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The Model Code of Conduct

for Local Councils in NSW

2018

NSW GOVERNMENT

THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW
2018

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Part 1:
Introduction

This *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct") is made under section 440 of the *Local Government Act 1993* ("LGA") and the *Local Government (General) Regulation 2005* ("the Regulation").

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in local government.

Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council's or joint organisation's adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not "council officials" for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council's or joint organisation's adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council's or joint organisation's adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council's adopted code of conduct applies to, must comply with the applicable provisions of their council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the LGA. The LGA provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office. A councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with a council's code of conduct may give rise to disciplinary action.

Note: References in the Model Code of Conduct to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code of Conduct, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

Note: In adopting the Model Code of Conduct, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".

Part 2:
Definitions

In this code the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of "council committee"
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
conduct	includes acts and omissions
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 400O of the LGA
LGA	the *Local Government Act 1993*
local planning panel	a local planning panel constituted under the *Environmental Planning and Assessment Act 1979*
mayor	includes the chairperson of a county council or a joint organisation

members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* prescribed under the Regulation
the Regulation	the *Local Government (General) Regulation 2005*
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to

Part 3:
General Conduct Obligations

General conduct

3.1 You must not conduct yourself in a manner that:

a) is likely to bring the council or other council officials into disrepute

b) is contrary to statutory requirements or the council's administrative requirements or policies

c) is improper or unethical

d) is an abuse of power

e) causes, comprises or involves intimidation or verbal abuse

f) involves the misuse of your position to obtain a private benefit

g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.

3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act *(section 439).*

Fairness and equity

3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.

3.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

Harassment and discrimination

3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status, infectious disease, carer's responsibilities or political, religious or other affiliation.

3.7 For the purposes of this code, "harassment" is any form of behaviour towards a person that:

a) is not wanted by the person

b) offends, humiliates or intimidates the person, and

c) creates a hostile environment.

Bullying

3.8 You must not engage in bullying behaviour towards others.

3.9 For the purposes of this code, "bullying behaviour" is any behaviour in which:

a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and

b) the behaviour creates a risk to health and safety.

3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:

a) aggressive, threatening or intimidating conduct

b) belittling or humiliating comments

c) spreading malicious rumours

d) teasing, practical jokes or 'initiation ceremonies'

e) exclusion from work-related events

f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level

g) displaying offensive material

h) pressure to behave in an inappropriate manner.

3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:

a) performance management processes

b) disciplinary action for misconduct

c) informing a worker about unsatisfactory work performance or inappropriate work behaviour

d) directing a worker to perform duties in keeping with their job

e) maintaining reasonable workplace goals and standards

f) legitimately exercising a regulatory function

g) legitimately implementing a council policy or administrative processes.

Work health and safety

3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:

a) take reasonable care for your own health and safety

b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons

c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety

d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff

e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations

f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.

Land use planning, development assessment and other regulatory functions

3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.

3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

Binding caucus votes

3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.

3.16 For the purposes of clause 3.15, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.

3.17 Clause 3.15 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

3.18 Clause 3.15 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

Obligations in relation to meetings

3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.

3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).

3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:

a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or

b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or

c) deliberately seek to impede the consideration of business at a meeting.

Part 4:
Pecuniary Interests

What is a pecuniary interest?

4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.

4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.

4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:

a) your interest, or

b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or

c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.

4.4 For the purposes of clause 4.3:

a) Your "relative" is any of the following:

i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).

b) "de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):

a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or

b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or

c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

What interests do not have to be disclosed?

4.6 You do not have to disclose the following interests for the purposes of this Part:

a) your interest as an elector

b) your interest as a ratepayer or person liable to pay a charge

c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code

d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code

e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)

f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee

g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company

h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership

i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:

   i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation

   ii) security for damage to footpaths or roads

   iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract

j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)

k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA

l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor

m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person

n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member

o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

4.7 For the purposes of clause 4.6, "relative" has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

What disclosures must be made by a designated person?

4.8 Designated persons include:

a) the general manager

b) other senior staff of the council for the purposes of section 332 of the LGA

c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest

d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

a) must prepare and submit written returns of interests in accordance with clauses 4.21, and

b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council staff other than designated persons?

4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.

4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council advisers?

4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.

4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.

4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

What disclosures must be made by a councillor?

4.20 A councillor:

a) must prepare and submit written returns of interests in accordance with clause 4.21, and

b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

Disclosure of interests in written returns

4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:

a) becoming a councillor or designated person, and

b) 30 June of each year, and

c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:

a) they made and lodged a return under that clause in the preceding 3 months, or

b) they have ceased to be a councillor or designated person in the preceding 3 months.

4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.

4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.

4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.

4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.

4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:

a) at any time during which the matter is being considered or discussed by the council or committee, or

b) at any time during which the council or committee is voting on any question in relation to the matter.

4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.

4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:

a) a member of, or in the employment of, a specified company or other body, or

b) a partner of, or in the employment of, a specified person.

Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.

4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.

4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:

a) the matter is a proposal relating to:

i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or

ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and

b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and

c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.

4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:

a) be in the form set out in schedule 3 of this code and contain the information required by that form, and

b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.

4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

b) that it is in the interests of the electors for the area to do so.

4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.

Part 5:
Non-Pecuniary Conflicts of Interest

What is a non-pecuniary conflict of interest?

5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.

5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.

5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.

5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.

5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.

5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.

5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.

5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:

a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household

b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship

c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation

d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter

e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1

f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.

5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:

a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or

b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.

5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.

5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.

5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.

5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

Political donations

5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.

5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:

a) made by a major political donor in the previous four years, and

b) the major political donor has a matter before council,

you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.

5.17 For the purposes of this Part:

a) a "reportable political donation" has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*

b) "major political donor" has the same meaning as it has in the *Electoral Funding Act 2018.*

5.18 Councillors should note that political donations that are not a "reportable political donation", or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

5.20 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interest in the matter is permitted to participate in consideration of the matter if:

a) the matter is a proposal relating to:

i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or

ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and

b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and

c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business or employment

5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.

5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.

5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.

5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.

5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:

a) conflict with their official duties

b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted

c) require them to work while on council duty

d) discredit or disadvantage the council

e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with council

5.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

Part 6:
Personal Benefit

6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.

6.2 A reference to a gift or benefit in this Part does not include:

a) a political donation for the purposes of the *Electoral Funding Act 2018*

b) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them

c) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or

d) free or subsidised meals, beverages or refreshments of token value provided to council officials in conjunction with the performance of their official duties such as, but not limited to:

i) the discussion of official business

ii) work-related events such as council-sponsored or community events, training, education sessions or workshops

iii) conferences

iv) council functions or events

v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.

6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

How are offers of gifts and benefits to be dealt with?

6.5 You must not:

a) seek or accept a bribe or other improper inducement

b) seek gifts or benefits of any kind

c) accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty

d) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9

e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount

f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer–supplier relationship with the competition organiser

g) personally benefit from reward points programs when purchasing on behalf of the council.

6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:

a) the nature of the gift or benefit

b) the estimated monetary value of the gift or benefit

c) the name of the person who provided the gift or benefit, and

d) the date on which the gift or benefit was received.

6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

Gifts and benefits of token value

6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of $50. They include, but are not limited to:

a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed $50

b) gifts of alcohol that do not exceed a value of $50

c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like

d) prizes or awards that do not exceed $50 in value.

Gifts and benefits of more than token value

6.9 Gifts or benefits that exceed $50 in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.

6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds $50, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.

6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person associated with that person or organisation, during the same 12-month period would exceed $50 in value.

6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.

"Cash-like gifts"

6.13 For the purposes of clause 6.5(e), "cash-like gifts" include but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

Improper and undue influence

6.14 You must not use your position to influence other council officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the proper exercise of their role as prescribed under the LGA.

6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

Part 7:
Relationships Between Council Officials

Obligations of councillors and administrators

7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.

7.2 Councillors or administrators must not:

a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA

b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate

c) contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager

d) contact or issue instructions to any of the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.

7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

Obligations of staff

7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.

7.5 Members of staff of council must:

a) give their attention to the business of the council while on duty

b) ensure that their work is carried out ethically, efficiently, economically and effectively

c) carry out reasonable and lawful directions given by any person having authority to give such directions

d) give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them

e) ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

Inappropriate interactions

7.6 You must not engage in any of the following inappropriate interactions:

a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters

b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters

c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor

d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council

e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting

f) councillors and administrators being overbearing or threatening to council staff

g) council staff being overbearing or threatening to councillors or administrators

h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media

i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make

j) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community

k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals

l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

Part 8:
Access to Information and Council Resources

Councillor and administrator access to information

8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).

8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.

8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.

8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.

8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.

8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Refusal of access to information

8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

8.9 In regard to information obtained in your capacity as a council official, you must:

a) subject to clause 8.14, only access council information needed for council business

b) not use that council information for private purposes

c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council

d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.

8.11 In addition to your general obligations relating to the use of council information, you must:

a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions

b) protect confidential information

c) only release confidential information if you have authority to do so

d) only use confidential information for the purpose for which it is intended to be used

e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person

f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body

g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

8.12 When dealing with personal information you must comply with:

a) the *Privacy and Personal Information Protection Act 1998*

b) the *Health Records and Information Privacy Act 2002*

c) the Information Protection Principles and Health Privacy Principles

d) the council's privacy management plan

e) the Privacy Code of Practice for Local Government

Use of council resources

8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.

8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:

a) the representation of members with respect to disciplinary matters

b) the representation of employees with respect to grievances and disputes

c) functions associated with the role of the local consultative committee.

8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.

8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.

8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:

a) for the purpose of assisting your election campaign or the election campaign of others, or

b) for other non-official purposes.

8.19 You must not convert any property of the council to your own use unless properly authorised.

Internet access and use of social media

8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.

8.21 You must not use social media to post or share comments, photos, videos, electronic recordings or other information that:

a) is offensive, humiliating, threatening or intimidating to other council officials or those that deal with the council

b) contains content about the council that is misleading or deceptive

c) divulges confidential council information

d) breaches the privacy of other council officials or those that deal with council

e) contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or

f) could be perceived to be an official comment on behalf of the council where you have not been authorised to make such comment.

Council record keeping

8.22 You must comply with the requirements of the *State Records Act 1998* and the council's records management policy.

8.23 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and the council's approved records management policies and practices.

8.24 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.

8.25 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the *State Records Act 1998*.

Councillor access to council buildings

8.26 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.

8.27 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.

8.28 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

Part 9:
Maintaining the Integrity of this Code

Complaints made for an improper purpose

9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.

9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

a) to bully, intimidate or harass another council official

b) to damage another council official's reputation

c) to obtain a political advantage

d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions

e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions

f) to avoid disciplinary action under the Procedures

g) to take reprisal action against a person for making a complaint alleging a breach of this code

h) to take reprisal action against a person for exercising a function prescribed under the Procedures

i) to prevent or disrupt the effective administration of this code under the Procedures.

Detrimental action

9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.

9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.

9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:

a) injury, damage or loss

b) intimidation or harassment

c) discrimination, disadvantage or adverse treatment in relation to employment

d) dismissal from, or prejudice in, employment

e) disciplinary proceedings.

Compliance with requirements under the Procedures

9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.

9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.

9.8 You must comply with a practice ruling made by the Office under the Procedures.

9.9 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

Disclosure of information about the consideration of a matter under the Procedures

9.10 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.

9.11 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.

9.12 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.

9.13 You must not disclose information about a complaint you have made alleging a breach of this code or a matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.

9.14 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act 1994.*

Complaints alleging a breach of this Part

9.15 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.

9.16 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.

Schedule 1:
Disclosures of Interest and Other Matters in Written Returns Submitted Under Clause 4.21

Part 1: Preliminary

Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

address means:

a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or

b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or

c) in relation to any real property, the street address of the property.

de facto partner has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

a) the allotment of shares in a company

b) the creation of a trust in respect of property

c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property

d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property

e) the exercise by a person of a general power of appointment over property in favour of another person

f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

interest means:

a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or

b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

return date means:

a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person

b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made

c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

relative includes any of the following:

a) a person's spouse or de facto partner

b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

d) the spouse or de factor partner of a person referred to in paragraphs (b) and (c).

travel includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:* A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.

3. *References to interests in real property:* A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

4. *Gifts, loans etc. from related corporations:* For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

Part 2: Pecuniary interests to be disclosed in returns

Real property

5. A person making a return under clause 4.21 of this code must disclose:

   a) the street address of each parcel of real property in which they had an interest on the return date, and

   b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and

   c) the nature of the interest.

6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:

   a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or

   b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.

7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.

8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

Gifts

9. A person making a return under clause 4.21 of this code must disclose:

   a) a description of each gift received in the period since 30 June of the previous financial year, and

   b) the name and address of the donor of each of the gifts.

10. A gift need not be included in a return if:

   a) it did not exceed $500, unless it was among gifts totalling more than $500 made by the same person during a period of 12 months or less, or

   b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or

   c) the donor was a relative of the donee, or

   d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.

11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:

   a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and

   b) the dates on which the travel was undertaken, and

   c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.

13. A financial or other contribution to any travel need not be disclosed under this clause if it:

    a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or

    b) was made by a relative of the traveller, or

    c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or

    d) did not exceed $250, unless it was among gifts totalling more than $250 made by the same person during a 12-month period or less, or

    e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or

    f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or

    g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.

14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:

    a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and

    b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and

    c) the nature of the interest, or the position held, in each of the corporations, and

    d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

    a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and

    b) required to apply its profits or other income in promoting its objects, and

    c) prohibited from paying any dividend to its members.

17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.

20. For the purposes of clause 19 of this schedule:

    close associate, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.

    property developer has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:

    a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and

    b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and

    c) a description of the position held in each of the unions and associations.

22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.

24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

Sources of income

26. A person making a return under clause 4.21 of this code must disclose:

    a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and

    b) each source of income received by the person in the period since 30 June of the previous financial year.

27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:

    a) in relation to income from an occupation of the person:

        i) a description of the occupation, and

        ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and

        iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or

    b) in relation to income from a trust, the name and address of the settlor and the trustee, or

    c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed $500, or is not reasonably expected to exceed $500, as the case may be.

29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.

