breach within the reasonable period for remedy specified in that notice; or
 - (c) the Department considers the Project no longer viable.
- 12.2 The Recipient agrees, on receipt of a notice of termination to immediately return to the Department any part of the Funding Amount in accordance with clause 3.4(g) or deal with any such part of the Funding Amount as directed by the Department.

13. Obligations when this Agreement ends

13.1 Rights and remedies not prejudiced

Any termination of this Agreement by a party is without prejudice to any accrued rights or remedies of that party.

13.2 Clauses that survive termination

Clauses 3.4 (Right to recall Funding Amount), 9 (Indemnity and release), 10 (Confidentiality), 16 (Intellectual Property) and this clause 13 (Obligations when this Agreement ends) and any other provision of this Agreement which by its nature should survive termination will survive termination, expiry or repudiation of this Agreement.

14. Dispute Resolution

14.1 The parties must attempt to settle any dispute in relation to this Agreement in accordance with the following provisions, before resorting to court proceedings or other dispute resolution process.

- (a) A party claiming that a dispute has arisen, must give written notice of the dispute to the other party. On receipt of this notice the parties must within 14 days of receipt seek to resolve the dispute.
- (b) If the dispute is not resolved within this 14 day period or within such further period as the parties agree in writing then the dispute is to be referred to the Australian Dispute Centre (**ADC**) for mediation.
- (c) The mediation shall be conducted in accordance with the ADC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) If the dispute is not settled within 28 days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.
- (e) Nothing in this clause (Dispute Resolution) will prevent either party from seeking urgent interlocutory relief.

15. Notices

15.1 The parties must inform each other within 7 days of any changes to its contact details set out in Item 1 of the Agreement Details.

15.2 A notice under this Agreement must be:

- (a) in writing, directed to the Representative of the other party as set out in Item 1 of the Agreement Details; and
- (b) forwarded to the address or the email address of that Representative as set out in Item 1 of the Agreement Details.

15.3 A notice under this Agreement will be deemed to be served:

- (a) in the case of delivery in person – when delivered to the recipient’s address for service and a signature received as evidence of delivery;
- (b) in the case of delivery by post – within three (3) Business Days of posting;
- (c) in the case of delivery by email – on receipt of confirmation by the sender that the recipient has received the email.

15.4 Notwithstanding the provisions of this clause (Notices), if delivery or receipt of a communication is on a day which is not a Business Day in the place to which the communication is sent or is later than 5pm (local time in that place) it will be deemed to have been duly given or made at 9am (local time in that place) on the next Business Day in that place.

16. Intellectual Property

16.1 Licence Rights in Project Material

- (a) Subject to this clause 16.1, Intellectual Property in Project Material vests or will vest in the Recipient.
- (b) Clause 16.1(a) does not affect the ownership of Intellectual Property in any Department Material incorporated into the Project Material.
- (c) The Recipient grants to (or will procure for) the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive, transferable licence in perpetuity (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Project Material for any purpose.
- (d) In addition to the rights granted by the Recipient to the Department, the Recipient agrees that the licence granted in clause 16.1(c) includes a right for the Department to licence the Project Material to the public under an Open Access Licence.

16.2 Existing Material

To the extent the Department does not otherwise own, or have licence rights to, the Existing Material, the Recipient grants to the Department a licence to all Existing Material on the same terms as the licence granted by the Recipient under clause 16.1.

16.3 Moral Rights

- (a) In this clause 16.3 **Permitted Acts** means any of the following classes or types of acts or omissions:
 - (i) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution or authorship;
 - (ii) supplementing the Project Material with any other Material;
 - (iii) using the Project Material in a different context to that originally envisaged; and
 - (iv) releasing the Project Material to the public under an Open Access Licence,

but does not include false attribution of authorship.

- (b) The Recipient agrees:
 - (i) to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Department; and

(ii) to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights.

(c) This clause 16.3 does not apply to any Department Material incorporated in the Project Material.

16.4 **IP Warranty**

The Recipient warrants that:

- (a) it is entitled; or
- (b) it will be entitled at the relevant time,

to deal with the Intellectual Property in the Project Material in the manner provided for in this clause 16.

16.5 **Further Assistance**

The Recipient agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 16.

17. **General**

17.1 **Entire agreement:** This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Any prior arrangements, representations or undertakings as to the subject matter of this Agreement are superseded.

