



CUMBERLAND
CITY COUNCIL

Terms of Reference

Wentworthville Community Garden Section 355 Committee

AUTHORISATION & VERSION CONTROL

Terms of Reference (TOR) No	TOR-014
TOR Owner	Wentworthville Community Garden Section 355 Committee
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1. Purpose

The purpose of the Garden Committee established under Section 355 of the *Local Government Act 1993* is to provide care, control and management of Council's Community Garden and facilities in accordance with the policies and procedures adopted from time to time by Council.

Functions

The functions of the Section 355 Committee are to supervise, manage and administer the Wentworthville Community Garden in terms of the agreed Constitution and work towards development and implementation of a Community Garden Management Work Plan within funds raised by the Committee and/or as provided annually by Council.

Aim

The purpose of the Wentworthville Community Garden ('the Garden') is to allow residents to grow fresh food, contribute to a sustainable environment, relax and meet people from the local community. It will also be a place within the community to facilitate a range of community development goals such as community education around environmental opportunities, gardening opportunities, address issues of breaking down barriers of social isolation through a range of activities and projects focused on the community garden.

2. Administrative Matters

i. MEMBERSHIP

- The membership (ie garden members recorded in the Register of Members) elect the Committee to run the Garden on behalf of the Garden community.
- Open to the residents and ratepayers of Cumberland Council subject to the regulations contained in the Wentworthville Community Garden Handbook.
- Garden Group Membership will be available to recognised community groups/government support agencies at the discretion of the Committee.

ii. COMMITTEE MEMBERS

- The Committee elect the Office Bearers who are subject to Council approval. The Committee is responsible for the supervision, care, control and management of the Garden.
- Committee Members are to be residents or rate payers of Cumberland Council and be representative of all Garden users as far as practicable.
- Thirteen maximum, including three Ward Councillors. Committee membership over 13 allowed only with Council's approval.
- A Chairperson, Vice Chairperson, Secretary and Treasurer should be elected at the first meeting of the Committee following its appointment.
- Council will not permit payments in the form of an honorarium to be made by the Committee to any of its members. The Committee may adopt procedures for the payment/reimbursement of out-of-pocket expenses.

iii. COMMITTEE MEMBERS TERM

Two years with the expiry date being three months after the General Election of Council and two years from that date, with the initial election of officers to occur in the first quarter following the elections and no later than 31 March.

iv. *OFFICE BEARERS*

- Committee to elect Chairperson, Vice Chairperson, Secretary and Treasurer for a two- year term.
- Office Bearers must be residents or ratepayers of Cumberland Council Local Government Area.

v. *DUTIES OF COMMITTEE*

In providing the care, control and management of the Garden and facilities, specific duties include:

- To implement set operating times for the Garden.
- To ensure widest use of facilities and equal opportunity to all.
- Work towards implementation of the Garden Management Work Plan with funds raised and any specific allocations made by Council, upon application being made.
- Report annually to Council on uses made of grounds, improvements effected, and submit a program of works proposed to be carried out by the Committee for the following year.
- Report damage of facilities to Council promptly for insurance purposes.
- Induct all new members.
- To approve and/or rescind membership.
- To maintain Key Register and Asset Registers.
- To set fees annually at the Annual General Meeting (AGM).

vi. *MEETINGS*

- Committee meetings will be held at least every 3 months (minimum 4 per year). An Annual Meeting of the Garden membership (AGM) will be held in the last quarter of the calendar year, unless otherwise approved by Council.
- Meetings will be held at Council premises or at the Garden. Committee Members and Ward Councillors will be notified by the Secretary in writing 7 days prior to the meeting.
- To assist with Councillor attendance, meetings shall not be held on the same day as Council meetings.
- The Annual General Meeting must be advertised on Council's website and the secretary is requested to provide one month's notice of the meeting to the Council's Coordinator Governance to assist with advertising.
- Meeting dates and times for the ensuing twelve (12) months will be determined at the Annual General Meeting and forwarded to the nominated Council officer for the information of Council.

vii. *QUORUM*

A Quorum will be half the number of Committee Members elected by the Wentworthville Community Garden membership, plus one.

viii. *MINUTES*

- Minutes and other documents, including financial reports, must be kept by the Committee for a minimum period of five (5) years.
- Accurate written record of decisions will be kept of all meetings with copies submitted to Council within 30 days.