30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:

    a) on the return date, and

    b) at any time in the period since 30 June of the previous financial year.

32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.

33. A liability to pay a debt need not be disclosed by a person in a return if:

    a) the amount to be paid did not exceed $500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:

i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and

ii) the amounts to be paid exceeded, in the aggregate, $500, or

b) the person was liable to pay the debt to a relative, or

c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or

d) in the case of a debt arising from the supply of goods or services:

i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or

ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or

e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

Schedule 2:
Form of Written Return of Interests Submitted Under Clause 4.21

'Disclosures by councillors and designated persons' return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

5. This form must be completed using block letters or typed.

6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by *[full name of councillor or designated person]*

as at *[return date]*

in respect of the period from *[date]* to *[date]*

[councillor's or designated person's signature]

[date]

A. Real Property	
Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest

B. Sources of income		
1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June		
Sources of income I received from an occupation at any time since 30 June		
Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June		
Sources of income I received from a trust since 30 June		
Name and address of settlor	Name and address of trustee	
3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June		
Sources of other income I received at any time since 30 June		
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]		

C. Gifts	
Description of each gift I received at any time since 30 June	Name and address of donor

D. Contributions to travel		
Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

E. Interests and positions in corporations			
Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)

F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

G. Positions in trade unions and professional or business associations	
Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position

H. Debts
Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

I. Dispositions of property
1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time
2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. Discretionary disclosures

Schedule 3:
Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

Special disclosure of pecuniary interests by *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the *[name of council or council committee (as the case requires)]*

to be held on the day of 20 .

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to councillor *[Tick or cross one box.]*	☐ The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). ☐ An associated person of the councillor has an interest in the land. ☐ An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest[1]	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land)[2] [Tick or cross one box]	☐ The identified land. ☐ Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control *[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]*	

1 Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

2 **A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.**

Proposed change of zone/planning control

[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]

Effect of proposed change of zone/planning control on councillor or associated person

[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]

RE: I Prosperity meeting

From: Tony McNamara <tony.mcnamara@canadabay.nsw.gov.au>
To: David Furlong <planurban@bigpond.com>
Cc: Angelo Tsirekas <angelo.tsirekas@canadabay.nsw.gov.au>, Belinda Li <belinda.li@iprosperity.com.au>, Peter Gainsford <peter.gainsford@canadabay.nsw.gov.au>
Date: Thu, 01 Feb 2018 09:02:13 +1100
Attachments: Notes of meeting with IProsperity.docx (16.87 kB)

Sorry guys
Attachment now attached.

Tony McNamara
Director Planning & Environment
City of Canada Bay
1a Marlborough Street, Drummoyne NSW 2047
tony.mcnamara@canadabay.nsw.gov.au
T 02 99116400
M [redacted]0926
www.canadabay.nsw.gov.au

From: David Furlong [mailto:planurban@bigpond.com]
Sent: Thursday, 1 February 2018 8:51 AM
To: Tony McNamara
Cc: Belinda Li; Angelo Tsirekas; Peter Gainsford
Subject: Re: I Prosperity meeting

Hi Tony,

No attachment.

Regards

David Furlong - Director

Plan Urban Services Pty Limited tel/fax 02 8812 5331
7 Chudleigh Street mob [redacted]3 541
Rydalmere NSW 2116 abn 91 528 083 843

On 1 Feb 2018, at 8:21 am, Tony McNamara <Tony.McNamara@canadabay.nsw.gov.au> wrote:

Good morning,
As discussed I have prepared some notes from yesterday's meeting. Please let me know if you agree, disagree with the notes, or let me have any alterations.
Thanks
Tony

Tony McNamara
Director Planning & Environment
City of Canada Bay
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tony.mcnamara@canadabay.nsw.gov.au
T 02 99116400
M [redacted]0926
www.canadabay.nsw.gov.au
<image001.png>
<image002.gif>

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Notes of meeting with IProsperity, David Furlong, Belinda Li, Tony McNamara Director Planning & Environment, Peter Gainsford General Manager, Angelo Tsirekis Mayor, Canada Bay Council.

31 January 2018.

Subject: I Prosperity site corner Mary St and Gauthorpe St Rhodes.

It was agreed meeting was held on a **WITHOUT PREJUDICE** basis.

DF made the submission that IProsperity had tested various configurations for their building and had come to the conclusion that the Council approved Masterplan concept was not economically viable and would not be built.

IProsperity were seeking to have Council approve a Planning Proposal which would allow a full floor plate (9 units per floor) over a maximum of 35 floors.

TM argued that there is a requirement to remain below the height of the approved building at 6-14 Walker St (approx. 37 floor), so a 35 storey building was not ruled out but the main objection was shadow impact to Union Square at the critical 12nn to 2.00pm period. The full floor plate proposal would cause overshadowing impacts during that period and was unacceptable.

BL and DF suggested how the overshadowing impacts could be offset via a heliostat, noting that the DCP/masterplan does not prescribe the maximum number of heliostats within Station Precinct. They also suggested the walkway from Mary St to the Billbergia central plaza would be a public benefit, and there was the possibility that Council could relocate the e-library from the Connection to their podium area thereby freeing the current e-library for commercial letting.

TM explained how the Union Square was a public benefit that had been negotiated with Mirvac following the failure of the NSW Dept of Planning to provide a town square for the Rhodes community. TM further offered the view that if IProsperity seriously wished to diminish the value of the Union Square by overshadowing, that a heliostat was not a suitable form of compensation and that IProsperity would need to consider a “like for like” compensation.

The suggestion then put forward which was agreed could be worth considering was as follows;

- Move the Iprosperity building to the east, while maintaining a public passageway from Mary St to the Bilbergia central plaza.
- Dedicate an equivalent area to that affected by shadow at Union Square, on the western boundary of the IProsperity site as an additional public square.
- Install a heliostat on top of the IProsperity building to offset the shadowing that would be caused to Union Square.
- Ensure that the IProsperity building was measurably lower than 6-14 Walker St to maintain the “centrepoint” philosophy of the Masterplan.
- It was agreed that the concept was worth considering.

BL advised that she would have some concept plans including massing diagrams prepared to test these concepts and return them to Council within a day or two.

RE: Meeting with IProsperity

From: Tony McNamara <tony.mcnamara@canadabay.nsw.gov.au>
To: Peter Gainsford <peter.gainsford@canadabay.nsw.gov.au>
Date: Mon, 12 Feb 2018 11:25:11 +1100

Thanks Peter

Tony McNamara
Director Planning & Environment
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1a Marlborough Street, Drummoyne NSW 2047
tony.mcnamara@canadabay.nsw.gov.au
T 02 99116400
M [redacted]0926
www.canadabay.nsw.gov.au

From: Peter Gainsford
Sent: Monday, 12 February 2018 9:01 AM
To: Tony McNamara; Angelo Tsirekas
Subject: RE: Meeting with IProsperity

Thanks Tony

That's looks fine

Peter

Peter Gainsford
General Manager
City of Canada Bay
1a Marlborough Street, Drummoyne NSW 2047
peter.gainsford@canadabay.nsw.gov.au
T 02 9911 6504
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City of Canada Bay

From: Tony McNamara
Sent: Saturday, 10 February 2018 2:55 PM
To: Peter Gainsford; Angelo Tsirekas
Subject: Meeting with IProsperity

Hi peter and Angelo
Could you please check these notes as an accurate recoird of our meeting this week?
Thanks

Notes on meeting with I Prosperity 7th February 2018

Present: David Furlong and Belinda Li for IProsperity and Angelo Tsirekas Mayor, Peter Gainsford General Manager and Tony McNamara Director Planning and Environment for City of Canada Bay Council.

The meeting was a continuation of an earlier **WITHOUT PREJUDICE** meeting on Wednesday 31st January 2018 at which the IProsperity representatives presented the case that they wished to :

- Build on the IProsperity site a development in the nature of a 35/36 storey mixed use development comprising 3 levels of podium and 32/33 residential levels.
- Follow the Steven Bowers design which is essentially an “egg shaped” floor plan of approx. 895m2 per floor plate.
- Provide a heliostat to offset shadow impacts on Union Square during the critical 12nn to 2.00PM winter solstice
- Contribute $ as a public benefit via a VPA process.

The Jan 31st meeting concluded on the basis that a new project causing overshadowing of a public square was at face value unacceptable and a heliostat was not a replacement for natural sunlight. The IProsperity representatives were asked to consider whether their project could be modified to improve the solar access to Union Square or alternatively consider dedicating some portion of their site as public open space, in effect replacing “like for like”.

At the meeting of 7th February, the following new matters were presented for consideration;

- The Steven Bowers tower concept was rotated slightly in an anticlockwise direction which showed an improvement on shadow diagrams for Union Square
- There was discussion that the ground floor area on the corner of Marquet and Mary Streets which was designed mainly as an entry vestibule with a 6m ceiling height could potentially be made an open public space. The opportunity created by the rotation of the tower created a space which was partially unroofed and partially roofed. The residential entry would need to be relocated to the north/south public walkway on the eastern side of the site.
- The $ offer via VPA was in the order of $2M which at face value is totally unacceptable, but PG agreed to send to Council’s consultant valuer for advice.

The final actions from the meeting were as follows:

- A concept for the potential public space offset at the corner of Marquet/Mary Sts would be investigated and detailed by IProsperity’s architects
- The concept of the tower rotation as mooted would be further investigated by IProsperity as there was concern regarding column placement through the basement levels.
- PG would have the $ VPA be assessed by Council’s valuer.

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IPG_VPA Proposal_08.03.2018

From:	Belinda Li <belinda.li@iprosperity.com>
To:	Peter Gainsford <peter.gainsford@canadabay.nsw.gov.au>
Cc:	Harry Huang <harry.huang@iprosperity.com>, David Furlong <planurban@bigpond.com>
Date:	Thu, 08 Mar 2018 16:46:20 +1100
Attachments:	VPA_Rhodes_08.Mar.2018.pdf (642.03 kB)

Dear Peter,

As per our conversation this Monday, please see attached our offer to council in regards to VPA subject to the proposed planning proposal as agreed in Monday meeting.

Please feel free to contact me if you need any more information from us. And we are looking forward to hear from you in earliest.

Regards,

iPROSPERITY

Belinda LI | General Manager – Projects

iPROSPERITY
Level 22, 126 Phillip Street,
Sydney NSW 2000.

M [redacted]7678 **E** belinda.li@iprosperity.com.au | W www.iprosperity.com.au
P +61 2 9154 4757

iPROSPERITY

Mr Peter Gainsford
General Manager
City of Canada Bay Council
Locked Bag 1470,
Drummoyne NSW 1470

Dear Peter,

Re: I Prosperity Group Planning Proposal & VPA at Rhodes

Thank you for your time this Monday (5 March) and the subject Councillor Workshop, regarding our Planning Proposal at Rhodes and specifically progressing the VPA negotiations.

As you are aware, both Council and I-Prosperity (IPG) have commissioned valuation reports in relation to the calculation of the uplift value, resulting from the potential approval of the current Planning Proposal. Council's original report set the value of the uplift at $2500 per square metre. IPG's original report (copy provided to Council) set a range of $2000 - $2500 per square metre. Since the preparation of both reports the market has dropped markedly and IPG have obtained a second current report (copy provided to Council), which suggests a value of $2250 per square meter in the current market.

IPG is of the opinion that this value correctly reflects the current market.
As we discussed on Monday, IPG is happy to accept the methodology contained on page 4 of Mr Montague's (BEM) original report, although we have not been provided a copy of the full document. **That methodology suggests that Council and IPG share the value of the uplift on a 50 / 50 basis.**

During the meeting on 5th March 2018, the overall size of the proposed building was also discussed and we agreed to a reduced building height to a maximumzz height of 117.1m representing a top RL 129.60. In that reduced form the resultant building would achieve an FSR of 13.059:1 (including winter gardens) and 11.94:1 (excluding winter gardens). This would result in an uplift FSR of 10.184:1 (without the winter gardens). In that regard, IPG accepts that in terms of the Statutory Planning calculation of FSR, the winter gardens are to be included in GFA - but for

HEAD OFFICE
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Sydney, NSW 2000,
Australia

MELBOURNE
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120 Collins Street,
Melbourne, VIC, 3000,
Australia

SINGAPORE
80 Raffles Place #26-01,
UOB Plaza 1,
Singapore 048624

HONG KONG
Unit 04, Level 7,
Bright Way Tower,
No. 33 Mong Kok Road,
Kowloon, Hong Kong, China

iPROSPERITY

the purposes of the valuation, believes that it is reasonable to exclude those spaces just as the balconies themselves are excluded.

If the methodology on page 4 of Mr. Montague's report was applied to the reduced FSR uplift and subject to the current market value suggested in our second Valuation report of $2250 per square metre, the total uplift value would be $30,677,346.5. If this was shared on a 50 / 50 the VPA return to Council would be $15,338,673.25. IPG is happy to make that offer to Council and in doing so, accepts that the VPA amount is exclusive of Section 94 payments.

Alternatively, as per our earlier discussions, IPG will fund an independent Valuation Report obtained by Council, in relation to the current market. A mutually acceptable valuer would undertake that report, with no previous links to either party.

Yours Sincerely

[redacted]

Belinda LI | General Manager – Projects

iPROSPERITY
Level 22, 126 Phillip Street,
Sydney NSW 2000.

P +61 2 9154 4757 M [redacted]7678
E belinda.li@iprosperity.com.au | W www.iprosperity.com.au

iPROSPERITY

10 April 2018

Mr Peter Gainsford
General Manager
City of Canada Bay Council
Locked Bag 1470,
Drummoyne. NSW. 1470.

Dear Peter,

Re: I Prosperity Group Planning Proposal & VPA at Rhodes

I refer to our recent meetings regarding our Planning Proposal at Rhodes and specifically progressing the VPA negotiations and thank you for your time.

At our most recent meeting on 29 March, I outlined the likely reductions in proposed gross floor area (GFA) and associated floor space ratio (FSR), as a result of the opening up of the ground floor and use as a public space and the removal of the "winter gardens" on the lower floors. These alterations result in a total GFA of 36,954 square metres representing an FSR of 12.73:1. Currently, the site enjoys an FSR of 1.76:1, which means that the proposed uplift in FSR is 10.97:1.