17.2 **Keeping of records, audit and rights of access to such records:** The Recipient:

- (a) must keep complete and accurate records and books of account with respect to the Recipient's performance of the Project (**the Records**), and must retain such Records for a minimum of 7 years after expiry or termination of this Agreement;
- (b) authorises the Department and any State or Commonwealth Government department or agency (**the Auditors**) that has provided money to the Department for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any Records held by the Recipient and allow any such Records to be copied; and
- (c) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

17.3 **Non-waiver:** No failure or delay by a party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by a party to the other party of any time or other consideration, will operate as a waiver of the breach or a default by a party. Any waiver by a party of a breach of this Agreement will not be construed as a waiver of any further breach of the same or any other provision.

17.4 **Conflict of interest:** The Recipient warrants that at the date of this Agreement, no Conflict of Interest exists or is likely to arise in relation to execution of this Agreement or its subject matter. The Recipient undertakes to notify the Department, in writing, immediately upon becoming aware of the existence, or possibility, of a Conflict of Interest and agrees to comply with any reasonable directions of the Department to appropriately manage the Conflict of Interest, within the time frame stipulated by the Department in writing.

17.5 **Severability:** If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued

operation of the remainder of the Agreement.

17.6 Relationship:

- (a) Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties;
- (b) A party will not hold itself out to be an employee, partner, agent or representative of the other party.

17.7 Applicable law: This Agreement is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.

17.8 Governing jurisdiction: The parties submit to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

17.9 Assignment: The Recipient must not assign or novate its obligations or interests under this Agreement, without the prior written consent of the Department

17.10 Counterparts: This Agreement may be signed in any number of counterparts which taken together will constitute one instrument.

EXECUTED AS A DEED on 10 September 2020.

Signed, sealed and delivered for and on behalf)
of the Crown in right of the State of New South)
Wales, acting through the Department of)
Planning, Industry and Environment (ABN 20)
770 707 468) by its authorised officer but not so)
as to incur any personal liability)

.....
(signature of authorised officer)

by Hanna Shortall,)
(name and position of authorised officer))
Director Infrastructure Grants + Delivery)

in the presence of Andrew Hargreaves)
(name of witness))

.....
(signature of witness)

Address of witness

12 Darcy Street Parramatta NSW

Signed, sealed and delivered for and on behalf)
of Warrumbungle Shire Council (ABN 63 348)
671 239) by its authorised officer but not so as)
to incur any personal liability)

by R.W. Bailey)
(name and position of authorised officer))

.....
(signature of authorised officer)

in the presence of Erin Player)
(name of witness))

.....
(signature of witness)

Address of witness

98 Namoi St, Cumnaburran

SCHEDULE 1 – AGREEMENT DETAILS

Item 1: Representatives

The Department	
Address:	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Email:	greenspace@planning.nsw.gov.au
Representative:	Hanna Shalbaf, Director, Infrastructure Grants and Delivery

Recipient	
Address:	14-22 John Street, Coonabarabran NSW 2357
Email:	roger.bailey@warrumbungle.nsw.gov.au
Representative:	Roger Bailey, General Manager, Warrumbungle Shire Council

Item 2: Project

Project Commencement Date:	September 2020
Project Completion Date:	September 2021
Project Name:	Little Timor Street Plaza
Changes or conditions for grant funding	NA

Item 3: Funding Amount

Funding Amount:	\$233,358 (excluding GST)
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Item 4: Payment of Funding Amount

Payment Amount	Timing of Payment
\$233,358 (excluding GST)	\$116,679 upfront payment on project commencement and \$116,679 on commencement of construction

Item 5: Reporting Requirements

Report	Recipient's obligations	Reporting period
Project Progress Report	<p>The Project Progress Report must be in the form of the template made available to the Recipient and must include:</p> <ul style="list-style-type: none"> • Before and after photographs for project locations; • Drawings and other evidence which demonstrate the progress of the Project. • Information on success indicators <p>The Project Progress Report must be accompanied by copies of any certification reports issued to the Recipient, where required, for any Project works undertaken.</p>	<p><u>Category 2</u> Report 1: Project commencement report/baseline data; Report 2: Interim 6 months progress report; Report 3: Project completion report/evaluation</p>
Street as Shared Spaces Evaluation Data	<p>Councils will be required to collect this data to help evaluate the fund, individual funded projects and community satisfaction.</p> <p>Councils must input data on project success indicators as advised by DPIE.</p>	Data to be submitted in the first and last report(s).
Grant Conditions	<p>Endorsement/provision of a grant under this program does not negate the need for council or the proponent to obtain all necessary/ required approvals such as road changes and/ or traffic facilities under the Roads Act, Transport Administration Act, and Local Government Act.</p>	All necessary approvals to be noted and reported on.

