

# Project and Consultancy Revenue Procedure

## Section 1 - Purpose

(1) To set out the requirements for the identification, negotiation, application, and approval of project and consultancy revenue and how any surplus funds generated from project and consultancy arrangements are applied.

## Section 2 - Scope

(2) This procedure applies to all undertakings determined to be commercial activities under the University [Guidelines for Commercial Activities](#).

(3) Section 4 Part G and H apply to transfers from The University of Newcastle Research Associates (TUNRA) for funds identified for placement in Staff Support Accounts.

(4) This procedure does not apply to activities:

- a. that are specifically excluded from being commercial activities as per the [Guidelines for Commercial Activities](#), including contract research under the [Guidelines for Commercial Activities](#) and other HERDC eligible research income;
- b. that are philanthropic in nature of where proceeds and or unspent funds are required to be held in trust; and
- c. that generate student load income from students defined as either Commonwealth Supported, Fee Paying Domestic, Fee Paying International or Higher Degree by Research.

## Section 3 - Definitions

(5) The terms used in this Procedure have the same meanings as the corresponding terms in the [Guidelines for Commercial Activities](#) (guidelines).

(6) In the context of this document:

Application	means the submission made to the customer for the work to be performed, this may be via a template or list of requirements provided by the funding body; a proposal from the University; or other mechanism which initiates a contracted or purchased piece of work by the University.
Budgeted cost	means the estimated costs to complete the work at the time the opportunity is identified.
Final cost	means the actual value and volume of resources used plus the indirect costs applied at the rates in Section 4 Part C. Surplus values for distribution to staff support accounts are determined based on actual income and final costs.
Financial delegate	means the officer approved to commit funds on behalf of the University as prescribed in the Delegations Schedules and <a href="#">Delegations Register</a> .
On costs	means those costs directly attributable to salary and wages that are not contained in Schedule 1 of the University of Newcastle Academic Staff and Teachers <a href="#">Enterprise Agreement</a> . In 2022 on costs are applied at 36% of base salary. These costs consist of superannuation, payroll tax, workers compensation and leave accruals.

Project and consultancy work	means work subject to the <a href="#">Commercial Activity Guidelines</a> and where the University has the right to retain any unspent funds at the conclusion of the work.
Responsible Officer	means the University staff member or student accountable for the delivery of the project and/or consultancy deliverables in accordance with the contract terms and University Policy and Procedure.
Staff support account	means the separate cost collector established for the deposit of surpluses determined on application of this procedure and used in accordance with this procedure.
Threshold risk	means the risk in relation to an opportunity, where: <ul style="list-style-type: none"> <li>a. the opportunity is valued at \$50,000 or more; and <ul style="list-style-type: none"> <li>i. uses a contract arrangement that is not a University standard template; or</li> <li>ii. uses a University standard template that requires significant amendments,</li> </ul> </li> <li>b. the opportunity requires a capital commitment by the University to ensure successful delivery;</li> <li>c. the opportunity has the potential to expose the University to moderate-significant reputational risk (whether by reference to the identity of the Funding Body, or the successful/unsuccessful outcomes of the opportunity); or</li> <li>d. otherwise, the opportunity by its nature represents, or is likely to represent, a medium (or higher) risk to the University as defined by the University <a href="#">Risk Management Framework</a>.</li> </ul>
Year	means the University budget year being the 12-month period from 1 January to 31 December.

## Section 4 - Procedure

### Part A - Opportunity

(7) All opportunities for project and consultancy work must be endorsed by the relevant Head of School, Director of an Institute, or Director of a Directorate and approved by the appropriate financial delegate prior to any contractual commitment being made to an external party.

(8) Where the party approving the opportunity is also engaged with the delivery of the work, endorsement is required from the relevant Pro Vice-Chancellor (PVC) of College or Deputy Vice-Chancellor (DVC) of Division to ensure no conflicts of interest arise.

(9) In considering whether to approve an opportunity to proceed to an application, the financial delegate will consider the following elements and any of the operational matters as a whole:

- a. ensuring that the work should not be more appropriately classified as HERDC attracting contract revenue, philanthropic or student load income;
- b. alignment of the underlying work with the overall objectives and strategy of the University;
- c. expected chance of success of the application;
- d. existing workloads of the principal staff;
- e. financial impact of the project or consultancy and the ability of the University to deliver the quality and deliverables required by the funding party within the required timeframes;
- f. use of University resources;
- g. risk to the University of entering into the agreement considering the contracting parties involved and the nature of the work being proposed;
- h. relevance of the University [Outside Work Policy](#);
- i. application of the [Conflict of Interest Policy](#);
- j. the obligation on the relevant business unit to underwrite any financial loss associated with the contract from the School, Directorate, Division or College operating funds.