As we had previously discussed, IPG is happy to accept the methodology contained on page 4 of Mr Montague's (BEM) original report, although we have not been provided a copy of the full document. **That methodology suggests that Council and IPG share the value of the uplift on a 50 / 50 basis.**

Using the above figures and Mr Montague's methodology, the calculation of the total VPA uplift amount would be 36954sqm * $2500-$47,200,000 (land purchase cost) ÷ 2= $22,592,500.

I-Prosperity is happy to make this offer to Council as its VPA contribution and we look forward to finalising these negotiations with Council.

Yours Sincerely
Belinda Li

[redacted]

HEAD OFFICE
Level 22, 126 Phillip Street,
Deutsche Bank Place,
Sydney, NSW 2000,
Australia

MELBOURNE
Level 45,
120 Collins Street,
Melbourne, VIC, 3000,
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80 Raffles Place #26-01,
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Kowloon, Hong Kong,
China

SHANGHAI
Suite 1107, Building A,
818 East Longhua Road,
Huangpu District,
Shanghai, China

iprosperity.com.au

ACN: 142 091 585

FW: IPG _ VPA Offer _ Rhodes

From: Tony McNamara <tony.mcnamara@canadabay.nsw.gov.au>
To: Peter Gainsford <peter.gainsford@canadabay.nsw.gov.au>
Cc: Paul Dewar <paul.dewar@canadabay.nsw.gov.au>, Karen Lettice <karen.lettice@canadabay.nsw.gov.au>
Date: Fri, 13 Apr 2018 15:23:28 +1000
Attachments: IPG _VPA OFFER_10.April 2018.pdf (54.29 kB)

Peter
I have instructed Karen/Paul Dewar to draft report to Council accepting the offer and proposing a PP which adopts the items which were agreed for IProsperity at the recent Council workshop. I anticipate this report will be ready to go to May Council meeting.
tony

Tony McNamara
Director Planning & Environment
City of Canada Bay
1a Marlborough Street, Drummoyne NSW 2047
tony.mcnamara@canadabay.nsw.gov.au
T 02 99116400
M [redacted]0926
www.canadabay.nsw.gov.au

From: Belinda Li [mailto:Belinda.Li@iprosperity.com]
Sent: Friday, 13 April 2018 2:50 PM
To: Peter Gainsford; Tony McNamara
Cc: David Furlong
Subject: FW: IPG _ VPA Offer _ Rhodes

Hi Peter and Tony,

Just want to confirm if you well received IPG VPA proposal, please let me know what's the next step to proceed.

You have a nice weekend.

Regards,
Belinda

From: Belinda Li
Sent: Tuesday, 10 April 2018 3:19 PM
To: 'Peter Gainsford' <Peter.Gainsford@canadabay.nsw.gov.au>; Tony McNamara <Tony.McNamara@canadabay.nsw.gov.au>
Cc: David Furlong <planurban@bigpond.com>; Harry Huang <Harry.Huang@iprosperity.com>
Subject: IPG _ VPA Offer _ Rhodes

Dear Tony and Peter,

Please see attached VPA offer letter for 4 Mary St, Rhodes NSW 2138.

Please feel free to contact me if any issue.

iPG
iPROSPERITY

Belinda LI | General Manager – Projects

iPROSPERITY
Level 22, 126 Phillip Street,
Sydney NSW 2000.

P + M [redacted]7678 E belinda.li @iprosperity.com.au | W

[redacted]4757 www.iprosperity.com.au

iPROSPERITY

10 April 2018

Mr Peter Gainsford
General Manager
City of Canada Bay Council
Locked Bag 1470,
Drummoyne. NSW. 1470.

Dear Peter,

Re: I Prosperity Group Planning Proposal & VPA at Rhodes

I refer to our recent meetings regarding our Planning Proposal at Rhodes and specifically progressing the VPA negotiations and thank you for your time.

At our most recent meeting on 29 March, I outlined the likely reductions in proposed gross floor area (GFA) and associated floor space ratio (FSR), as a result of the opening up of the ground floor and use as a public space and the removal of the "winter gardens" on the lower floors. These alterations result in a total GFA of 36,954 square metres representing an FSR of 12.73:1. Currently, the site enjoys an FSR of 1.76:1, which means that the proposed uplift in FSR is 10.97:1.

As we had previously discussed, IPG is happy to accept the methodology contained on page 4 of Mr Montague's (BEM) original report, although we have not been provided a copy of the full document. **That methodology suggests that Council and IPG share the value of the uplift on a 50 / 50 basis.**

Using the above figures and Mr Montague's methodology, the calculation of the total VPA uplift amount would be 36954sqm * $2500-$47,200,000 (land purchase cost) ÷ 2= $22,592,500.

I-Prosperity is happy to make this offer to Council as its VPA contribution and we look forward to finalising these negotiations with Council.

Yours Sincerely
Belinda Li

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SHANGHAI
Suite 1107, Building A,
818 East Longhua Road,
Huangpu District,
Shanghai, China

ACN: 142 091 585

iprosperity.com.au

Re: VPA Offer Rhodes

From: Tony McNamara <tony.mcnamara@canadabay.nsw.gov.au>
To: Peter Gainsford <peter.gainsford@canadabay.nsw.gov.au>
Cc: Kent Walton <kent.walton@canadabay.nsw.gov.au>
Bcc: Tony McNamara <tony.mcnamara@canadabay.nsw.gov.au>
Date: Mon, 14 May 2018 21:14:35 +1000

Will do Peter.

Sent from my iPhone

On 14 May 2018, at 6:08 pm, Peter Gainsford <Peter.Gainsford@canadabay.nsw.gov.au> wrote:

Hi Tony

Can you draft some appropriate words that outlines our position in relation to the GFA calculation and subsequent monetary contribution.

I suggest that you check this with Lindsay and get some suggested wording from him that covers off the public benefit. If he has time tomorrow morning I am happy for him to drat the reply.

Thanks

Peter

Peter Gainsford
General Manager
City of Canada Bay
1a Marlborough Street, Drummoyne NSW 2047
peter.gainsford@canadabay.nsw.gov.au
T 0[redacted]9911 6504
www.canadabay.nsw.gov.au
<image005.png>

From: Belinda Li [mailto:Belinda.Li@iprosperity.com]
Sent: Monday, 14 May 2018 6:02 PM
To: Peter Gainsford
Cc: David Furlong (planurban@bigpond.com); Harry Huang; Michael Gu
Subject: RE: VPA Offer Rhodes

HI Peter,

Will this final figure subject to the final design GFA? We might not be ran exactly the GFA as the estimation cause the concept plan didn't coordinate with any services yet. We might end up using less GFA. But we can agree with your calculation formula subject to final design.

Again in regards to where the money going to be used, we believe council might need to provide us detailed list in the VPA.

Let me know if any issue.

Belinda LI | General Manager – Projects

iPROSPERITY
Level 22, 126 Phillip Street,
Sydney NSW 2000.

P + 61 2 9154 4757 M [redacted]7678 E belinda.li @iprosperity.com.au | W www.iprosperity.com.au

From: Peter Gainsford [mailto:Peter.Gainsford@canadabay.nsw.gov.au]
Sent: Monday, May 14, 2018 5:57 PM
To: Belinda Li <Belinda.Li@iprosperity.com>
Cc: David Furlong (planurban@bigpond.com) <planurban@bigpond.com>; Harry Huang <Harry.Huang@iprosperity.com>; Michael Gu <Michael.Gu@iprosperity.com>
Subject: RE: VPA Offer Rhodes

Hi Belinda

Just confirming that your VPA offer is $25,816,250 payable to Council. The money will be used as a public benefit for capital works within the locality and also provide for recreational facilities within the City of Canada Bay.

Could you please get back to me by 12.00PM Tuesday 15th May to confirm that this is your understanding.

Kind regards

Peter

Peter Gainsford
General Manager
City of Canada Bay
1a Marlborough Street, Drummoyne NSW 2047
peter.gainsford@canadabay.nsw.gov.au
T 02 9911 6504
www.canadabay.nsw.gov.au
<image005.png>

From: Belinda Li [mailto:Belinda.Li@iprosperity.com]
Sent: Monday, 14 May 2018 4:28 PM
To: Peter Gainsford
Cc: David Furlong (planurban@bigpond.com); Harry Huang; Michael Gu
Subject: RE: VPA Offer Rhodes

HI Peter,

Unfortunately, we need to agree with you because the email comes out the last second.

Therefore, we agree with you VPA proposal. And see you tomorrow.

Due to company re-structure, belinda@ljconslink.com.au will not be in use from 1st June 2018. Please send email to belinda@fortegroups.com.au

<image003.jpg> **Regards,**

Belinda LI
FORTE SYDNEY PROPERTY GROUP Pty Ltd
Level 2/ 3 Rider Boulevard, Rhodes NSW 2138
PO Box 3874 Rhodes NSW 2138
P (02) 9736 1863 **M:** [redacted]7 678
E : belinda @fortegroups.com.au **W:** www.fortegroups.com.au

---

From: Peter Gainsford [mailto:Peter.Gainsford@canadabay.nsw.gov.au]
Sent: Friday, May 11, 2018 6:20 PM
To: Belinda Li <Belinda.Li@iprosperity.com>
Cc: David Furlong (planurban@bigpond.com) <planurban@bigpond.com>; Harry Huang <Harry.Huang@iprosperity.com>; Michael Gu <Michael.Gu@iprosperity.com>
Subject: Re: VPA Offer Rhodes

Hi Belinda

Thanks for your email.

We need to resolve this issue prior to Tuesday's Council Meeting.

I will be in touch on Monday.

Kind regards

Peter

On 11 May 2018, at 5:21 pm, Belinda Li <Belinda.Li@iprosperity.com> wrote:

> Dear Peter,
>
> Well received the letter from you dated 10th May 2018.
>
> I-Prosperity Waterside Rhodes Pty Ltd (I-Prosperity) offered Hossa Group to purchase 3-9 Marquet and 4 Mary street for $41 million. The vendors accepted the offer on the basis the deal was structured by way of a 10% put and call option deed and a land sale contract cover the 90% balance. The vendors asked that the deal needs to be structurally paid in combine of option and contract exchange. These arrangement were unconditional, i.e., if I-Prosperity had not exercised the call, the vendor would have put the properties to it under the put option.
>
> We understand this last issue for negotiation means we are approximately $2 million away from agreeing on the value sharing contribution. The total price paid for Hossa property is $41mil and we believe this is the amount that ought to be used for the VPA calculation.
>
> We are looking forward to hear from you in earliest.
>
> **Due to company re-structure, belinda@ljconslink.com.au will not be in use from 1st June 2018. Please send email to belinda@fortegroups.com.au**
>
> <image004.jpg> **Regards,**
>
> **Belinda LI**
> **FORTE SYDNEY PROPERTY GROUP Pty Ltd**
> Level 2/ 3 Rider Boulevard, Rhodes NSW 2138
> PO Box 3874 Rhodes NSW 2138
> **P** (02) 9736 1863 **M:** [redacted]7 678
> **E** : belinda @fortegroups.com.au **W:** www.fortegroups.com.au
>
>
>
> Belinda Li | General Manager I Projects
>
> iPROSPERITY
> Level 22, 126 Phillip Street,
> Sydney NSW 2000.
>
> P + 61 2 9736 1863 M + [redacted]7 678 E Belinda.Li@iprosperity.com
> iprosperity.com
>
>
>
> **From:** Peter Gainsford [mailto:Peter.Gainsford@canadabay.nsw.gov.au]
> **Sent:** Thursday, May 10, 2018 3:26 PM
> **To:** Belinda Li <Belinda.Li@iprosperity.com>; David Furlong (planurban@bigpond.com) <planurban@bigpond.com>
> **Subject:** RE: VPA Offer Rhodes
>
> Dear Belinda,
>
> Please find attached Council's response to recent discussions re the BPA for 1, 3, 5, 7 & 9 Marquet Street and 4 Mary Street Rhodes.

Regards
Peter Gainsford
General Manager
City of Canada Bay
1a Marlborough Street, Drummoyne NSW 2047
peter.gainsford@canadabay.nsw.gov.au
T 02 9911 6504
www.canadabay.nsw.gov.au
<image001.png>
<image007.png>

iPROSPERITY

City of Canada Bay

Please consider the environment before printing this e-mail

FORTE
Sydney Property Group

RE: Re: Rhodes Recreation Centre - Warren Green - Architect's Review (Final) - Mantric Architecture - 201807...

From: Narelle Butler <narelle.butler@canadabay.nsw.gov.au>
To: Manuela Baumann <manuela.baumann@canadabay.nsw.gov.au>
Cc: Kelly Loveridge <kelly.loveridge@canadabay.nsw.gov.au>, Samuel Lettice <samuel.lettice@canadabay.nsw.gov.au>
Date: Fri, 27 Jul 2018 12:27:45 +1000

Hi Manuela,

As you would be aware, Council's development assessment staff are independent of the VPA process as these agreements are negotiated at Executive level (ie., General Manager, Director Planning and Environment etc) and with the involvement of the Property Manager (Kent Walton) and subject to the agreement of Council (Councillors). As you would be aware, our adopted VPA Policy, requires Council to engage an independent planning consultant to assess any DA accompanied by a VPA. Therefore, it is the responsibility of the applicant to ensure that they lodge all of the information/plans etc required under the VPA as these are matters they have agreed to in signing up to the VPA. Billbergia and their consultants are certainly aware of their responsibilities in this regard and from what I can see in ECM under DA2017/0544 (Kendal has Council's hard copy file at present), they appear to have satisfied all of the DA lodgement requirements under Schedule 23 in the current DA submission to Council.

In relation to reviewing and assessing this information, a variety of Council staff assist by providing referral comments/conditions/feedback to Kendal to include in his independent assessment of the DA. For example, our building surveyors review the BCA report, Council's engineering staff (Traffic Engineers and City Assets etc) review the car share scheme, parking, public domain works etc. As I mentioned during our discussion, Kendal is a planning consultant and a transport planner, therefore, he needs to rely on Council's expertise in part to ensure that all matters required to be considered as part of the DA assessment process under the Environmental Planning and Assessment Act 1979 have been addressed and satisfied – it is important to note that under Section 7.4 (9) (a) of the Act, a VPA cannot impose an obligation on a planning authority to grant consent to the DA that the VPA relates to, and Clause 2.6 of Council's adopted Planning Agreements Policy states as follows:-

2.6 When exercising its functions under the Act in relation to an application by a developer for an instrument change or a development consent to which a proposed planning agreement relates, the Council will consider to the fullest extent permitted by law:
a. whether the proposed planning agreement is relevant to the application and hence may be considered in connection with the application; and
b. if so, the proper planning weight to be given to the proposed planning agreement.

