



Hawkesbury City Council

attachment 1
to
item 127

Hawkesbury War Memorial
Eligibility Criteria Deed

date of meeting: 14 July 2020
location: by audio-visual link
time: 6:30pm

Hawkesbury War Memorial Eligibility Criteria Deed

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Parties

Council	Name	Hawkesbury City Council
	Address	366 George Street WINDSOR NSW 2756
	ABN	54 659 038 834
RSL's	Name	Windsor District Sub Branch of the RSL
	Address	36 Argyle Street SOUTH WINDSOR NSW 2756
	ABN	60 711 966 842
	Name	Richmond Branch of the RSL
	Address	24 West Market Street RICHMOND NSW 2753
	ABN	31 221 831 570

Background

- A** Council owns and maintains War Memorials.
- B** The placement of a name on War Memorials is currently determined by Council in accordance with the Original Eligibility Criteria and Process.
- C** Council has agreed to allow the Sub Branches to determine the eligibility criteria for the placement of a name on a War Memorial, subject to and in accordance with the terms of this document.

Operative Provisions

1 Definitions & Interpretation

1.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

1.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this document.

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2 New Eligibility Criteria and Process

2.1 Operation

The New Eligibility Criteria and Process will come into operation on date of this document.

2.2 Compliance

On and from the date of this document, the Sub Branches shall follow the New Eligibility Criteria and Process.

2.3 Alteration

The New Eligibility Criteria and Process may only be amended by agreement in writing between Council and the Sub Branches. Council will not withhold its agreement where the Sub Branches are in mutual agreement. Council's ultimate approval of a Name Placement Request

- (1) Upon receiving a Name Placement Request, Council will consider the Name Placement Request in accordance with:
 - (a) the New Eligibility Criteria and Process; and
 - (b) the terms of this document.
- (2) Council, in considering a Name Placement Request, may at its absolute discretion:
 - (a) accept the Name Placement Request; or
 - (b) reject the Name Placement Request, but only if the Name Placement Request did not comply with the New Eligibility Criteria and Process.
- (3) If Council rejects a Name Placement Request, Council will provide the Sub Branches with the reasons for the refusal in writing.

2.4 No right of appeal

- (1) The Sub Branches have no right to appeal a decision of Council to reject a Name Placement Request under clause 2.3(2)(b), however may re-submit the Name Placement Request including additional information supporting reconsideration by Council.
- (2) Upon receiving Council's written notice of its rejection of a Name Placement Request, the Sub Branches are responsible for notifying the Applicant (or their family) of the decision of Council.

2.5 Acceptance of a request

- (1) If Council accepts a Name Placement Request:
 - (a) it will inform the Sub Branches in writing of its acceptance; and
 - (b) it may specify any conditions of the acceptance, including, but not limited to:
 - (i) when the name is to be placed on a War Memorial; and
 - (ii) how, and where, the name is to be placed on a War Memorial,

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- (iii) Identify which war memorial (this would be solved with any Proforma)

(Placement Conditions).

- (2) The Sub Branches must comply with any Placement Conditions.

3 Termination

3.1 Termination of this document

Council may terminate this document with immediate effect by providing written notice of such termination to the Sub Branches.

3.2 Effect of termination

On the date of termination of this document under clause 3.1:

- (1) the New Eligibility Criteria and Process will cease to operate; and
- (2) any pending Requests under the New Eligibility Criteria and Process will be finalised under the New Eligibility Criteria, notwithstanding the termination of this document.

4 Position of Council

4.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act, including with respect to community land upon which some of the War Memorials may be erected.

4.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

4.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 4.3 is substantially satisfied;
 - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and

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- (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

4.4 No obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in a certain manner.

5 Administrative provisions

5.1 Notices

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

5.2 Entire Agreement

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

5.3 Waiver

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

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5.4 Cooperation

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

5.5 Counterparts

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

5.6 Amendment

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

5.7 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

5.8 Joint parties

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

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

5.9 Governing law

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

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

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Schedule 1: Defined terms and Interpretation

Part 1 - Definitions

Act	means the <i>Local Government Act 1993</i> (NSW).
Applicant	means the individual to whom a Name Placement Request relates.
Name Placement Request	means a request by a Sub Branch submitted in accordance with the New Eligibility Criteria and Process that a name of the Applicant be added to a War Memorial.
New Eligibility Criteria and Process	means the criteria and process set out in Schedule 2 of this document.
Original Eligibility Criteria and Process	means ‘ <i>The Hawkesbury War Memorial Eligibility Criteria 2015</i> ’ (as amended).
War Memorials	means the War Memorials owned by Council in the Hawkesbury Local Government Area from time to time.

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
variations or replacements	a document (including this document) includes any variation or replacement of it.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.