Project Acquittal Report	<p>If the Department provides a template Project Acquittal Report, then the Project Acquittal Report should conform to the template, but otherwise it should include</p> <ul style="list-style-type: none"> i. an itemised list specifying how the Funding Amount has been spent, which is to include documentary evidence/receipts; ii. confirmation that a complete set of accounting and financial records relevant to the project has been maintained; iii. evidence (including photographs, design and construction drawings, and inspection report where applicable) that the Project has been completed; iv. if applicable, copies of certification reports issued to the Recipient; v. if applicable, copies of product compliance certificates issued to the Recipient during construction to demonstrate compliance with required statutory approvals and relevant Australian Standards. 	Project Acquittal Report to be submitted at no later than 1 month after the Project Completion Date.
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Item 6: Milestones

Milestones (Category 2)	Date for Completion
Milestone 1: Project commencement and baseline data (Report 1)	September 2020
Milestone 2: Engagement with stakeholders and approvals	December 2020
Milestone 3: Interim progress report and data evaluation after 6 months (Report 2)	February 2021
Milestone 4: Commence construction/installation	April 2021
Milestone 5: Project completion and evaluation data (Report 3)	September 2021

ANNEXURE A – THE PROPOSAL



Streets as Shared Spaces Fund application

Submission deadline

Please send the completed form with required documentation to publicspace@planning.nsw.gov.au by 5.00 pm on Wednesday 10 June 2020.

Introduction

The Streets as Shared Spaces program provides one-off grant funding to support local councils to test and pilot new and innovative ideas for streets as safe, shared public spaces. The program will provide funding to quick-response demonstration projects and strategic pilots that temporarily adapt streets to support healthier, safer and more resilient communities. These temporary measures should support immediate community needs and also test and build the case for more permanent changes.

The Streets as Shared Spaces program supports the NSW Premier's Priority to increase walkable access to quality open, green and public space in urban areas. It is also aligned with various NSW Government and local government strategic frameworks.

Program objectives

The objectives are to:

- build on the local character and improve the attractiveness of centres and public spaces through innovative and creative approaches (temporary greening/planting or public art)
- increase space for safe walking and cycling (such as footpath widening)
- improve access on foot or bike to key destinations including local centres and public open space (such as a new cycleway)
- reconfigure streets to support physical health, local business and key workers (such as new parklets or reducing speed)
- activate high streets to create better quality public space
- enable long-term changes supported by strategies, the community and stakeholders (such as bringing forward a new public pathway or road closure)
- establish and start delivery of projects as early as possible in 2020, and/or
- ensure the safety of the travelling public, including under the NSW Government's *Road Safety Plan 2021*.

Available funding

Category 1: Quick Response Demonstration Projects

Short-term, quick-response, projects or programs that test, pilot or incubate changes to streets in line with the objectives of the program

This grant category is valued at up to \$100,000 per project. Projects must be delivered and evaluated within three months of funding approval.



Category 2: Pilot Projects

Medium-term pilot projects that improve or activate streets as shared public spaces

This grant category is valued at up to \$1 million per project and can be delivered within a year of funding approval.

Required documentation

Please ensure that all application documentation submitted follows the below file naming standard:

Streets as Shared Spaces Fund - Warrumbungle Shire Council - Little Timor Street Plaza

Note: The Department of Planning, Industry and Environment can only receive emails of up to 50 MB. Where possible, please send extracts of documents, web links and links to cloud storage services.

You can provide web links if a document (for example, council minutes) is held on a publicly available website. This should be a direct link to a specific document.

For large documents, please provide page references to the text that is relevant to the project.

For questions about this application form, please email publicspace@planning.nsw.gov.au

Contact details

Table 1. Council details

Question	Answer
Council name	Warrumbungle Shire Council
Address	20-22 John Street, Coonabarabran
ABN	63 348 671 239

Table 2. Name and contact details for general manager/chief executive officer

Question	Answer
GM/CEO name	Roger Bailey
GM/CEO email	roger.bailey@warrumbungle.nsw.gov.au
GM/CEO phone	02 6849 2000



Table 3. Name and contact details for person completing this application (this person must be authorised by council as the nominated contact for the application)

Question	Answer
Contact name	Shane Weatherall (WSC Manager of Urban Parks and Gardens)
Email	info@warrumbungle.nsw.gov.au
Phone	02 6849 2000

Project details

Table 4. Project name

Project name
Little Timor Street Plaza

Provide a full description of your project including the:

- scope of the project
- purpose of the project
- project objectives
- problem or challenge the project seeks to resolve; and/or
- opportunity the project seeks to realise.