Therefore, any planning consultant is required to remain independent in their assessment of a DA accompanied by a VPA and are not bound to consider the VPA as part of their assessment of a DA if they do not consider it relevant, and if they do consider relevant, they must decide what weight should be given to the VPA in planning terms.

Please note: I have cc'd Sam Lettice in this email as he is co-ordinating Kendal's review of the DA.

I trust the above is of assistance. If you have any further questions in relation to the DA assessment process, please let me know.

Regards
Narelle

Narelle Butler | Manager Statutory Planning
City of Canada Bay

1a Marlborough St Drummoyne NSW 2047 | www.canadabay.nsw.gov.au
T: 02 9911 6440 | Narelle.Butler@canadabay.nsw.gov.au

From: Manuela Baumann
Sent: Friday, 27 July 2018 10:50 AM
To: Narelle Butler
Cc: Kelly Loveridge
Subject: Re: Rhodes Recreation Centre - Warren Green - Architect's Review (Final) - Mantric Architecture - 201807...

Hi Narelle,

It is Manuela from the Rhodes Recreation Centre (RRC) Project Team. It was real helpful to talk to you the other day. Thank you!

I have shared your input with Kelly Loveridge, who is now the Project Sponsor for the RRC.

We are currently figuring out what the best way forward is given the 'niche' architect identified non compliances during the peer review (FYI attached, confidential) that Kendall would not be able to find because, as you said, this is not his area of expertise.

We will have a phone conference with the Peer Reviewer and the Architect next week to understand what would need to happen to make the design compliant.

In reading the VPA right now, I have another question popping up in my head: Who has the role in the development application process to cross check against the VPA - Schedule 23 – Content of Development Applications (refer to attached VPA extract) if the developer complied? Is this something Kendall would be checking?

FYI – We have not yet talked to the Developer or SJB as we need to form a view on implications/approach first.

With thanks
Manuela

Manuela Baumann | Project Administrator
City of Canada Bay

15-17 Regatta Road Five Dock NSW 2046 | www.canadabay.nsw.gov.au
T: 02 9911 6488 | Manuela.Baumann@canadabay.nsw.gov.au

From: Belinda Li
Sent: 5 Dec 2018 11:11:21 +1100
To: Kent Walton
Subject: RE: Station Precinct Rhodes VPA - Execution Version
Attachments: 3538_001.pdf

Hi Kent,

Please see the signed VPA from IPG Director Harry Huang.

We will mail the original copy to council tomorrow morning first thing.

Thanks,

Belinda LI | General Manager – Projects

iPROSPERITY
Level 22, 126 Phillip Street,
Sydney NSW 2000.

M [redacted]7678
P +61 2 9154 475 7
E belinda.li@iprosperity.com.au | W www.iprosperity.com.au

From: Kent Walton [mailto:Kent.Walton@canadabay.nsw.gov.au]
Sent: Wednesday, December 5, 2018 7:24 AM
To: Belinda Li <Belinda.Li@iprosperity.com>
Subject: Fwd: Station Precinct Rhodes VPA - Execution Version

Hi Belinda,

Can you please give me an update in relation to your progress with the VPA as attached to my email below.

Regards
Kent

Kent Walton | Manager, Buildings & Property
City of Canada Bay

1a Marlborough St Drummoyne NSW 2047 | www.canadabay.nsw.gov.au
T: 02 9911 6428 | Kent.Walton@canadabay.nsw.gov.au

Begin forwarded message:

From: Kent Walton <Kent.Walton@canadabay.nsw.gov.au>
Date: 3 December 2018 at 12:18:57 pm AEDT
To: Belinda Li <Belinda.Li@iprosperity.com>
Subject: Station Precinct Rhodes VPA - Execution Version

HI Belinda,

Further to our phone conversations last Friday, please find attached the final version of the VPA in executable form.

The final amendments to the document are as follows:

- *Draft* watermark removed,
- Developers address updated on page 4,
- Schedule 1, Part 1, cl.1.2 – reflects the agreement that the offer is for 2 bedrooms units only
- Schedule 1, Part 2, items 1 & 2. Item 1 to provide a pool of 10 units of which Council will select 5 only. Item 2 is that pool of 10 units is to be provided to Council 28 days after development consent is provided.
- Schedule 1, Part 4 – indicative floor plan included.

I believe that was all of the items we discussed and therefore the attached VPA document is ready for your final review and execution if satisfactory.

Once executed please scan a copy and e-mail to me and send the original in the mail to Council and attention to myself.

Regards
kent

<CAN_CAN18011_023.pdf>

Deed

Station Precinct Rhodes

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

City of Canada Bay Council

I-Prosperity Waterside Rhodes Pty Ltd

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Station Precinct Rhodes Planning Agreement

Table of Contents

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Station Precinct Rhodes
Planning Agreement

Summary Sheet

Council:

Name: City of Canada Bay Council

Address: Locked Bag 1470 DRUMMOYNE NSW 2047

Telephone: 02 9911 6555

Facsimile: 02 9911 6550

Email: council@canadabay.nsw.gov.au

Representative: Peter Gainsford, General Manager

Developer:

Name: I-Prosperity Waterside Rhodes Pty Ltd

Address: Level 22, 126 Phillip Street SYDNEY NSW 2000

Telephone: [redacted]7678

Email: Belinda.li@iprosperity.com

Representative: Belinda Li

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2.

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Dispute Resolution:

See Part 3.

Security:

See Clause 19.

Registration:

See clause 24.

Restriction on dealings:

See clause 25.

Station Precinct Rhodes Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (**Council**)

and

I-Prosperity Waterside Rhodes Pty Ltd ACN 608 318 752 of Level 22, 126 Phillip Street SYDNEY NSW 2000 (**Developer**)

Background

A The Developer owns the Land.

B The Land is within the Canada Bay Council area.

C The Developer has made the Planning Proposal Submission to the Council requesting the Council to prepare a planning proposal under the Act relating to the making of a Local Environmental Plan that will facilitate the carrying out of the Development on the Land.

D The value of the Land will increase significantly if the Local Environmental Plan is made.

E The Developer is agreeable to sharing the increased value with the Council if the Developer carries out the Development in order to enable the Council to fund improvements to the public domain around Rhodes railway station and surrounding streets and to fund recreation facilities in the City of Canada Bay.

F The Developer and the Council has agreed to enter into this Deed to give effect to that value sharing arrangement.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Affordable Housing has the same meaning as in the Act on the date this Deed commences.

Affordable Housing Unit (AHU) means a Dwelling (including the lot on which the Dwelling is situated) in the Development that is Affordable Housing and which meets the AHU Criteria and has been selected in accordance with the AHU Selection Process.

AHU Criteria means the criteria specified in Part 1 of Schedule 1.

AHU Dedication means the dedication to the Council free of cost to the Council of AHUs in the Development having an aggregated value that is as near as possible to 20% of the Development Contribution Value.

AHU Selection Process means the process described in Part 2 of Schedule 1.

AHU Construction Standards means the construction standards for AHUs specified in Part 3 of Schedule 1.

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Charge Land means the Land or such other land as the Council, in its absolute discretion, may agree in writing.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CPI means the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means development on the Land in accordance with a Development Consent (as modified or substituted from time to time under the Act) occurring as a consequence of the making of a Local Environmental Plan arising from the Planning Proposal Submission.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act and includes a development consent as modified or substituted from time to time.

Development Contribution does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Development Contributions Value means the dollar value calculated in accordance with the formula in clause 9.

Dwelling has the same meaning as in *Canada Bay Local Environmental Plan 2013* on the date this Deed commences.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Final Residential Lot means a lot in the Development capable of separate occupation, use or disposition for residential purposes created by the procuring of the registration in the office of the Registrar-General (within the meaning of the Real Property Act 1900) of:

(a) a plan of subdivision within the meaning of section 195 of the Conveyancing Act 1919 , or

(b) a strata plan or a strata plan of subdivision within the meaning of the Strata Schemes Development Act 2015.

Gross Floor Area has the same meaning as in Canada Bay Local Environmental Plan 2013.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Initial Monetary Contribution Amount means 80% of the Development Contributions Value adjusted in accordance with clause 13.3.

Land means all of the following land:

1 Marquet Street, Rhodes	Lot 5 DP17671
3 Marquet Street, Rhodes	Lot 4 DP17671
5 Marquet Street, Rhodes	Lot 3 DP17671
7 Marquet Street, Rhodes	Lot 2 DP17671
9 Marquet Street, Rhodes	Lot 1 DP17671
4 Mary Street, Rhodes	Lot 6 DP17671

Local Environmental Plan has the same meaning as in the Act.

Party means a Party to this Deed.

Plan means a plan referred to in paragraph (a) or (b) of the definition of Final Residential Lot.

Planning Proposal Submission means the written submission made by the Developer to the Council on 26 May 2016 as subsequently revised by the Developer and endorsed by the Council on 15 May 2018 requesting the Council to prepare a Planning Proposal for the Land under s3.33 of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.**Subdivision Certificate** has the same meaning as in the Act.

Supplementary Monetary Contribution Amount means the payment to the Council of 80% of any increase in the Development Contributions Value that occurs at any time after payment of the Initial Monetary Contribution.

Total Gross Floor Area in the Development means the total gross floor area in the development for which Development Consent has been granted from time to time.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.

1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Deed to dollars or $ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

1.2.5 A reference in this Deed to a $ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

1.2.12 References to the word 'include' or 'including' are to be construed without limitation.

1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.

1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of Cost.

1.2.16 Any schedules, appendices and attachments form part of this Deed.

1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

2.2 The Developer agrees that this deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

3 Commencement

3.1 This Deed commences and has force and effect on and from the date when both Parties have executed this Deed.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

4.1 This Deed applies to the Land and to the Development.

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of, this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

8.1 This Deed does not exclude the application of s7.11 to the Development.

8.2 This Deed does not exclude the application of s7.12 to the Development.

8.3 This Deed does not exclude the application of s7.24 to the Development.

Part 2 – Development Contributions

9 Calculation of Development Contributions

9.1 The formula for calculating the Development Contributions Value is:

$$DCV = \frac{[GFA \times m^2] - P}{2}$$

Where:

DCV is the Development Contributions Value

GFA is the Total Gross Floor Area of the Development

m^2 (square metres) is $2,500.00

P is $43,100,000.00

10 Obligation to make Development Contributions

10.1 The Developer is to make Development Contributions to the Council equal to the Development Contributions Value in accordance with this Deed.

10.2 The Parties are to agree in writing on the value of the AHU Dedication (irrespective of whether the AHU Dedication has occurred) before the time when the Initial Monetary Contribution is payable to the Council as specified in this Deed.

11 Dedication of Affordable Housing Units

11.1 The Developer is to make the AHU Dedication prior to the issuing of the first Occupation Certificate relating to any residential part of the Development other than an AHU.

12 Occupation Certificates

12.1 The Developer must apply for and obtain an Occupation Certificate for the AHUs prior to the AHU Dedication.

12.2 The Developer is not to apply for or cause or procure the issuing of an Occupation Certificate relating to any residential part of the Development other than an AHU in breach of clause 11.

13 Monetary Development Contribution

13.1 The Developer is to pay monetary Development Contributions to the Council in accordance with this clause.

13.2 The Developer is to pay the Initial Monetary Contribution Amount subject to adjustment in accordance with clause 13.3 prior to the issuing of the first Subdivision Certificate for the creation any Final Residential Lot in the Development.

13.3 The Initial Monetary Contribution Amount is to be adjusted before payment in accordance with the following formula:

AIMCA = DCV – AHUV

Where:

AIMCA is the adjusted Initial Monetary Contribution Amount

DCV is the Development Contributions Value

AHUV is the value of the AHU Dedication agreed between under clause 10.2

13.4 The Developer is to pay any Supplementary Monetary Contribution not later than 14 days after the Council makes a written demand for payment to the Developer following any increase in the Development Contributions Value that occurs at any time after payment of the Initial Monetary Contribution,

14 Restriction on issuing certificates under the Act

14.1 The Developer is not to apply for, or cause or procure the issuing of, a Subdivision Certificate for the creation any Final Residential Lot in Development unless the Initial Monetary Contribution Amount to the Council has been paid to the Council.

14.2 Without limiting clause 14.1, the Developer is not to apply for, or cause or procure the issuing of, any kind of certificate specified in s6.4 of the Act for the Development while any part of the Initial Monetary Contribution Amount or any Supplementary Monetary Contribution Amount that has become due and payable under this Deed remains unpaid.

15 Use of Monetary Contribution by Council

15.1 Subject to clause 15.2, the Council is to apply the Initial Monetary Contribution and any Supplementary Monetary Contribution paid by the Developer towards the following public purposes:

15.1.1 the significant and high quality upgrade of the public domain around Rhodes railway station and in surrounding streets, and

15.1.2 upgrading recreation facilities within the City of Canada Bay.

15.2 The Council may apply Initial Monetary Contribution and any Supplementary Monetary Contribution paid by the Developer towards a public purpose other than those specified in clause 15.1 if the Council reasonably considers that the public interest would be better served in so doing.

16 When Contributions are made

16.1 A monetary contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution due and payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

16.2 An AHU is dedicated for the purposes of this Deed when:

16.3 the Council is given:

16.3.1 an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the AHU to the Council when executed by the Council as transferee and registered, and

16.3.2 the written consent to the registration of the transfer of any person whose consent is required to that registration, and

16.3.3 a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.

16.4 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

16.5 The Developer is to ensure that an AHU dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

16.6 If, having used all reasonable endeavours, the Developer cannot ensure that an AHU to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Part 3 – Dispute Resolution

17 Dispute resolution – expert determination

17.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:

17.1.1 the Parties to the Dispute agree that it can be so determined, or

17.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the

Dispute gives a written opinion that the Dispute can be determined by a member of that body.