- Where minutes are amended prior to adoption at a subsequent meeting, the amendments are to be noted in the minutes of that meeting.
- The Minutes, addressed to Council's Coordinator Governance, may be forwarded to the Council electronically.

ix. REPORTING

The following information should be reported at the AGM:

- Committee Membership;
- Office Bearers' reports including a Chairperson's report on the Garden's activities for the past twelve months;
- Presentation of audited financial statements by the Treasurer or Secretary;
- An outline of the Committee's proposed activities for the next 12 months, that may also include seeking approval of those plans from the Garden membership.

Note that the financial statements are required within two months after the 31st March each year.

3. Use of Garden

Please refer to the Wentworthville Community Garden Handbook for details on the Garden Regulations and use of the Garden which supersedes all decisions and practices prior to Council's approval of this Constitution.

4. Financial Matters

i. ACCOUNTS

- Accounts are to be kept to the satisfaction of the General Manager and in accordance with the requirements of Accounting Standards applicable to Local Government.
- Finalised accounts are to be submitted to the Council for annual audit each year for consolidation in Council's Annual Statement of Accounts. The Garden's financial year runs from 1 April to 31 March. Accounts must be submitted within two months from 31 March each year.

ii. EXPENDITURE OF FUNDS

- Funds are to be applied solely towards maintenance, improvement and embellishment of the garden and facilities.
- The Council's guidelines for the procurement of goods and services are to be strictly adhered to.
- Any expenditure of Garden funds must be approved by the Committee.
- Payments for approved expenditure must be authorised by two (2) Committee members who are approved to do so.

iii. FUNDS

- All funds raised are the property of Council.
- GST compliant receipts are to be issued for all payments received from any source.

iv. **BANKING OF FUNDS**

The bank account of the Garden Committee be subject to:

- a) Bank accounts to only be held with the Commonwealth Bank of Australia (CBA);
- b) Council officers with the delegation to sign cheques and authorise EFT transactions be co-signatories on the Garden Committee's bank account;
- c) Committee funds held by Council will be paid interest;
- d) Committee funds held by Council form part of each Committee's annual accounts - and hence are subject to audit by the independent auditor.

v. **CONTRIBUTIONS BY CLUBS OR COMMUNITY GROUPS TOWARDS FACILITIES**

Any contributions are to be accepted on the understanding that such contributions are not for exclusive use, and become Council property after three (3) years.

vi. **SURCHARGE**

Committees are subject to the surcharge provisions of the *Local Government Act 1993* for illegal expenditure.

vii. **GST**

Committees are required to submit an annual statement of GST collected and incurred during the Committee's financial year. Such statements are to be submitted along with the Committee's financial accounts. Proformas of the statement can be obtained from Council's Financial Services Section.

5. Garden Management Work Plan

- The Council establishes a Plan of Management for each Park through the public consultative process in accordance with the *Local Government Act 1993*.
- Committees are required to implement the requirements of the Plan of Management and in so doing prepare and submit a Garden Management Work Plan for the Community Garden Group to Council for this purpose.
- The Committee's action plan is to be reviewed annually to ensure that it continues to meet the requirements of the Garden Management Work Plan.

6. Limitations imposed by Council

The following limitations are imposed by Council on the delegation of powers given to the Committees:

- Committee office bearers and ordinary members of Committees are to be approved by Council.
- The Constitution for Section 355 Committees is not to be varied without Council's approval.
- The Committee is not to deviate from the Garden Management Work Plan without Council's express written approval.
- Payment to Committee members is not permitted.

7. Compliance

- Committees are required to comply with the rules and conditions set by Council from time to time.
- In the event that rules and conditions are not complied with, Council retains the right to dissolve a Committee.

8. Resolution of Disputes

Committees are required to comply with the rules and conditions set by Council from time to time. In the event that rules and conditions are not complied with, Council retains the right to dissolve a Committee.

9. Code of Conduct

Cumberland Council has adopted a Code of Conduct that is applicable to elected Councillors, employed staff and committee members (volunteers). This Code of Conduct sets out the principles to ensure the business of Council is carried out in an efficient, honest and impartial way. Council's S355 Committees have the responsibility to ensure the following:

- Access is available to the entire community and is not denied because of ethnicity, gender, disability or religion.
- Priority of use should be given to non-profit making community groups and organisations.
- That the facility not be aligned with, or advocate or advertise for or on behalf of, any political party or persons.