Table 5. Project description

PROJECT DESCRIPTION



PROJECT DESCRIPTION

Coonabarabran is a small country town nestled in the foothills of the Warrumbungle Range, the most westerly spur of the Great Dividing Range. It is located on Gamilaroi ancestral land and encapsulated by the stars and the heavenly bodies of the glorious Milky Way, thus having the title of Astronomy Capital of Australia. We have a thriving CBD area with shops, banks, hotels, garages, supermarkets, medical and health services local and state government offices, churches, libraries and takeaway food outlets all nestled together, with the National Newell Highway (also known as John Street) running north/south dissecting the whole area. The one essential service missing in this CBD area is that it does not have a park/plaza in its CBD precinct. On the outer edge of this area are two well established parks; Neilson Park (running alongside the Castlereagh River) and David Bell Park in Robertson Street (to the west of the proposed plaza). Parkland areas have been extensively developed with gym equipment, walkways and cycleways, public amenities blocks and seating. Neilson Park connects to the town sporting complex, which comprises 3 ovals, netball and basketball courts, tennis courts, skate park and a dog racing track. Council proposes to close a narrow section of Little Timor Street Coonabarabran adjacent to the CBD and Newell Highway which is in the centre of the CBD".

This is a one way street travelling in an east west direction and at the 36 metre point is bisected by a lane way running in a north south direction. From this point on, the road becomes a 2 two street servicing several businesses, a home and a Council Car Park. This 36 metre area is enclosed on both sides by the walls of adjoining business houses. The wall on the southern side is constructed of brick, rustic corrugated iron and a cement rendered wall. The opposite side has 2 shops facing into the road Plaza area at its western end; The remaining wall area is brick. All business owners have been approached and given written permission & support for use of the laneway to enhance the proposed plaza.

The project proposal consists of:

Area 1a- John street – (High street)

Area 1 – 15 metres of Decking- Gutter to Gutter

Area 2 12 metres of astro turf- Gutter to Gutter

Area 3 – Parklet Stage area complete with lighting and electricity

Area 3a – Bike-rack and a large tree planter box to provide shade and protection from summer sun at the rear of the Parklet.

Area 4 - Corrugated Wall on Southern Side

Area 5 – Cement Rendered Wall

Area 1a This area will have 3 large Planter Boxes of Trees as bollards to mark the closing of the road entry

Area 1. 15 metres of timber decking leads straight off the pavers of the John Street footpath. It will have 2 tree planter boxes and seating & large industrial umbrellas. All planter boxes are made to be moved around but will require a front end loader to do so. The completed plaza will be accessible to all able bodied pedestrians and those with a disability; it will be wheelchair accessible and by its design will be an inviting place for people who carry any form of disability. **Public art** displayed on the southern Corrugated Wall (much of which will be prepared by artists seeking to establish themselves within the creative industries and local volunteers) Garden beds will be replanted (already exist from street front along wall of business houses) including 6 tree planter boxes.

PROJECT DESCRIPTION

A **Parklet** as a covered stage area complete with power and lighting will cover the total width of the western end making this a safe area from the street behind.

A **designated walkway/cycle way** will be incorporated on the northern side of this area by means of a fence in two parts. One fence will be stainless steel post with wire while the second fence will be in the area closest to the stage and children's area and will be steel framed with eye catching brightly coloured palings hand painted by families, school children and members of the local disability group - Break Thru to reflect the wall tiles already on the southern brick wall affixed of the local Arts Council and create talking points for those who visit the space. This will bring true community involvement and ownership to the plaza. **Bicycle racks** in Area 3a will allow provision of access to a safe & cool place to rest, as well as an extension to the cycleways and pathways that takes you further to open spaces which are part of the existing larger plan of cycleways and walkways of Coonabarabran.

In Area 2 Astro Turf leading to the Parklet will have another **large tree planter box** in the centre with tree planter boxes on the other sides, large industrial umbrellas, seating, table and chairs children play stations imbedded in turf, chess board also in front of stage (can lend itself to a dance floor when required) a sensory free-standing musical glockenspiel and a wooden 3 seater "car" This area will provide entertainment for children and adults. The socialisation aspects will ensure a higher level of well being and improved Mental Health within the community.