17.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

17.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.

17.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

17.6 Each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.

17.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.

18 Dispute Resolution - mediation

18.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.

18.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

18.3 If a notice is given under clause 18.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

18.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

18.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

18.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.

18.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

Part 4 – Security & Enforcement

19 Grant of Charge

19.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:

19.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and

19.1.2 any damages that may be payable to the Council, or any Costs which may be incurred by the Council in the event of a breach of this Deed by the Developer.

19.2 The interest and right granted to the Council under clause 19.1 may only be exercised after the LEP giving effect to Planning Proposal Submission is published on the NSW Legislation website,

19.3 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.

19.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

20 Caveat and Discharge

20.1 The Developer agrees that:

20.1.1 the Council may lodge a caveat on the title of the Charge Land, and

20.1.2 the Council cannot be required to remove the caveat from the title to the Charge Land other than in accordance with clause 20.2.

20.2 The Council is to release the Charge and withdraw the caveat from the title to the Charge Land on satisfaction by the Developer of both of the following obligations under this Deed:

20.2.1 to make all Development Contributions in full to the Council that are required to be made under this Deed, and

20.2.2 to pay any damages that may be payable to the Council, or pay any Costs which may be incurred by the Council, under this Deed as a consequence of a breach of this Deed by the Developer.

21 Priority

21.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

22 Breach of obligations

22.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:

22.1.1 specifying the nature and extent of the breach,

22.1.2 requiring the Developer to:

(a) rectify the breach if it reasonably considers it is capable of rectification, or

(b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

22.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

22.2 If the Developer fails to fully comply with a notice referred to in clause 22.1, the Council may exercise its power of sale of the Charge Land under the Charge provided for in this Deed and apply the proceeds of sale towards remedying the Developer's breach.

22.3 Any Costs incurred by the Council in remedying a breach of this Deed that are not compensated by the proceeds of the sale of the Charge Land may be recovered by the Council as a debt due in a court of competent jurisdiction.

22.4 For the purpose of clause 22.3, the Council's Costs of remedying a breach the subject of a notice given under clause 22.1 include, but are not limited to:

22.4.1 the Costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

22.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

22.4.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.

22.5 Nothing in this clause 22 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

23 Enforcement in a court of competent jurisdiction

23.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

23.2 For the avoidance of doubt, nothing in this Deed prevents:

23.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

23.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

24 Registration of this Deed

24.1 The Parties are to do all things reasonably necessary to enable the Council to register this Deed on behalf of the Parties for the purposes of s7.6(1) of the Act.

24.2 Within 60 days of the execution of this Deed , the Developer is to deliver to the Council in registrable form:

24.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Council, and

24.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.

24.3 The Parties are to do all things reasonably necessary to:

24.3.1 release and discharge the Developer from its obligations under this Deed, and

24.3.2 remove any notation relating to this Deed from the title to the Land,

once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

25 Restriction on dealings

25.1 The Developer is not to:

25.1.1 sell or transfer the Land or any part of it, or

25.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

25.1.3 the Developer has, at no Cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

25.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

25.1.5 the Developer is not in breach of this Deed.

25.2 Subject to clause 25.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 25.1.

25.3 Clause 25.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Other Provisions

26 Heliostat reflector

26.1 This clause applies if a heliostat reflector is required to be constructed on a building in the Development pursuant to a Development Consent.

26.2 The Developer is to register a Public Positive Covenant:

26.2.1 if no Strata Scheme applies to the land on which the building is to be situated – on the title to that land,

26.2.2 if a Strata Scheme applies to the land on which the building is to be situated and the scheme includes common property – on the title to the common property in that scheme,

26.2.3 if a Strata Scheme applies to the land on which the building is to be situated and the scheme does not common property - on the title to each lot in that scheme.

26.3 The Public Positive Covenant referred to in clause 26.1 is to require the registered proprietor of the land or lot, or the owners corporation of the Strata Scheme, of the land burdened, as the case may be, to:

26.3.1 operate, maintain, repair and replace (as necessary) the heliostat reflector in perpetuity in accordance with the applicable Development Consent and any maintenance manual for the heliostat reflector approved by the Council from time to time, and

26.3.2 unless otherwise provided for in the maintenance manual,

(a) take out all relevant insurances in respect of the heliostat reflector,

(b) permit the Council to enter onto the land burdened to inspect the heliostat reflector and carry out any works the Council considers necessary to repair, replace or maintain the heliostat reflector,

(c) comply with any reasonable direction of the Council to repair, replace or maintain the heliostat reflector,

(d) provide security to the Council to the Council's satisfaction,

(e) indemnify the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the covenantor's obligations in respect of the heliostat reflector except if, and to the extent that, the Claim arises because of the Council's negligence or default, and

(f) make any changes to the maintenance manual as directed by the Council from time to time.

26.4 The Public Positive Covenant referred to in clause 26.1 is to be registered before the issuing of the first Occupation Certificate in relation to the building on which the heliostat reflector is required to be constructed.

26.5 Until such time as the Public Positive Covenant referred to in clause 26.1 is registered, the Developer is required to do the things specified in clauses 26.3.1 and 26.3.2.

26.6 The Developer is to make two contributions into the Capital Works Fund for any Strata Scheme applying to the building on which the heliostat is required to be constructed of $25,000 each, the first of which is to be paid on the establishment of the Capital Works Fund and the second of which is to be paid 12 months thereafter, to be applied towards maintenance of the heliostat.

26.7 The contributions to be made under clause 26.6 are to be in addition to any contributions which the Developer would, but for this clause, be required to make to the Capital Works Fund.

26.8 The Developer is take whatever action is necessary to ensure that the contributions made into the Capital Works Fund pursuant to this clause can only be and are only applied to the maintenance, repair and replacement (as necessary) of the heliostat reflector.

26.9 In this clause 2:

26.9.1 **Capital Works Fund** has the same meaning as in the *Strata Schemes Management Act 2015* (NSW).

26.9.2 **Public Positive Covenant** has the same meaning as in the *Conveyancing Act 1919* (NSW).

26.9.3 **Strata Scheme** has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

27 Risk

27.1 The Developer performs this Deed at its own risk and its own Cost.

28 Release

28.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

29 Notices

29.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

29.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,

29.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or

29.1.3 emailed to that Party at its email address set out in the Summary Sheet.

29.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

29.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

29.3.1 delivered, when it is left at the relevant address,

29.3.2 sent by post, 2 business days after it is posted,

29.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or

29.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

29.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

30 Approvals and Consent

30.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

30.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

31 Costs

31.1 The Developer is to pay to the Council the Council's Costs of preparing, negotiating and executing this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

31.2 The Developer is also to pay to the Council the Council's reasonable Costs of enforcing this Deed within 7 days of a written demand by the Council for such payment

32 Entire Deed

32.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

32.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

33 Further Acts

33.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

34 Governing Law and Jurisdiction

34.1 This Deed is governed by the law of New South Wales.

34.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

34.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

35 Joint and Individual Liability and Benefits

35.1 Except as otherwise set out in this Deed:

35.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

35.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

36 No Fetter

36.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

37 Illegality

37.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

38 Severability

38.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

38.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

39 Amendment

39.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

40 Waiver

40.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

40.2 A waiver by a Party is only effective if it:

40.2.1 is in writing,

40.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,

40.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,

40.2.4 is signed and dated by the Party giving the waiver.

40.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.

40.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

40.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

41 GST

41.1 In this clause:

Adjustment Note, **Consideration**, **GST**, **GST Group**, **Margin Scheme**, **Money**, **Supply** and **Tax Invoice** have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier

chooses to apply the Margin Scheme in working out the amount of GST on that supply.

41.2 Subject to clause 41.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

41.3 Clause 41.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

41.4 No additional amount shall be payable by the Council under clause 41.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

41.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

41.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

41.5.2 that any amounts payable by the Parties in accordance with clause 41.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

41.6 No payment of any amount pursuant to this clause 41, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

41.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a Cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant Cost, expense or other liability.

41.8 This clause continues to apply after expiration or termination of this Deed.

42 Explanatory Note

42.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

42.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager | **Witness**

Mayor | **Witness**

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Zhou Xiang HUANG DIRECTOR [redacted]

Name/Position

Name/Position

Schedule 1

(Clause 1.1)

Part 1 - AHU Criteria

1 The AHU Criteria is as follows:

1.1 AHUs are to be situated on floors 6-10 in the Development generally in accordance with the indicative floor plans contained in Part 4 of this Schedule,

1.2 AHUs are to comprise all 2 bedroom dwellings,

1.3 AHUs are to have the same storage areas and car parking spaces as those allocated on title or otherwise available to a typical non AHU Dwelling in the Development having the same number of bedrooms as the AHU,

1.4 AHUs are not to be located over any driveway entry or exit in the Development,

1.5 AHUs are not to be located over any storage or waste disposal areas in the Development,

1.6 the living rooms and private open space of all of the AHUs are to be able to receive cross-ventilation and a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June in any year,

1.7 AHUs are to be constructed in accordance with the AHU Construction Standards.

Part 2 - AHU Selection Process

1 The Developer is to nominate in writing for the Council's consideration a pool of 10 Dwellings eligible to be dedicated as AHUs under this Deed.

2 The Developer is to nominate such pool of Dwellings 28 day of Development Consent being granted for the Development.

3 The Council is to select the AHU's it requires to be dedicated under this Deed within 21 days of receiving the Developer's nomination.

Part 3 - AHU Construction Standards

1 Each AHU to be transferred to the Council must comply with the following standards:

1.1 The standard of construction and finishes of an AHU is not to differ from a non-AHU Dwelling.

1.2 AHUs are to comply with relevant Australian Standards and the Building Code of Australia and is suitable for occupation and use.

1.3 All fixtures, fittings and inclusions in an AHU are to be consistent with, and of the same quality and standards as, similar non AHUs within the Development unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed in writing between the parties by reference to a detailed schedule of fixtures, fittings and finishes.

1.4 AHUs are to be equipped with the following minimum fittings, unless otherwise agreed in writing between the parties by reference to a detailed schedule of fixtures, fittings and finishes:

1.4.1 floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s),

1.4.2 light fittings fit for purpose in each room,

1.4.3 telephone and television aerial points in the lounge and main bedroom,

1.4.4 cable television fittings if provided in the Building,

1.4.5 allocation of car and storage spaces consistent with other units, o all opening windows to have and blinds consistent with other units, if other units do not have blinds then blinds are to be installed for the AHU to a type and standard approved by the Council,

1.4.6 sliding doors to have blinds and security fly screen door provisions consistent with other units, unless the parties agree, acting reasonably, that fitting blinds and security screens to any particular part of the building is unreasonable or impractical,

1.4.7 provision of air conditioning to living area and bedroom/s,

1.4.8 security and/or intercom system

1.5 All AHUs, or such number of AHUs as are provided for in the Development Application for the Development as agreed in writing by the Council, are to be designed in such a way that they can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties.

1.6 Any preconditions to the grant of an Occupation Certificate as specified in the Act and the Regulation have been satisfied.

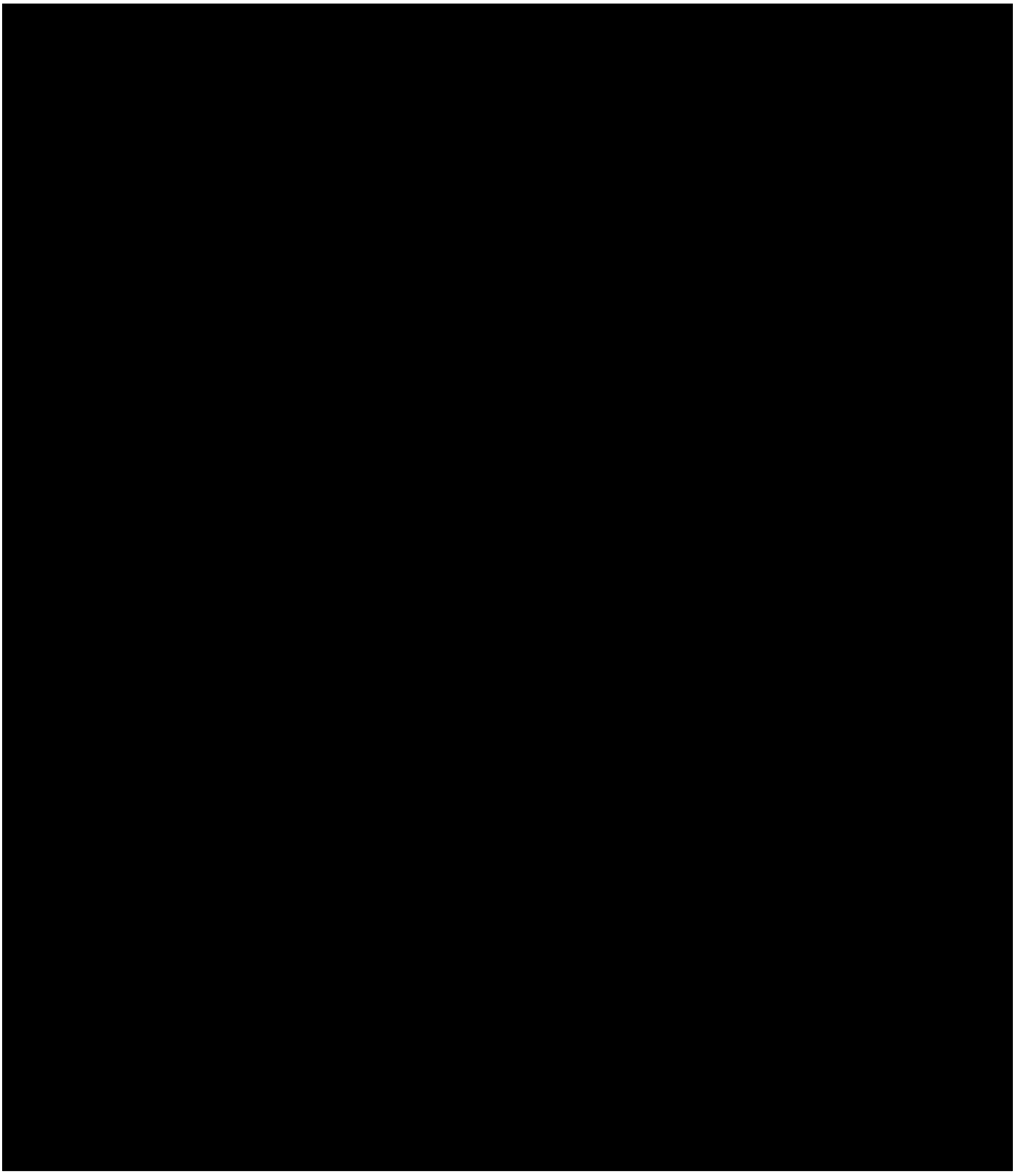
Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Part 4 – Indicative Floor Plan

(See paragraph 1.1 of Part 1 of this Schedule)

See next page

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd



Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Appendix

(Clause 42)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (**Council**)

I-Prosperity Waterside Rhodes Pty Ltd ACN 608 318 752 of Level 22, 126 Phillip Street SYDNEY NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

1 Marquet Street, Rhodes, Lot 5 DP17671

3 Marquet Street, Rhodes, Lot 4 DP17671

5 Marquet Street, Rhodes, Lot 3 DP17671

7 Marquet Street, Rhodes, Lot 2 DP17671

9 Marquet Street, Rhodes, Lot 1 DP17671

4 Mary Street, Rhodes, Lot 6 DP17671

Station Precinct Rhodes Planning Agreement

City of Canada Bay Council

I-Prosperity Waterside Rhodes Pty Ltd

Description of Proposed Development

Development on the Land in accordance with a Development Consent following a Planning Proposal Submission made by the Developer to the Council on 26 May 2016 as subsequently revised by the Developer and endorsed by the Council on 15 May 2018.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

To facilitate the payment by the Developer to the Council of monetary development contributions, and the dedication by the Developer to the Council of Affordable Housing Units, in connection with the Development of the Land.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The provision of funding for the significant and high quality upgrade of the public domain around Rhodes railway station and in surrounding streets, and upgrading recreation facilities within the City of Canada Bay.