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calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the <i>Corporations Act 2001</i> (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
gender	a reference to one gender extends and applies to the other and neuter gender.

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Schedule 2: New Eligibility Criteria and Process

1 Background

- 1.1 War Memorials were generally erected to commemorate the sacrifice of local veterans going to war.
- 1.2 The Department of Veteran Affairs defines War Memorials as:
- 'A war memorial is a commemorative object intended to remind us of the people who served in and died as a result of war. War memorials may take many forms, but common to all of them is the intention that they remind us of those we have lost to war.'*
- 1.3 In many regional towns, even those settled after the First World War, War Memorials were built to commemorate the impact of the war. Since the Second World War and subsequent conflicts, many of these War Memorials have been updated.
- 1.4 In 1966, a policy was introduced of repatriating war dead back to Australia for burial if possible. Prior to that, local War Memorials were especially important in giving family and friends a focal point for remembering.
- 1.5 In Australia, generally only the names of those who served and died are inscribed on monuments and honour rolls, preserving them in the local memory. However, some monuments also include the names of people from the district who served and returned. This distinguishes Australia from British military tradition, which gives individual honours on monuments only to the dead.
- 1.6 This was the case in the Hawkesbury, where War Memorials were erected for the purpose of its residents who served in and died as a result of war. Over time however, names have been supported that did not meet the original purpose.

2 Principle

War Memorials located within the Hawkesbury Local Government Area (**LGA**) are to commemorate local veterans who were deployed on operational service to a declared Conflict zone in Australia's defence forces and were resident in the Hawkesbury or its historical Council/Shire boundaries at enlistment and were killed in action (KIA) or subsequently died.

3 Criteria for placement of a name on a War Memorial

- 3.1 Service personnel who meet the qualifications of principle.

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- 3.2 Personnel posted to a military establishment in the LGA in the course of their service at the time of a declared conflict, or Re-enlist at the time do not qualify for the placement of their name on a War Memorial in the Hawkesbury LGA.
- 3.3 Only names of deceased individuals may be placed on any War Memorial within the Hawkesbury LGA.
- 3.4 Veterans should be honoured by Surname initials and Post Nominals recognising Military Gallantry. E.g., VC, DCM, MM etc.
- 3.5 A Veteran who was 'Killed in Action' will have a religious cross placed next to their name, with the same cross at the bottom of the memorial with the letters KIA – Killed in Action written.
- 3.6 In the event that a veteran serves in more than one conflict his/her name may be placed under each conflict that he/she served, on only one War Memorial within the Hawkesbury LGA.

4 Process

- 4.1 The process for adding names to a War Memorial is as follows:
 - (1) The relevant RSL Sub-Branch is to maintain a Register of eligible Sub Branch members that are entitled to have their names added to a War Memorial within the Hawkesbury LGA.
 - (2) A copy of the Register is to be held by Council and to be maintained in an updated state by the Sub Branch. The Sub -Branch must provide Council with an updated Register as changes occur, and at the very least, on a quarterly basis.
 - (3) In the event of a death of an eligible Sub Branches member, the Sub Branche will issue a request to Council that their name be added to a War Memorial.
 - (4) If the Sub Branch receives a request from a member of the community who was a non- Sub Branch member to have their name placed on a War Memorial within the Hawkesbury LGA, the proposed applicant is to provide proof of residency at enlistment in accordance with this document to either RSL Sub Branch
 - (5) A certified copy of the Veterans Service Record is to be provided to the Sub Branch and the Sub Branch will be responsible for carrying out the required due diligence to establish if the deceased veteran meets the requirements of this document.
 - (6) After the due diligence has been completed, the Sub Branch may request that Council place the name of the Sub Branch member/veteran on the War Memorial subject to the Sub Branch providing Council with:
 - (a) documentation to Council's satisfaction evidencing that the process and criteria set out in this document has been followed and met; and
 - (b) written attestation by the Sub Branch that the relevant Sub Branch member meets this criteria.

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- (7) .
- (8) The Sub Branch will communicate with an Applicant advising them of the outcome of the request.
- (9) The costs of adding any new name to a War Memorial is to be borne by Council

Execution page

Executed as a deed.

Dated:

Signed, sealed and delivered by **Hawkesbury City Council** by its duly authorised officer pursuant to delegation from Council and in the presence of:

Witness (Signature)

Authorised Officer (Signature)

Name of Witness (Print Name)

Name of Authorised Officer (Print Name)

Signed, sealed and delivered by **Windsor District Sub-Branch of the RSL** by its authorised members in accordance with its Constitution:

Authorised Member (Signature)

Authorised Member (Signature)

Name of Member

Name of Member

Signed, sealed, and delivered by **Richmond Branch of the RSL** by its authorised members in accordance with its Constitution:

Authorised Member (Signature)

Authorised Member (Signature)

Name of Member

Name of Member

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