The Cement rendered wall will have suitable wall art of falling stars (as per our Theme) and will also feature the Indigenous art of the Gamilaroi people

A **black board** will cover the back wall of the **Parklet**, coloured **bunting and string lighting** will cover the plaza adding colour and character a showpiece designed to lighten the spirits of our community and those who stop to enjoy our town.

The 3 large Tree planter Boxes down the centre of this Plaza will have themed stencil cut out as walls; these will be illuminated by solar lights for a night time glow.

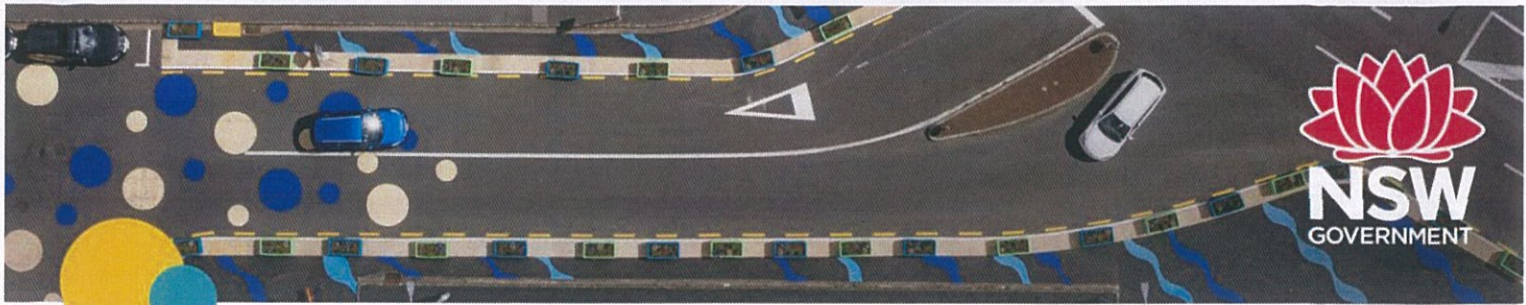
The Plaza Project is being proposed because Coonabarabran does not have an area VISIBLE from the CBD for local and travelling people to engage in the things we value (ie socialising, children's play, community interaction, audience appreciation of local talent and performance) .

Such a plaza would be a "dream come true" for residents and the travelling public. The proposed site is within 50metres of a designated carpark. It would also be a place where exercise classes can be held, night entertainment and a socialising space where residents can take a break and rest.

The Project builds on the character of the community which has undergone improvements including Tree Plantings and gardens in John Street, An Astronomy Mural on the Bakery Wall (undertaken by the 2357 Partnerships Committee) in an area opposite this proposed plaza and the ongoing redevelopment of the Old Royal Hotel site into a functioning Wine-bar, Restaurant, and Hotel Accommodation with a Boutique Distillery in the longer term plan..

The proposal that is presented is based on all aspects of the project being semi permanent fixtures in accordance with the category 2 which is semi permanent. *Attached is a video of the Concept Plan*

This will repurpose an area with a minimal traffic flow but high-level use by pedestrians and create a "people focused area". It will be a stand-alone project, independent of ongoing funding,



6. Expected project start and completion dates

Question	Answer
Project start date (month and year)	August 2020
Project completion date (month and year)	August 2021

Table 7. Project location/s

Location of the project, including whether the project will occur on state or local roads and what the land ownership or responsibility is for the project site/s

The location of the project is in Little Timor Street, Coonabarabran which is a Council owned road, and therefore Council is the responsible authority for the site.

Has the landowner provided in principle support for the project? Please attach evidence to application.

Yes

No



Table 8. Funding table (GST-exclusive amount)

Question	Answer
Funding sought	\$233,358
Applicant contribution (if applicable)	\$11,300
Partner contribution (if applicable)	\$0
Estimated total cost	\$244,658

Is this application a:

- Single council project
- Collaborative project



Please list which other councils/organisations that have contributed to this application or will partner in project delivery.

Table 9. Other councils/organisations contributing to application

Organisation	Contribution (for example, financial contribution; consent for the project to proceed on their land)
Warrumbungle Shire Council - Coonabarabran Town Beautification Advisory Committee, a 355 Committee of Council	Heavy consultation and development of the concept plan and costings.