The provision of Affordable Housing Units by the Council in the Council's area.

How the Draft Planning Agreement Promotes the Public Interest

The planning agreement promotes the public interest by facilitating the provision of funding for public domain works and upgrading recreation facilities and the provision of affordable housing in the Council's area.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

N/A (The Council's charter, formerly contained in s 8 of the *Local Government Act 1993* (NSW), was repealed by the *Local Government Amendment (Governance and Planning) Act 2016* (NSW).)

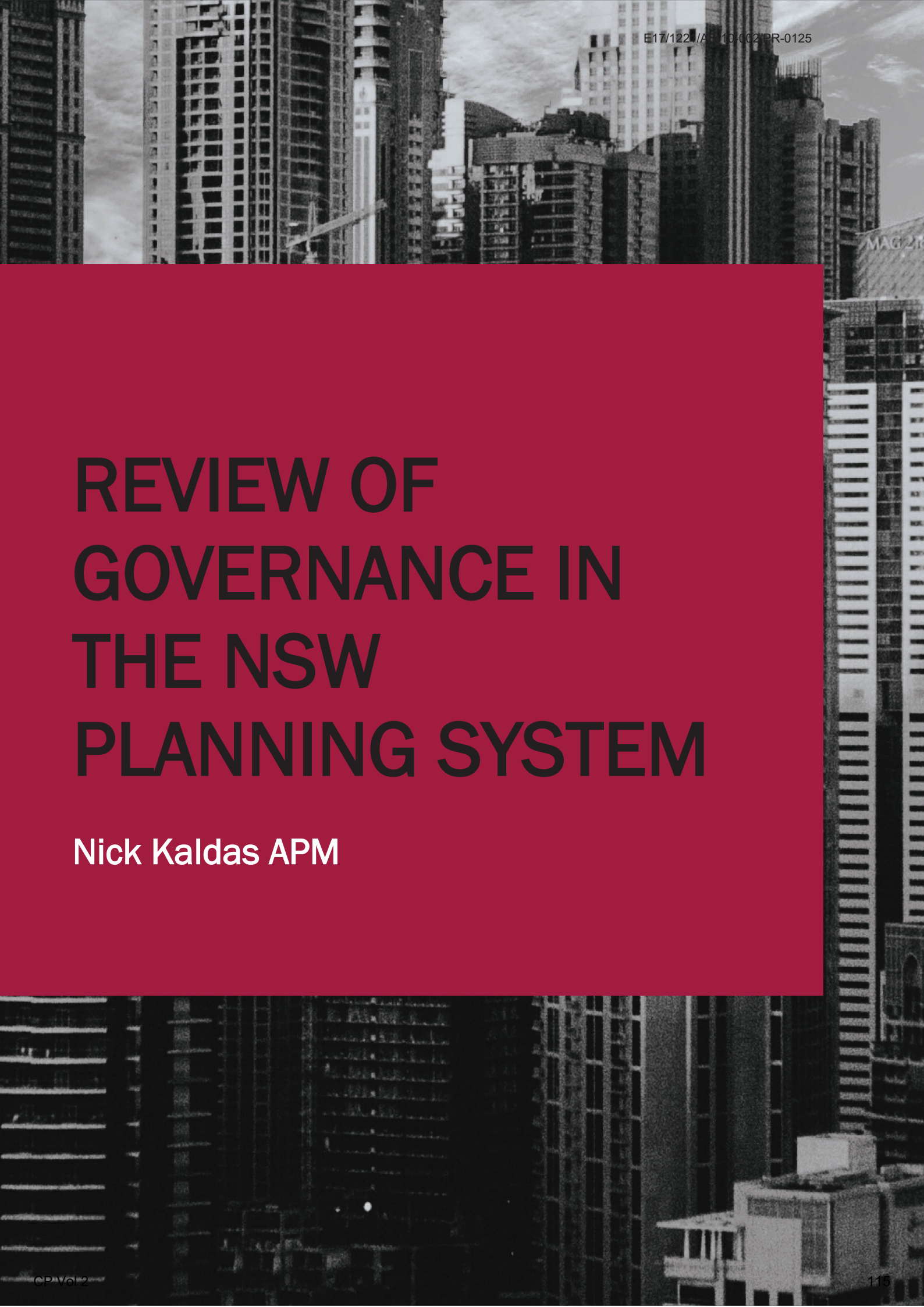
All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

No

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes. The planning agreement requires the following:

- The Developer is to pay the Initial Monetary Contribution Amount to the Council prior to the issuing of the first Subdivision Certificate for the creation any Final Residential Lot in the Development.
- The Developer is to dedicate the Affordable Housing Units to the Council prior to the issuing of the first Occupation Certificate relating to any residential part of the Development other than an Affordable Housing Unit



REVIEW OF GOVERNANCE IN THE NSW PLANNING SYSTEM

Nick Kaldas APM

Table of Contents

Executive Summary

In July 2018, I was appointed to conduct an independent review of the governance of decision-making within the NSW planning system. My Terms of Reference are set out in Appendix 1. Broadly, they require me to review the integrity of decision making in the NSW planning system, and to look at the progress of the newly introduced system of Independent Hearing and Assessment Panels (IHAPs).

The Review

During my consultations, I have been struck by the strength of emotion and passion that people have brought to discussions. Decision makers in all planning systems are often required to make a determination between private rights and the public interest.

Planning can be a divisive portfolio with many competing tensions. From my research into planning systems of other jurisdictions, it was clear to me that the tension that is evident in the NSW system is not unique. People are understandably emotional when dealing with the impact of development on their homes, families, communities, and livelihood, and there will no doubt be many instances in the planning system where decisions are made that do not make all stakeholders happy. There is an often-made point that the NSW planning system has evolved into an extremely complicated, slow system.

So, with these evident tensions in mind, I am of the view that people are more likely to accept a decision if they can understand the rules that were applied and how the decision was made. That is why a transparent, clear decision-making process that is easily understood by all is critical to an effective planning system. Efforts to simplify the system should continue.

I have not had the opportunity to delve into the detail of every aspect of the planning system. I have stayed within my Terms of Reference, and the time limits that existed, to examine only those specific aspects that have been raised consistently by numerous stakeholders as issues of concern.

It was determined from the beginning of the review that specific, individual cases, and passing judgement on them, were outside the scope of this Review. I agreed it was simply not appropriate, nor feasible. Many people have approached me and asked me to look at different issues, or specific cases, and while I have considered the key issues from those cases, in terms of their implications for the system, I could and should not intervene on those cases. This may disappoint some stakeholders, but the Review was not a forum for decision-making on individual cases.

So, noting the breadth and complexity of the planning system, and given the timeframes available, I have limited my considerations and focus on issues that affect the “health” of the system, the key concerns raised by the majority of stakeholders, and the progress of IHAPs in particular.

I have had the benefit of reviewing the many reports that have been written on the NSW planning system over the years, through various cycles of reform. I refer several times in this Report to the 2012 report by the Hon Tim Moore and the Hon Ron Dyer [1] in which they consulted over 2,000 people in community forums. I was struck by how the same themes raised in 2012 have been echoed in my consultations, six years on.

[1] Tim Moore & Ron Dyer, *The Way Ahead for Planning in NSW – Recommendations of the NSW Planning System Review,* May 2012.

Despite ongoing improvements to the planning system, such as the introduction of the IHAPs, it is clear there is still some misunderstanding and a measure of public mistrust toward the planning system. Similar to the issues raised with Moore and Dyer, stakeholders have commented that the planning system is adversarial, that it favours developers (or those with funds to afford legal support) on one hand, and is too cumbersome and slow for the needs of builders on the other hand, and finally, that the system is opaque and difficult to navigate. Some stakeholders also reported that there is not a 'positive planning culture' in NSW and that the community is not adequately engaged in planning decisions.

From my experience during this review, it seems to me that the Department of Planning and Environment has made significant improvements to enhance the culture of the Department and the decision-making process, however, there is still more to be done. Faith in the equity of the system is essential. For this reason, I have recommended the Department establish an Independent Ethics Unit, similar to those in the United Nations. The Unit would not investigate complaints but would proactively identify improvements to the planning system to ensure that ethics and integrity are at the forefront of everything they do. The unit could also consider issues of perceived or actual conflicts of interest and provide advice or recommendations on whether a conflict exists, and how to mitigate or manage such conflicts. I am of the view this would be a positive addition to the planning system and would promote greater transparency, and therefore assist in building trust.

IHAPs were introduced earlier this year, and I was called on to conduct a health check on how they are progressing and whether there are any areas for improvement. The IHAPs have many positive features, but primarily they ensure that planning decisions are determined on a technical basis by experts and remove the politics from the process. NSW has had a history of Independent Commission Against Corruption (ICAC) investigations in NSW uncovering corrupt conduct in several local councils. This measure goes a very long way to addressing these issues.

Thus, even though the mandatory IHAPs are in their early days, I am of the firm view they reduce the potential for corruption, and ensure more consistent, rigorous and merit-based decision-making. The vast majority of stakeholders I consulted view the introduction of mandatory IHAPs in the Sydney metropolitan area and Wollongong as an overwhelmingly positive change, and they saw it as a highly beneficial step in enhancing the planning system. I noted that a minority felt that IHAPs were a negative development and interfered with democratically-elected representatives at local councils. While respecting that view, in all the circumstances, I was not persuaded, and it is clear they are an effective compromise, balancing the need for community input and transparency. Overall, IHAPS should be supported, and be allowed to evolve as an extremely positive initiative aimed at improving the planning system.

Due to the success of IHAPs in metropolitan Sydney and Wollongong, I have recommended in this report that they be extended to other regional centres such as Newcastle and the Central Coast.

I have recommended some changes and clarifications to the IHAP system to ensure they continue to run smoothly and ensure consistency between Sydney Planning Panels and the Regional Panels. It seems to me that many of those who come into contact with the planning system do not have a deep understanding of the different panels and the reasons for them. I am therefore of the view that it would be sensible to be consistent across all panels and ensure the same rules apply, while adopting a "plain English" approach to all literature. I have made those recommendations.

Given the success and professionalism of IHAP deliberations, I have also recommended greater flexibility to allow local councils to refer additional matters to IHAPs for consideration if they are contentious for the local area but may not meet the threshold for referral. It is important to note that this flexibility will only allow for Council to refer *additional* matters - it will not provide flexibility for Councils to decide more matters themselves instead of referring them to an IHAP. I have also recommended that the Department provide clearer guidance for IHAPs in relation to matters that are appealed to the Land and Environment Court and clarity in relation to the guidance provided to IHAPs on the rules around meeting in public and deliberating in private.

Concerns were raised by many in relation to infrastructure contributions, particularly Voluntary Planning Agreements (VPAs). These concerns included the inconsistent manner in which contributions were calculated, collected and open to abuse, as well as the failure to allocate appropriately towards public amenity improvements as intended. It is my opinion that the issue of contributions, whether they be VPAs, Special Infrastructure Contributions (SICs), or otherwise, should be looked at holistically and applied equitably across the system to ensure certainty, fairness and in adherence to the strategic aim. Accordingly, I have recommended a holistic review of the infrastructure contribution scheme to address concerns raised by many stakeholders.

I have also made recommendations which I believe will increase the transparency, and therefore community confidence, in the decision-making process, such as providing ongoing support for the ePlanning project. It seems to me that one of the major reasons for a lack of trust in the system is a real or perceived lack of transparency and accountability in planning decisions. I am of the view that the recommendations I have made in this report will go some way to addressing this issue and strengthening community trust.

I would like to express my appreciation to the Secretary of the Department, the Acting Secretary, and all the staff who assisted me in my deliberations. They were accommodating and helpful throughout. I am sincerely grateful to all the stakeholders who took the time to meet with me and those who wrote to me to outline their views, concerns, and suggestions. Some travelled great distances to meet with me. The information they provided has been of great assistance during this review. While I have not addressed every concern raised, I have tried to address those that I felt will make a difference to the system.

My Background:

In terms of the skills and experience that I bring to this review, following is a brief outline of my professional experience:

I was in the NSW Police Force for almost 35 years, with nine of those as a Deputy Commissioner. My career has primarily been in investigative roles, in organised and major crime, and counter terrorism. I have led a number of International investigations for the United Nations including the investigation into the assassination of Rafiq Hariri, the former Prime Minister of Lebanon, and 21 other assassinations, and I was selected by the United Nations Security Council to lead the joint United Nations/Organisation for the Prohibition of Chemical Weapons joint investigation into the use of chemical weapons in the Syrian conflict, and reported to the Security Council.