(10) Opportunities that are not given approval to proceed to an application must not be pursued in a person's capacity as staff member of the University.

(11) For opportunities greater than \$100,000 and/or those that meet or exceed the threshold risk, the Responsible Officer should obtain the appropriate subject matter expertise from Legal and Compliance, the Risk Unit and Financial Services.

## Part B - Application

(12) The nature of work required to complete an application will vary with each opportunity, however, the following common factors must be considered for each:

- a. treatment of intellectual property generated as per the University [Intellectual Property Policy](#);
- b. availability of cover under the University indemnity and public liability insurance coverage;
- c. ethics requirements ([human ethics](#) / [animal ethics](#));
- d. the ownership of background intellectual property;
- e. the type of contract;
- f. existing workload commitment of participating staff and the additional commitment required, if approved;
- g. due diligence of the funding body;
- h. requirements for partnerships with third parties;
- i. application of the standard University contract terms and conditions; and
- j. costing as per the University costing template refer Part C.

(13) Each application will contain a declaration acknowledging the responsibility of the Responsible Officer to manage delivery of the contract within the identified funding and cost parameters, and a completed costing tool in the information provided for review by the Financial Delegate prior to the submission being made to the external party ([Project Consultancy Costing Tool](#)).

(14) Where assigned either by the College or by the Research and Innovation Division, a Business Development Manager will assist the business unit/s in ensuring these elements of the application are appropriately considered and addressed.

## Part C - Pricing

### Standard Approach

(15) To ensure that the University is meeting the objective in the Guidelines to participate in fair and competitive activity the applicant MUST ensure revenue received covers:

- a. Labour – hours worked by the University continuing and fixed term staff, applying the Academic Level C step 3 rate, plus oncosts as per the University Salary Commitment Calculator in Ascender;
- b. Direct costs – all direct non salary, internal recharges, and temporary staff costs to do the work required to deliver the contract;
- c. Intellectual property – royalties payable under the University [Intellectual Property Policy](#);
- d. Indirect costs – a contribution to University support reflected as a percentage of the costs in a) to c) as per the [Indirect Cost Recovery Guideline](#).

(16) Where the price received exceeds the total actual value of labour, direct costs, and indirect costs at 30% the Responsible Officer may be entitled to transfer the surplus to a Staff Support Account under Section 4 Part G of this Procedure.

## Waivers

(17) It is recognised that the University may wish to enter arrangements from time to time that will not produce a financial return but may provide other qualitative benefits to the University. When such benefits are identified upfront the following waivers may be sought prior to any negotiation or contract finalisation with the funding body.

(18) In determining whether a waiver can be applied the approver must consider whether the work in isolation and as part of a portfolio of work may be considered to represent uncompetitive behaviour under the [Australian Competition and Consumer Commission Guidelines](#).

## Labour

(19) Approvers – Head of School, Pro Vice-Chancellor

(20) A Head of School may endorse waivers of salary recovery, for PVC approval, after considering the sustainability of workload of the Responsible Officer and other staff if no backfill or overtime requirement is identified. Project and consultancy work cannot be substituted for teaching workload without full labour cost recovery.

## Indirect costs

(21) Approver – Refer to University [Delegations Register](#).

(22) All applications to waive or reduce the indirect cost rate must be endorsed by the PVC and approved in accordance with the [Delegations Register](#). In providing this approval the financial delegate will consider the broader qualitative benefits to the University as well as the financial impact.

## Generation of financial loss

(23) Approver – PVC of College

(24) Opportunities where the pricing is insufficient to meet the cost of labour and direct costs must be approved by the PVC/s of the relevant College/s. Where losses are incurred, the deficit will be met from either the lead academic's Staff Support Account, the College or the School. The source must be identified at the time the deficit position is approved.

(25) Where any waivers are approved and applied, the Responsible Officer is not entitled to transfer the surplus to a Staff Support Account under Section 4 Part G of this Procedure.

(26) All applications for contracts where any costs have been waived or otherwise have a zero or negative financial return should be reported to the relevant College or Division Executive Group monthly to ensure appropriate oversight of the quantity and cost of the portfolio of non-profitable projects and consultancies.

(27) The Register of Contracts including details of waivers will be maintained by the office of the Director of Institute or PVC / DVC office endorsing the activity and must be provided to the CFO on request.

## Part D - Approval

(28) All applications, submissions or similar must be submitted to the appropriate financial delegate in accordance with Delegation A32 the [Delegations Register](#) and [Guidelines for Commercial Activities](#) to allow sufficient time for review.