Assessment criteria responses

Full Assessment Criteria is available in the *Streets as Shared Spaces Fund Guidelines* document.

Project merit

Describe how your project or program will test opportunities to:

- increase space for safe walking and cycling (such as footpath widening)
- improve access on foot or bike to key destinations including local centres and public open space (such as a new cycleway)
- reconfigure streets to support physical health, local business and key workers (such as new parklets or reducing speed)
- activate high streets to create better quality public space
- enable long-term changes supported by strategies, the community and stakeholders (such as bringing forward a new public pathway or road closure)



- establish and commence delivery of projects as early as possible in 2020, and/or
- ensure the safety of the travelling public, including under the NSW Government’s *Road Safety Plan 2021*.

Table 10. Project/program opportunities

Describe the opportunities the project/program will test

At present the proposed section of road is a one-way street used for vehicular and pedestrian access. Currently pedestrians and cyclists, using this section of street for access, are required to do so along the vehicle travel path as there is little to no nature strip or footpath.

Therefore, closing this section of road to vehicles will provide a safe thoroughfare for pedestrians and cyclists both to and from CBD.

The project will also provide better quality public space in a safe vibrant area for locals to sit and eat, socialise, interact and gather.

Visitors will congregate in this space which will benefit local takeaway food businesses and specialty shops as visitors feel more comfortable shopping from the Plaza area. Coonabarabran is dependent on foreign contributions to the local economy and the proposed project is a rest area to attract visitors to sit and stay longer which will benefit local businesses and road safety by encouraging the travelling public to take a break from their travel.

Local residents will have a gathering place which incorporates a children’s music, art and play space and intergenerational play areas, seating for socialising or being alone.

A Parklet is proposed to provide a stage for the presentation of local performances, enhancing community capacity and well being.

Bike racks will provide a designated space for cyclists to have their bikes.

The involvement of local artists in providing for the public art space and decoration will include schools and young people with a disability.

The skills of members of the existing Garden Club will be utilised.

The project will also act as a test model for permanent conversion of the site, and/or other similar projects at other locations within the WSC LGA.



Describe how your project or program aligns with one or more of the following:

- A strategic priority of the NSW Government (as described in *Appendix A—Policy context of the program guidelines*)
- Alignment with objectives of NSW Government funding programs or funding, such as:
 - Transport for NSW Walking and Cycling Program investment guidelines
 - Create NSW Arts and Cultural Development funding
- Council strategies, such as Local Strategic Planning Statements or other strategic documents such as social or cultural strategies, urban design plans, town centres or economic strategies, active travel and transport plans.

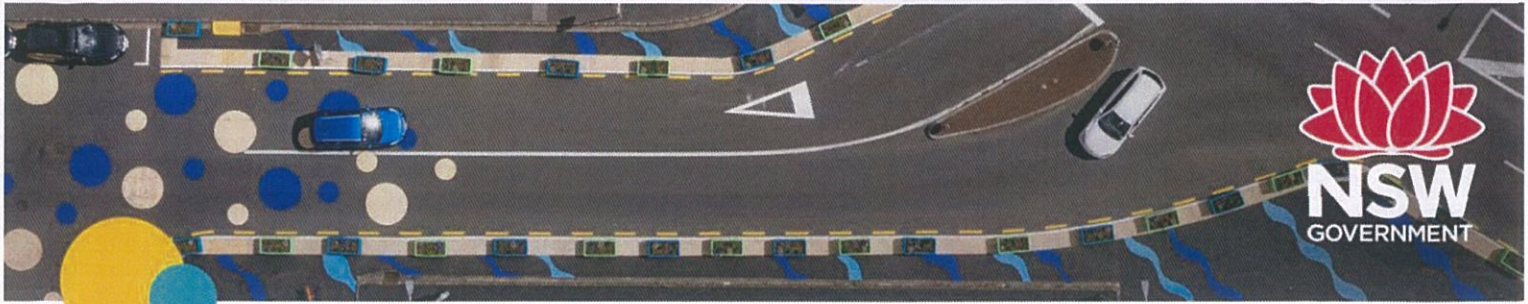
Table 11. Project/program alignment

Describe how your project/program aligns with one or more of the above items

The project aligns with the WSC Bike plan which identifies a proposed shared path along this section of road.

It also aligns with the WSC Community strategic plan:

- RU4 Our towns and villages are characterised by their attractiveness, appearance, safety and amenity.
- RO1.1 Identify opportunities for innovative adaptation and/or sharing of open space and infrastructure for recreational purposes.