For the past 18 months before commencing this review, I was the Director of Internal Oversight Services for the United Nations Relief and Works Agency - the sizeable body tasked with dealing with

Palestine refugee aid issues. This agency has over 30,000 staff, with a significant budget, and is operational in five fields - Lebanon, Syria, Jordan, Gaza and the West Bank, under an often-intense gaze from international media and the public, making integrity paramount to its work.

My oversight responsibilities in the United Nations included divisions handling investigations, audits, evaluation programs and the Ethics Division. I am currently the Managing Director of a consulting company, Stratium Global. Essentially, in all these roles, I believe I have been a fact-finder.

Recommendations

1. That the Department of Planning and Environment consider further work toward the development of plain English materials and a user-friendly plain English guide for the NSW planning system.

2. In recognition of the significant positive feedback and overall effectiveness of Independent Hearing and Assessment Panels (IHAPs), I recommend IHAPs should remain mandatory for Sydney metropolitan and Wollongong areas.

3. That consideration be given to extending mandatory Independent Hearing and Assessment Panels to the Central Coast and Newcastle local government areas (LGAs).

4. That the Department of Planning and Environment give consideration to ensuring consistency and providing greater clarity in relation to the Independent Hearing and Assessment Panels and Regional/District Panels, for example, in relation to:

    a) Tenure of panel members

    b) Rotation of IHAP panel members

    c) Restrictions on who can be a panel member

5. That the Department of Planning and Environment consider undertaking mandatory probity checks for Independent Hearing and Assessment Panel community representatives, similar to the appointment process of the Chairs and technical experts.

6. That the Department of Planning and Environment clarify the issue of Independent Hearing and Assessment Panel meeting procedures with the intent being that private deliberation should be permitted. There should also be clarity on whether panel members can, or cannot, meet with Council staff during deliberations and what record is made of those meetings.

7. The Department of Planning and Environment conduct an annual review of multiple membership on Independent Hearing and Assessment Panels to ensure no conflicts of interest or other issues arise.

8. The Minister give consideration to amending the “Local Planning Panels Direction – Development Applications” to provide greater flexibility for local councils to refer additional matters to Independent Hearing and Assessment Panels for consideration.

9. That the Department of Planning and Environment consider providing greater guidance and clarity to local councils and Independent Hearing and Assessment Panels in relation to decisions of those Panels that have been appealed to the Land and Environment Court, including:

    a) Who should appear before the court

    b) If Council staff appear before the court, who should instruct Council

c) Clarity in relation to resourcing for Independent Hearing and Assessment Panels in court matters

10. That the Department of Planning and Environment consider undertaking an audit of all infrastructure contributions and spending of same in NSW to enable evidence-based decision-making on the collection and monitoring of those contributions.

11. That the Department of Planning and Environment update the Practice Note for Voluntary Planning Agreements to ensure consistency and transparency. To ensure Councils consider the Practice Note when negotiating or preparing a Voluntary Planning Agreement, the Minister consider issuing a Ministerial Direction requiring Councils to have regard to the Practice Note.

12. The updated Voluntary Planning Agreement framework should also include requirements for reporting and auditing where the funds are being allocated. This will further ensure transparency, compliance and accountability.

13. While recognising the significant work underway to improve concurrences and referrals, I recommend that this issue continue to be monitored with a view to the development of a transparent technological solution.

14. The Chair of the Independent Planning Commission continue to liaise with the Secretary of the Department of Planning and Environment to enshrine and clarify the independence of the Commission and its staff. The Secretary and the Chair should consider a contemporary Memorandum of Understanding to achieve that objective.

15. That the Department of Planning and Environment continue to provide appropriate support to the implementation phase of the ePlanning project.

16. The Department of Planning and Environment establish an Ethics Unit, similar to the United Nations Ethics Divisions, which reports directly to the Secretary of the Department.

17. While noting that some interagency forums exist, that the Department of Planning and Environment give consideration to the establishment of a regular quarterly forum for CEOs as a basis for strategic issues and policy discussions of planning related issues.

18. That the Department of Planning and Environment monitor the development of the South Australian scheme in relation to accreditation of Planners and review in twelve months' time the desirability of progressing a similar scheme in NSW.

19. That consideration be given to enshrining the principle that major infrastructure commitments should be approved in principle, but be subject to appropriate planning approval.

1. Methodology and Consultation

Consultations

1. The Terms of Reference directed me to consult with stakeholders and identify governance issues that they feel require consideration or create a risk to the integrity of the planning system. Accordingly, to inform the development of this report, I wrote to key stakeholders in NSW, inviting them to meet with me or provide me with written feedback. Other stakeholders contacted me directly, and if they raised issues that fell within my Terms of Reference, and time permitted, I agreed to meet with them.

2. In addition, a survey was sent to all Councils in the Greater Sydney and Wollongong regions that are subject to the mandatory IHAP requirements with targeted questions on the establishment and operation of IHAPs. The survey data received from these Councils is attached at Appendix 7.

3. A list of all the stakeholders I met with is attached at Appendix 2. While every effort was made to meet with as many interested stakeholders as possible, they numbered in the hundreds, and it was not possible to meet with all of them. Accordingly, the Review endeavoured to engage with as many stakeholders as possible and accepted written feedback from a number of stakeholders.

Approach to the Review

4. I have been required to conduct the Review in two parts. The first part of the Review was focused on the operation of the Independent Hearing and Assessment Panels (known as IHAPs but referred to as 'Local Planning Panels' in the legislation), to ensure they are operating as intended and to identify actions, procedures or processes to improve the integrity of the system. The interim draft report in relation to the IHAPs was provided to the Secretary at the end of September 2018. At my request, the interim report was not made public, as I was still in the process of deliberating and consulting with key stakeholders on the issues that I was intending to discuss in my final report.

5. In addition to the early health check for the IHAPs, my Terms of Reference also required me to consider the wider planning system and make recommendations as I see fit to improve the integrity of the system. This formed the basis of the second part of my Review. This report includes my findings and recommendations, both in relation to the IHAPs and wider system reforms.

6. The starting point for this Review was to read and consider a number of reports and material relating to the current planning system in NSW, as well as consider planning models interstate and similar jurisdictions overseas. I held extensive meetings with senior representatives from the Department of Planning and Environment, who were very helpful in providing me with a foundational understanding of the NSW planning system.

7. I have also had the benefit of drawing on previous reviews, as outlined in detail in this report, which have already examined the establishment and integrity of the IHAP model. However, unlike previous reviews, in which "changes that would require public consultation (i.e. significant policy

or legislative changes) fall outside the scope,"[2] I am not so restricted and have been asked to consult widely and consider all aspects of improvements to the integrity of the planning system.

8. I am grateful to all those who took the time to meet with me during the consultation process. I have been impressed by the expertise, professionalism, passion and knowledge of all those who contributed.

[2] *Minimising and monitoring risk in the IHAP framework,* p.3.

2. Planning models outside NSW

1. My Terms of Reference require me to examine interstate and overseas planning and other administrative systems to ensure any relevant best practice options are considered for inclusion in NSW.

2. During my wide-ranging consultations, almost all the people that I spoke to said that Australian planning systems are among the most complex in the world, with NSW one of the most complex planning systems in Australia.

3. As I considered the planning models in other jurisdictions, it became clear that while other jurisdictions had undertaken, or are in the process of, major reforms to their planning systems, there is no existing planning system that could be adapted to NSW as a 'package'. There are many legal, historical, cultural, economic and political differences between jurisdictions which means each planning system has been developed and adapted over many years to suit each jurisdiction's unique environment.

4. In considering other planning models, I have also been cognisant of the fact that NSW has significantly higher rates of development applications than most other jurisdictions in Australia. This means that what works in other jurisdictions, which have smaller numbers of development applications to deal with, will not necessarily be appropriate in the NSW context.

5. However, while recognising there is not a "one size fits all" approach to planning, there is value in considering initiatives from other jurisdictions. For example, many of the stakeholders I met with spoke of the benefits of the Queensland 'one stop shop' system for development approvals. Briefly outlined below is an overview of the relevant features of planning systems from other jurisdictions that I have examined that may be beneficial for NSW to consider in the future.

Queensland

6. The Queensland Government has recently undertaken significant reforms to its planning system in recent years which resulted in an entirely new act being introduced. The new planning legislation in Queensland, the *Planning Act 2016*, commenced on 3 July 2017.

7. Among other changes, the new planning legislation created the Queensland State Assessment and Referral Agency (SARA) which takes a whole-of-government approach for assessing developments. SARA provides a one stop shop for development applications that require the approval of several government agencies. The SARA is coordinated by the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP). Several of the stakeholders we met with noted the benefits of the Queensland model for planning approvals, noting it as a feature that would be beneficial in the NSW context. I am advised by the Department that work is well underway in NSW to streamline the concurrence approvals process. This is further discussed in Chapter 7.

8. Some stakeholders praised an initiative that Logan City Council had recently introduced that involves accrediting planning consultants to assess simple, low risk applications. The consultants prepare the approval paperwork and supporting documentation for Council staff, who then issue

the notice of determination. This scheme has been considered extremely successful in reducing the costs and wait times associated with a development application while also increasing the certainty relating to the project.

Northern Territory

9. One issue that many stakeholders raised with me is the difficulty of navigating the Department of Planning and Environment website and finding easy to understand information about the development application process.

10. The Northern Territory has a clear and concise 'Development One Stop Shop' which provides online information for developers and the general public about both the development application process and current applications.

11. The website for the one stop shop clearly sets out five steps for development approvals:
    - Step 1: Pre-application meetings – applicants are encouraged to meet with a planner from the Department of Infrastructure, Planning and Logistics or with the Development Consent Authority as many times as needed to get advice before submitting an application. Applicants are required to meet with a planner before submitting a concurrent application.
    - Step 2: Submit an application – all applications are submitted online through the Development Applications Online website.
    - Step 3: Application assessment – A planner from the department's Development Assessment Services is assigned to manage the application.
    - Step 4: Consultation – the application is advertised, and the general public can make submissions to the consent authority on the application. Development Assessment Services prepares a technical assessment and report for the consent authorities.
    - Step 5: Decision on the application – the proposal and any submissions are considered by the consent authority who then advises if the application has been consented to (approved), altered or refused.

12. The online information in the Northern Territory is clear, concise and easy to navigate and could provide useful guidance for streamlining online information on the NSW planning system.

South Australia

13. South Australia has recently undertaken major reforms in its planning system. The *Planning, Development and Infrastructure Act 2016* was passed by parliament in April 2016 and came into force on 1 April 2017. The reforms of the planning system are intended to be up and running by 2020.

14. As is the case in NSW, in South Australia, most development applications are assessed by local councils. However, for more complex or contentious development applications, the legislation provides for the following Assessment Panels to make decisions:

    - Council Assessment Panel – appointed by a Council.
    - Joint Planning Board Assessment Panel – appointed by a Joint Planning Board.

- Combined Assessment Panel – established by the Minister to be involved in applications across different legislation (for example, planning and mining or liquor licensing).
- Regional Assessment Panel – established by the Minister and comprises parts, or all, of the areas of two or more Councils.
- Local Assessment Panel – constituted by the Minister upon recommendation of the Commission following an inquiry into an existing Council Assessment Panel.

15. One aspect of the South Australian planning system that has been of particular interest to this Review is the Accredited Professionals Scheme which was a key reform of the reform package. Under the new scheme, planning and building professionals who are involved in assessing development applications will be expected to maintain minimum standards of professional practice and produce evidence of sufficient qualifications to make key decisions at certain levels.

16. Once accredited, planning and building professionals will be registered in a central database managed by the South Australian Department of Planning, Transport and Infrastructure. In addition, all accredited professionals will be required to hold all appropriate insurance, comply with an Accredited Professionals Code of Conduct, participate in annual compliance checks and undertake specified units of Continuing Professional Development.

17. The issue of potential accreditation or registration of planners in NSW is discussed in detail in Chapter 8.

Victoria

18. As in NSW, cumulative amendments to the Victorian planning legislation and "local planning schemes over the past 20 years have led to increasingly long and complex planning schemes. This has resulted in complexity, duplication, delays and uncertainty."[3] The Victorian Government has recently initiated a consultation process on proposed planning reforms.[4] The proposed reforms in Victoria aim to make the planning system more efficient, responsive and transparent. They are currently consulting with Advisory and Technical Reference Groups before finalising the proposed reforms. It will be useful to examine the Victorian proposed changes once they are finalised.

19. The current planning system in Victoria has planning panels that independently assess planning proposals by considering submissions, conducting hearings and preparing reports. Planning panels provide advice and make recommendations. The final decision is made by the appropriate statutory bodies, or the Minister.

20. In 2015, the Victorian Government introduced legislation to implement a new development levy framework for the state. The changes came about following concerns expressed by local government and the development industry that the system of development contributions was onerous, costly and difficult to administer. The revised infrastructure contribution scheme was designed to ensure that the planning and delivery of infrastructure is equitable, efficient and cost effective.

[3] https://engage.vic.gov.au/reform-victoria-planning-provisions
[4] https://engage.vic.gov.au/reform-victoria-planning-provisions

21. The infrastructure levy is used to fund local infrastructure, such as local roads, community centres, kindergartens, maternal and child health facilities, local parks and sporting facilities. The levy is payable at the building permit stage, or within a time specified in an agreement. The legislation restricts a building surveyor from issuing a building permit if the levy has not been paid.

22. The Infrastructure Contribution Plan Guidelines are comprehensive, and I am of the view a similar document would be useful in NSW. The guidelines provide an overview of the purpose of infrastructure contributions and how they are used. The guidelines also state that there should be clear and transparent records showing the amounts collected and how they are spent: "Infrastructure levies must be used for the purpose for which they are collected, and proper financial accounts should be kept to demonstrate this. The method for calculating and applying levies is clear and simple to understand and the collection and use of levies is reported on regularly".[5]

23. One innovative scheme from Victoria that may be instructive is a recent partnership between Wyndham City Council and developers to help boost housing supply. The project allows developers who own large parcels of land in Wyndham to pay a fee to Council to fast-track applications for subdivision approvals and engineering works. Council uses the money to establish a new dedicated growth area team focused on large residential approvals resulting in faster processing of applications.