(29) The purpose of the financial delegate review is to ensure that all risks arising from the application have been considered and appropriately mitigated. The review will consider the following as a minimum:

- a. the financial, key person dependency, human resource, reputational and operational risks associated with the execution of the contract;
- b. need for and capacity of subject matter expertise such as legal, research infrastructure, academic quality etc. in the application and execution;
- c. the accuracy and completeness of the application;
- d. the completeness of the costing tool;
- e. alignment with University objectives and strategy; and
- f. support of the relevant Head of School or Director of the business unit where they are not the applicable financial delegate.

(30) The financial delegate must also ensure that there is no expectation implicit or explicit of special, ex gratia or other payments of the nature of a bonus or performance payment proposed to be made via payroll or other means to any individuals responsible for the application or execution of the project or consultancy regardless of the financial or qualitative outcomes.

(31) Once approved the application for work over \$100,000 must be provided to the Head of School or Director after submission to the funding body and recorded in the Register of Contracts.

(32) Note the financial delegate approving the opportunity, is accepting the risk of any financial loss from the contract by providing that approval. This means that the financial delegate accepts that the relevant College or Division will bear any cost overruns on delivery or a failure to pay by the contract party from their operating funds if these cost overruns should occur. The subsequent recovery of funds from any existing or future project and consultancy works of the academic staff member is then a matter for the approving financial delegate to resolve.

## **Part E - Negotiation**

(33) To avoid actual or perceived conflict of interests, details of negotiations between contract parties must be documented and provided to the appropriate PVC of College or DVC of Division, for review.

(34) Requirements of the University [Conflict of Interest Policy](#) and Foreign Interference Policy must be applied.

(35) Any adjustments to the pricing approved in the application must be approved by the relevant approving financial delegate before coming to any agreement with the third party.

(36) Final commercial contract and consultancy revenue must be equal to or greater than the direct costs + indirect costs including Intellectual property (IP) payments, except where waivers have been approved in accordance with Section 4 Part C.

(37) A staff member cannot negotiate and approve a contract arrangement where they are a direct beneficiary of financial or other benefits because of the arrangement.

## **Part F - Delivery Administration**

### **Commencement**

(38) The Responsible Officer will be accountable for undertaking contract management activities after notification is received that an application has been successful. This includes liaising with the University Legal and Compliance unit, the oversight of contract execution, contract implementation (including achievement of milestones), and ensuring financial returns are generated in accordance with the contract costing.

(39) On execution of the contract document by the approving financial delegate, the contract must be provided immediately to Financial Services to enable establishment of a cost collector in the appropriate fund pool, recording of

any commitments, and inclusion in the relevant School or Directorate forecasts and budgets.

(40) Commercial project and consultancy are excluded from the contribution margin calculation for budgeting and forecasting purposes as the distribution to Service Divisions occurs through the overhead.

### **Variations**

(41) Variations to project and consultancy arrangements require communication and approval of changes in accordance with the costing, approval and negotiation steps above.

(42) Any variations reducing the amount of a contract must be referred to Financial Services before being accepted to ensure expenditure already incurred is sufficiently covered and full costing across the life of the contract is maintained.

(43) At the time a variation is executed the updated information must be provided to Financial Services.

(44) Variations to contracts must be approved in accordance with Delegations of Authority (see [Delegations Register](#)).

## **Part G - Identification and Allocation of Contract Surplus**

(45) A contract surplus is derived when the actual total cost of executing the relevant obligations is less than the actual revenue received from the funding party/s.

(46) Contract surplus is calculated by the following formula:

$$\text{contract revenue} - (\text{direct costs} + \text{overhead} + \text{Intellectual property (IP) commitments}) = \text{contract surplus}$$

(47) Where contract revenue = all income derived under the contract including any adjustment for variations, bonuses, discounts, pricing adjustments or other increases or decreases to total income earned such as debt write offs and credit notes.

(48) Direct costs = all costs directly attributable to the execution of the contract obligations consisting of salary and non-salary costs. The time of existing University staff is recovered through salary recoveries to the relevant School or Directorate operating funds at the applicable rate plus on-costs.

(49) All other costs are charged at full invoice value for third party charges or at the internal charge rate applicable at the time incurred for goods or services provided by the University directly to the project or consultancy.

(50) The Indirect cost rate must be applied in accordance with the [Indirect Cost Recovery Procedure](#).

(51) Distribution of a contract surplus will only occur for projects where direct salary costs, other direct costs and the indirect cost has been recovered, the consultancy work is completed, and all invoices are paid by the funding party. Where delays in payment occur from the funding body surpluses may not be transferred until subsequent years and not at all if balances are written off due to bad debts.

(52) To be eligible for distribution of surpluses to Staff Support Accounts or the Schools Strategic Fund the actual cost of a project must include directly salary costs and the indirect cost recovery rate at the maximum rate as specified in the [Indirect Cost Recovery Guideline](#).