Project deliverability

Identify approvals likely to be required (for example, environmental impacts, heritage, DA, local traffic committee) and strategy for obtaining them.

Table 12. Approvals

Identify approvals likely to be required and strategy for obtaining them (if relevant)

It is envisaged that the closure of Little Timor Street will require approval by the Local Traffic Committee. However, due to COVID the committee is currently not meeting, so approval may come direct from the General Manager.

Table 13. Impact

Does it impact on public transport services, clearways, existing cycleways, loading and serving arrangements? If so, have the various agencies responsible been consulted?

The section of road that is being closed is used as a 'one way' thoroughfare for access to some local businesses nearby. It is a 'no stopping' section of road so parking and delivery will not be impacted, and adjacent landholders have expressed support as it will provide a safer access to their property.

Access for road users will still be available from the western end of Little Timor Street so the impact on through traffic will be minimal to nil.

Table 14. Timeline against major milestones

Timeline against major milestones according to the project duration

The project is planned to be completed prior to August 2021, which aligns with the completion dates stated in the funding program guidelines for Category 2 projects.



Table 15. Experience and ability

Describe your experience and/or ability to deliver the proposed project or program

Project management is carried out on a daily basis by multiple officers within the organisation. The majority of projects form part of Councils Capital Works Program each year. These can range from small projects with budgets under \$10k to multi-milliondollar projects.

Some of the recent projects that have been managed by Council are:

- Construction of Castlereagh Zone Rural Fire Service Fire Control Centre
- Construction of Alison Bridge
- Construction of Coonabarabran Regional Netball Courts
- Various State Highway upgrades for RMS
- Baradine and Binnaway Oval Sports Field Lighting
- Baradine Skate Park

Councils officers are skilled at all facets of Project Management and delivery including:

Cost Estimating

Consultation

Inviting and receiving quotations

Inviting and receiving tenders

Contract Appointment

Safety Management

Works Programming

Contract Management

Contractor Management

Budget Management

Has this project received existing funding or applied for funding from the Transport for NSW Active Transport Fund?

Yes

No



Table 16. Outcomes for public space

If 'Yes', please describe how this will improve the project's outcomes for public space

N/A

Does the project or program build on funding or income from other sources?

- Yes
- No

Table 17. Funding or income from other sources

If 'Yes', please list and describe how they relate to this application

N/A

Table 18. Path to permanent change

Describe how your project or program will test or demonstrate a pathway to permanent change in the future

The conversion of Little Timor Street into a plaza style facility has been discussed by the Coonabarabran Beautification Advisory Committee as a potential project for some time now. The initial idea was to establish the plaza in the section of Little Timor Street on the eastern side of the main Street (John Street), however after consultation with businesses in that area the western side of John Street was selected and deemed a more feasible site.

The closure of streets is always open for criticism by the public and adjoining land holders, therefore a trial for the project has been determined as the most suitable solution,

This funding program has provided a perfect opportunity for Council to trial the project with the intention of gaining public approval for permanent change to the section of road being converted to a plaza in which case a positive response will see the space utilised as a permanent thoroughfare. .

Does the program or project have the support of the elected council?

- Yes
- No



Table 19. Community engagement

What is proposed for engaging the community in the delivery of the project and its evaluation?

Council have an established Coonabarabran Town Beautification Advisory Committee. It is a 355 committee made up of active members of the Coonabarabran community. The committee has a membership of 17 which includes 13 community members, 2 Councillors, and 2 Council staff. The community members within the group are extremely active members (includes representation from, but not limited to, The Chamber of Commerce, Hospital Auxiliary, Arts Council, Rotary Club, Youth, Local History Society, and Garden Club. Members as well as individual business operators) who continuously engage with members of the public - gaining ideas and opinion for beautification and streetscape improvements for the town.

This committee has been heavily involved in planning of the project by providing community representation and concept plan development. The committee has also sought project costing and assisted with preparation of this proposal.

Council will also advertise the project on social media and Councils website page prior to construction and provide a 'Have Your Say' placed on Councils website at completion of the project providing a platform for community feedback.