As Section 355 Committees are operating as a delegation of Council in the management of facilities/services it is important for Committees to be aware of these responsibilities and abide by this Code of Conduct. For further information on the Code of Conduct, refer to the General Manager.

10. Conflict of Interest

A conflict of interest can arise when a member of the Committee has other involvements or interests which make it difficult for them to always remain impartial when involved in discussions and decision-making. These can include:

- Business or professional activities,
- Employment or accountability to other people or organisations,
- Membership of other community organisations or service providers, and/or
- Ownership of property or other assets.

The conflict may lead to:

- Financial benefit e.g. Sale of goods or privileged knowledge,
- Political benefit e.g. Gaining or losing electoral support, and/or,
- Personal benefit e.g. Career advancement or increased standing in the community.

11. Pecuniary Interest

A pecuniary interest is a financial benefit or liability by a Committee person or other person with whom the person is associated (that is, spouse, de-facto partner or relative of a Committee person) from an interest that a Committee person has in a Council matter. It does not exist where the interest is so remote or insignificant that it could reasonably be regarded as unlikely to influence any decision. The obligation to disclose is a strict duty, and the person's motives for participation are irrelevant if an interest is said to exist.

Chapter 14 of the *Local Government Act 1993 (NSW)* includes framework for the handling of alleged breached of the pecuniary interest provision of the Act. The Act is about openness, accountability and transparency in decision-making by Councils and any Committees representing the Council. It is the responsibility of the members of the Section 355 Committee:

- To disclose to the meeting any pecuniary interest in a matter before the meeting,
- Not to participate in the discussion of the matter before the Committee in which the member has a pecuniary interest, and briefly to depart from the meeting while the topic is being discussed.

12. Disclosure of Pecuniary Interest

If a Committee Member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting or the interest appears to create a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the members knowledge, disclose the nature of the interest at the meeting.

A Committee must ensure that particulars of any disclosure made under the clause are recorded in the minutes. After a member of a Committee has disclosed the nature of an interest in any matter, the member must not:

- Be present during any deliberation of the Committee with respect to the matter; or
- Take part in any decision of the Committee with respect to that matter.

Please note that a member's absence has a direct impact on numbers for quorum.

For the purposes of the making of a determination by a Committee as to whether the member has a direct or indirect pecuniary interest in a matter to which the disclosure relates, the member must not be present for the deliberation.

FURTHER INFORMATION

There are basic procedures to follow that provide solid structures for operations - large or small. Many of these procedures are common to all kinds of Committees throughout the community, not just Management Committees.

Committees need to be aware that accountability is required to Council, user groups and the general community. To facilitate this accountability, Committees are required to:

- Hold an Annual General Meeting and ensure that it is advertised,
- Provide reports and minutes to Council, and
- Ensure that affected persons are aware of Committee meeting details.

13. Records of Committee

Records of Council Committees should be kept in accordance with the *State Records Act 1998 (NSW)* and General Disposal Authority - Local Government Records. In particular, the Committee needs to be aware of the importance of minutes because of their legal status and their liabilities to subpoena in court. Many records of Council Committees may need to be retained for a minimum period of 30 years. Further guidance can be obtained from General Manager.

14. Purchasing

There may be times when the Committee will need to make substantial purchases and as Committees act on behalf of Council, advantage may be taken of Council's purchasing system.

15. Employment of Persons

A Committee cannot enter into any agreement, which may be construed as an employer/employee relationship without prior Council approval. Each contractor engaged must comply with the *Occupational Health and Safety Act 2000 (NSW)* and *Occupational Health and Safety Regulation 2001 (NSW)* and Council's Risk Management policies. Before engaging contractors, proof of evidence of their Public Liability cover and Workers Compensation insurance is mandatory. This proof must be in the form of Certificates of Currency.

16. Review of Terms of Reference

The Terms of Reference for the Committee will be adopted for the duration of the Council term.

Any proposed changes other than those of a minor/administrative nature to the Terms of Reference will be required to be reported to Council and adopted by way of resolution at a Council meeting.