(53) Any contract surplus whether generated internally at the University after applying the calculation above or received as a contribution for staff support of a named staff member from The University of Newcastle Research Associates (TUNRA) is then distributed as follows:

- a. 100% to the Staff Support Account of the responsible officer up to a total balance of \$50,000 in the account. Any amount that causes the Staff Support Account to exceed \$50,000 requires a strategy approved by the PVC for the application of funds which may be over more than one year.
- b. Remaining funds in a Staff Support Account may be rolled forward at the end of each year subject to confirmation that the staff member has:
  - i. \$50,000 or less in their Staff Support Account or, if the balance is greater than \$50,000 then the staff member must have an approved strategy for utilising the funds agreed with the PVC;
  - ii. no accounts in deficit or contained debts agreed greater than 90 days for which they are the CI or responsible officer;
  - iii. met other core teaching and research accountabilities as well as the consultancy or contract work;
  - iv. has delivered on any existing strategies for the application of funds.

(54) Where the staff member has not met the requirements above, any remaining funds are transferred to a Strategic Fund Pool of the respective School, a Centre or Institute. Residual funds in a Strategic Fund Pool of a School, Centre or Institute may be rolled forward at the end of each year subject to a plan for application of those funds being approved by the College PVC and CFO.

(55) A Responsible Officer may elect to have surplus funds directed to the School, Centre or Institute Strategic Fund Pool as an alternative to receiving into a Staff Support Account.

## Summary of Revenue Distribution

Recipient	Nature of Revenue Stream	Method of Distribution
Research and Innovation Division or TUNRA	Indirect Costs	Fixed Indirect Cost Rate
Service Divisions	Recovery of direct costs at rates determined by Research and Innovation Services (includes charges for use of equipment and built infrastructure)	Transfer of Direct Costs as incurred
School	Recovery of direct salary costs Recovery of direct non salary costs	Transfer of Direct Costs as incurred
Responsible Officer	Surplus	Transfer of fund balance at time of closing the cost collector

(56) There is no obligation on the University to roll forward a University Staff Support Account of any value into future years.

## Part H - Use of Funds in a Staff Support Account

(57) The purpose of a Staff Support Account is to provide a pool of funds over which a staff member can provide greater direction as to the application of those monies than general operating funds. Managers and supervisors are to be consulted in the appropriate use of Staff Support Accounts.

(58) Typical uses of funds in staff support accounts are expected to be:

- a. bridging funds for academically related activities between funding contracts;
- b. support for professional development;
- c. seed funding for new initiatives;
- d. support for students under Higher Degree by Research (HDR) supervision;
- e. funds to support publishing or other administrative costs associated with research activity;

- f. purchases of minor equipment or consumables; or
- g. travel and attendance at relevant conferences or other industry or discipline related engagement events.

(59) Expenditure of funds from a Staff Support Account are subject to the application of any relevant University policies and procedures and the University delegations of authority.

(60) Funds must be applied for purposes aligned with the University strategic intent i.e. to support research and education activities. Funds may also be transferred to the cost collector of a Centre or Institute as defined in the [Framework to define College Units, Research Centres, Academies and Institutes](#).

(61) Staff support funds cannot be used for:

- a. private expenditure;
- b. payment of ex-gratia, bonus or other supplementary remuneration benefit;
- c. transfer of funds to another institution;
- d. any expense that creates a commitment into future years or is greater than the balance of the staff support account at the time the commitment is made. For example but not limited to:
  - i. purchase of capital;
  - ii. employment of continuing staff;
  - iii. multi year service contracts;
  - iv. HDR stipends except where the commitment is guaranteed by the Deputy Vice-Chancellor (Research and Innovation) or the PVC of College from operating or other funds under their administration.

(62) University Staff Support Accounts are transferred to University General Reserves at the time a staff member leaves the employment of the University, they are not transferable or payable to the individual or another institution.

(63) A report of Staff Support Account balances will be provided on a periodic basis to the PVC of College or DVC of Division as applicable as part of the financial reporting pack.



## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	16th August 2023
<b>Review Date</b>	8th December 2023
<b>Approval Authority</b>	Chief Financial Officer
<b>Approval Date</b>	15th August 2023
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Paul McCubbin Chief Financial Officer
<b>Enquiries Contact</b>	Paul McCubbin Chief Financial Officer <hr/> Financial Services

## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Risk"** - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

**"Commercial activities"** - As defined in the University of Newcastle Act 1989.

**"Student"** - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

**"Intellectual property"** - Intellectual property (IP), as defined by the World Intellectual Property Organisation, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications; and Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

**"Research"** - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

**"School"** - An organisational unit forming part of a College or Division, responsible for offering a particular course.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

**"University resources"** - Any resources of the University including the staff member's work time or duties, facilities, equipment, systems, IT networks, other staff resources and the University's name, logo or any other identifying mark or brand of the University.

**"College"** - An organisational unit established within the University by the Council.