Value for money

Table 20. Value for money

Describe how your project or program has considered value for money and will be a sound investment for the NSW Government



Describe how your project or program has considered value for money and will be a sound investment for the NSW Government

Post COVID 19 and the elements of “lockdown” and isolation, the Little Timor Street Plaza will provide a meeting place for a broad cross section of community which values self expression (as seen in the exhibition space and entertainment area – Parklet, walkways and seating), socialising and well being (for young mothers, the elderly requiring a rest area, the visitor looking for a place to break their journey and the general public who are simply looking for a space to meet) , improved Mental Health outcomes (which include aspects of planned (and unplanned) socialising and well being initiatives) and interaction (by all user groups) – all of which have been sadly missing during the Covid 19 Lockdown period.

The plaza will be in the central community business district in the town centre adjacent to the Newell Highway/ John Street (which will make it visible and accessible for the travelling public too). It will complement ongoing redevelopment of the CBD and town centre.

While it is located in the CBD, it has been planned to complement the previous development and proposed redevelopment of the whole area.

It will also link the main CBD to the Pre School and David Bell Park and residential area to the west of John Street by way of improved interconnected walkways and cycle-paths.

The provision of a stage area will encourage self-expression and build confidence in individual abilities to perform by residents; this leads to improved Mental Health.

The open space proposed provides for an area where exercise and BJP can be presented for community enjoyment and wellbeing.

The involvement of community in planning and implementing the project creates a sense of ownership which in turn will provide security for the area. It will be safe and restful and within a very easy walking distance of the carpark in Little Timor Street .

The area will be safe, cool and attractive with planter boxes, bunting and lighting, children’s play areas and an area where adults can meet and be entertained..

The time spent by visiting public in the Plaza can be monitored as well as surveying purposes of stop overs.

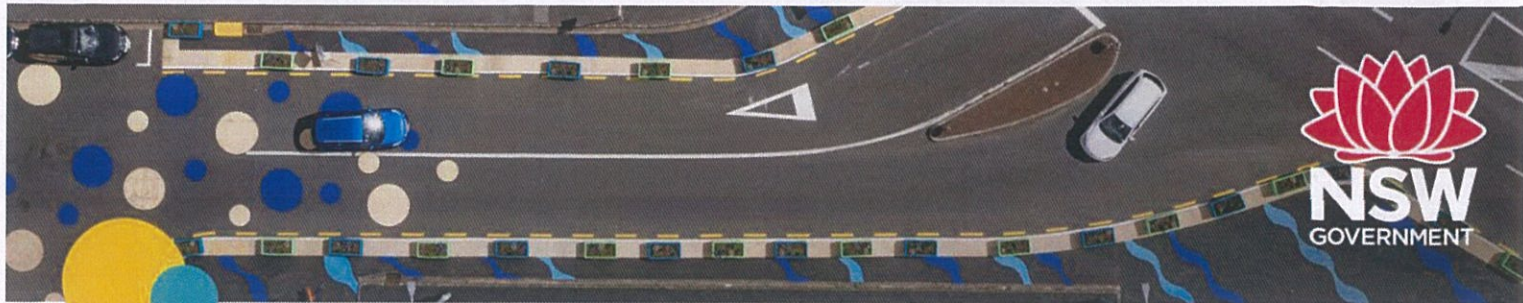
The project, although mooted firstly as a semi permanent plaza has the potential to be a permanent gathering space within the community, to be valued and owned by the community.

The proposal puts forward an accessible public space for all people to enjoy which can be implemented ASAP and the success of this can be measured by observation of “park users”.

Improved Mental Health can be measured by reduced numbers dependant on services

Safety for the travelling public can be measured by number of plaza users, increased visitor nights in accommodation, increased number of people accessing shopping opportunities.

In the Road Safety Plan 2021, NRMA refers to need to change driving habits “safer drivers and safer roads” .. it is believed that this project addresses this through provision of a means of slowing traffic and road users. In Section 6 on page 20 of the document reference is made to working with “local government to improve consistency and guidance on road safety for vulnerable road users including on road and off road bicycle facilities” and also to “Investigate infrastructure treatments to enhance road safety on the highway network for .. and to support enforcement activities”, again this project addresses each of these objectives.



Investing in community (and enhancing community assets) is considered a sound expenditure of government funds which promotes support of local and state-wide initiatives as outlined in the policies of the NSW Govt Community Strategic Plan. This project, we believe, fulfills the government objectives and the establishment of a committee responsible for the implementation will see completion within the specified time.

© State of New South Wales through Department of Planning, Industry and Environment 2020. The information contained in this publication is based on knowledge and understanding at the time of writing May 2020. However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Planning, Industry and Environment or the user's independent adviser.

Photography: Auckland City Council