24. This innovative pilot project commenced in August 2017 and will run for three years, with each developer contributing $100,000 per year. In total, 10 developers have signed up, contributing a total of $3 million to Council over the three-year duration of the project. The project is one aspect of the Victorian Government's Streamlining for Growth program, delivered by the Victorian Planning Authority, which aims to make Victoria's planning system more efficient.

25. A further simple but positive initiative in Victoria that I believe could be adopted in NSW is the *Ministerial Direction on the Form and Content of Planning Schemes* which directs that a planning scheme or planning scheme amendment must be written in plain English.

Western Australia

26. Western Australia is in the process of undertaking an independent review of its planning system, with the aim of identifying "ways to make it more efficient, open and understandable to everyone".[6] A Green Paper outlining significant planning reforms was released for public comment earlier this year. Over 240 submissions were received and these are currently under review.

27. Development Assessment Panels (DAPs) were established in Western Australia in 2011 to assess development applications for certain land use types or value thresholds. The aim of the DAPs is to "enhance planning expertise in decision-making by improving the balance between technical advice and local knowledge. Specialist and local government members work together to

[5] Infrastructure Contribution Plan Guidelines, Victorian Department of Environment, Land, Water and Planning, October 2016, p.10.
[6] Green Paper for planning reform, 'Modernising Western Australia's Planning System', May 2018, (available at https://www.planning.wa.gov.au/dop_pub_pdf/Green_Paper_Summary.pdf)

determine complex development applications that meet certain class and value thresholds".[7] Stakeholders have commented that the DAPs "have transformed the development process in WA by introducing unbiased and expert assessment of development applications.[8]

Vancouver

28. Vancouver is highly regarded for its inclusive approach to strategic planning, and "has been noted around the world for its involvement of citizens in building a shared vision for the city"[9]. During the 1990s, Vancouver directly consulted residents in relation to the development of the strategic plan for the city. The initial consultation involved residents and community members on the directions and objectives of the city planning. They were "provided a number of growth strategies to deliberate, with trade-offs involved in choosing the different paths made clear. Following this process, residents were engaged at the local level, and the plan progressively developed over four years. A key element of the consultation process was that city officials and planners did not provide a preferred option and consensus was not sought".[10] This was viewed as genuine consultation as the outcome was not predetermined.

29. The benefits of different growth options were clearly communicated to the community as part of the consultation process. "For example, each neighbourhood was told that the larger the population supported by more dwellings, the bigger the neighbourhood's contribution to government tax revenue and the larger the distribution it would receive to improve the area with community amenities such as libraries. Working with developers and builders, residents frequently opted to get more of the amenities they valued by allowing some buildings to be even higher than required for the area's housing targets".[11]

30. This consultation process is internationally regarded as a highly inclusive approach. The importance of early and genuine consultation to establish trust and faith in the NSW planning system should not be underestimated.

The United Kingdom

31. As is the case in NSW, in England the majority of smaller, uncontroversial planning applications are decided by Council staff under delegated decision-making powers. These form around 90 per cent of the applications received by local planning authorities. Larger and more controversial developments are decided by the planning committee; however, these are still informed by recommendations from Council staff.[12]

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[7] https://www.planning.wa.gov.au/About-DAPs.aspx
[8] Property Council of Australia, https://www.propertycouncil.com.au/Web/Content/Media_Release/WA/2016/DAPs_Provide_Unbiased_Planning_Outcomes_and_Better_Development_.aspx
[9] Australian Productivity Commission, *Shifting the Dial: 5 year productivity review, supporting paper no.10, Realising the Productive Potential of Land,* 3 August 2017, p.22.
[10] Australian Productivity Commission, *Shifting the Dial: 5 year productivity review, supporting paper no.10, Realising the Productive Potential of Land,* 3 August 2017, p.22.
[11] Australian Productivity Commission, *Shifting the Dial: 5 year productivity review, supporting paper no.10, Realising the Productive Potential of Land,* 3 August 2017, p.22.
[12] *Plain English guide to the Planning System,* Department for Communities and Local Government, *January* 2015, p.6.

32. The Secretary of State oversees the planning system as a whole, as well as having a more direct role in a small number of decisions through the appeals system, the call-in process and decisions on nationally-significant infrastructure projects. [13]

33. In order to fund community infrastructure England and Wales have a levy. Planning authorities can determine that a Community Infrastructure Levy (CIL) be charged on new developments to help pay for supporting infrastructure. If a CIL is in force, "land owners and developers *must* pay the levy to the local authority. The money raised from the levy can be used to support development by funding infrastructure. The CIL charges are set by the local authority, based on the size and type of the new development. It is payable on most developments over 100 square metres or where a new dwelling is created. The local authority can set different rates for different geographical zones in their area and for different intended uses of development. This is a local decision based on economic viability and the infrastructure needed. There is no requirement for a local authority to charge the CIL if it does not want to. "… Relief from the CIL is also available for development which relates to social housing and development by charities for charitable purposes".[14] While such a levy may not be viable in NSW, the transparent nature of the UK process is important to note.

34. One aspect of the planning system from the United Kingdom that could be a useful addition to the NSW Planning system is the user friendly 'Plain English guide to the Planning System' produced by the Department for Communities and Local Government.[15] As I have mentioned above, in Victoria there is a Ministerial Direction that a planning scheme or planning scheme amendment must be written in plain English. I acknowledge the work the Department has already undertaken in this space to ensure its material is written in plain English. However, I am of the view that there is further work to be done to ensure the planning system can be understood by all. Given the complexity of the NSW system, I have recommended that the Department work towards establishing plain English documents to explain the planning system to the NSW public, as well as developing a plain English guide to the NSW system.

Recommendation 1: That the Department of Planning and Environment consider further work toward the development of plain English materials and a user-friendly plain English guide for the NSW planning system.

[13] *Plain English guide to the Planning System,* Department for Communities and Local Government, *January* 2015, p.6.
[14] *Comparison of the planning systems in the four UK Countries*, Research Paper 713-2005, 20 January 2016, pp.34-35, at http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016/joint-publication/joint-briefing-paper-ni-interactive.pdf
[15] *Plain English guide to the Planning System,* Department for Communities and Local Government, January 2015, (available at www.gov.uk/dclg)

3. The NSW Planning system

1. The planning system in NSW is noted for its complexity - both in terms of legislative complexity and complexity for users of the system.[16] Since the commencement of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) on 1 September 1980, it has been amended approximately 150 times.[17] A consequence of the "constant, and at times significant, amendments to the EP&A Act has been a growing public perception … that the current planning system is unwieldy, overly complex and lacking in transparency."[18]

2. There are inherent challenges in any planning system. The Productivity Commission notes that:

   > *Whether governments or the private sector or a mix of both determine the uses to which land is allocated, the inherently challenging features of this task include: positive and negative impacts on others (such as on neighbourhood character, traffic congestion, air and sound pollution); insufficient or 'asymmetric' information; future generations not being part of decisions that ultimately will impact on them; and conflicting preferred outcomes of different stakeholders so that the costs of reaching community consensus on objectives are high".*[19]

3. Planning reform has been an ongoing issue for governments in NSW and most other Australian jurisdictions as they respond to population growth and housing pressure. The population in NSW is expected to grow by more than 100,000 every year. By 2036, an estimated 2.1 million additional residents will need housing in NSW. The NSW Government has committed to deliver 61,000 housing completions on average per year. To assist with the increase of housing supply, the NSW Premier has committed to a target of 90 per cent of housing approvals to be determined within 40 days by 2019 and rezoning for 10,000 additional dwellings on average per year in appropriate areas to 2021.[20]

4. The growing housing and infrastructure requirements in NSW inevitably mean there will be an increase in development and therefore growth in demand on the planning system, both at a state and local level. However, research indicates that businesses and residents in NSW have low levels of trust in the planning system. The Productivity Commission reports that only 14 per cent of surveyed residents in Sydney agree the state is effective at planning, and only 15 per cent agreed that local government is effective at planning.[21]

5. The Centre for International Economics (CIE) noted several issues of concern with the NSW planning system, including that:
   - The planning system is overly complex and costly

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[16] *Reform of the NSW planning system Final Report* – Better Regulation Statement, Centre for International Economics, October 2013, p.3.
[17] Planning Legislation Updates, Summary of proposals, January 2017. Available at: http://www.planning.nsw.gov.au/~/media/Files/DPE/Other/summary-of-proposals-2017-01-09.ashx
[18] *Anti-corruption safeguards and the NSW planning system,* ICAC Report, February 2012, p.4.
[19] Productivity Commission, '*Performance benchmarking of Australian business regulation: planning, zoning and development assessments*', 2011, p. xx. http://www.pc.gov.au/projects/study/regulationbenchmarking/planning
[20] https://www.nsw.gov.au/improving-nsw/premiers-priorities/making-housing-more-affordable/
[21] Productivity Commission, '*Performance benchmarking of Australian business regulation: planning, zoning and development assessments*', 2011, p. xxxviii.

- The system has not responded well to change, and
- There is low business and community confidence in the system.

6. The Productivity Commission, Council of Australian Governments (COAG) and the CIE report that the root causes of problems in the NSW planning system are:[22]
    - Higher costs of development, as the community is involved at the wrong level of planning. Councils are not appropriately resourced or supported and there are overly prescriptive and onerous development controls.
    - Higher risks associated with development in NSW because infrastructure is not always appropriately aligned to growth and the community is often opposed to development and has also lost confidence in the system.
    - There are inefficient restrictions on land use and development

7. To address the complexity of the system and the lack of community confidence, there have been many attempts to reform the NSW planning system. The 2013 White Paper addressed many of these issues of concern and noted that "the key objective of the planning system is to promote and enable economic growth and positive development for the benefit of the entire community, while protecting the environment and enhancing people's way of life. It is about enabling development that is sustainable."[23]

8. The most recent reforms were in the *Environmental Planning and Assessment Amendment Act 2017* in the NSW Parliament. The amended EP&A Act commenced on 1 March 2018, with most of the changes coming into effect from that date. The key amendments of these reforms aimed "not only to reducing corruption risks; they are also fundamental to providing strategic, streamlined and balanced decision-making."[24]

9. Outlined below is a snapshot of the planning system in NSW. This is by no means a complete overview of the system, however, for the purpose of this report, I have attempted to outline the key features of the planning system and the major issues raised by stakeholders to provide context for my recommendations.

Development approval pathways in NSW

10. Responsibility for planning approvals rests with both state and local governments. In broad terms, the state is responsible for:[25]
    - Releasing land for new developments
    - Strategic plans for metropolitan areas or regional areas
    - Making provision for major infrastructure

[22] *Reform of the NSW planning system Final Report* – Better Regulation Statement, Centre for International Economics, October 2013, p.19.
[23] White Paper, 'A new planning system for NSW', 2013, p.15.
[24] Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017, Second Reading, Mr Anthony Roberts (Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) Legislative Assembly Hansard – 08 August 2017, p.3.
[25] Australian Productivity Commission, *Shifting the Dial: 5 year productivity review, supporting paper no.10, Realising the Productive Potential of Land,* 3 August 2017, p.4.

- Overarching planning and development policies, such as the broad objectives of and purposes for land use (whether residential, business, recreational or other), with which state or local approval authorities must comply.

11. Local governments are responsible for developing and implementing land use plans at the local level. The vast majority of development applications are processed by local governments.

12. There are seven main planning approval pathways in NSW depending on the size and scale of the development.

- Development without Consent – Low impact routine activities carried out by, or on behalf of, public authorities as part of their business as usual activities (for example, backburning, minor infrastructure works or home occupation). If an EIS is required, 30 days of public exhibition may be required.
- Exempt Development - Minor renovations and building projects that do not require planning or building approval.
- Complying Development - Straightforward, low impact residential, commercial and industrial developments may qualify for a fast track approval if the application meets specific standards and a complying development certificate (CDC) can be obtained.
- Local Development – This is the most common type of development in NSW and incudes home renovations and extensions, and medium-sized commercial, retail and industrial developments. Applicants must consider the Local Environment Plans (LEPs), the State Environmental Planning Policy (SEPP) and Development Control Plans (DCPs) in the relevant local government area. Exhibition for a minimum of 14 days may be required. Development applications (DAs) are determined by local councils, or local planning panels if the development is complex, sensitive or contentious.
- Regional Development – Development that is of a greater scale or value than local development. Applications to be determined by a Regional Planning Panel or Sydney District Planning Panel.
- State Significant Development – Large high cost and high impact development projects that are not public infrastructure projects. The IPC or the Minister determines the application (the Minister can delegate this function to the Department).
- State Significant Infrastructure – Large, mainly public infrastructure projects (for example, rail roads and wharves). The development application is determined by the Minister. The Minister can delegate determination to the Department in some circumstances.

13. The consent authority that assesses and determines a DA or complying CDC is guided by the EP&A Act, the Environmental Planning Assessment Regulation 2000 and a number of SEPPs and LEPs.

Planning Panels

14. Over the last fifteen years, councils in NSW have increased the use of Local Planning Panels, more commonly referred to as Independent Hearing and Assessment Panels (IHAPs), which have

"provided increased transparency, integrity and rigour in the Development Assessment process".[26]

15. IHAPs, which were made mandatory for local councils in Sydney and Wollongong in March 2018 are a particular focus of this report and are discussed in detail in the next chapter. However, there are additional panels in NSW including the Sydney Planning Panels (SPPs) and Joint Regional Planning Panels (JRPPs), which act as the consent authority for development and rezoning applications depending on the size, nature and location of the application.

16. JRPPs were introduced in NSW on 1 July 2009 to strengthen decision making in relation to regionally significant development applications. JRPPs operate in the following four regions of NSW:
    - Hunter and Central Coast
    - Southern
    - Northern and
    - Western.

17. In the Greater Sydney Region, a Sydney Planning Panel operates for each district:[27]
    - Sydney Eastern City
    - Sydney Central City
    - Sydney Western City
    - Sydney North and
    - Sydney South

18. The Planning Panels do not cover the City of Sydney LGA, where the Central Sydney Planning Committee operates.

19. The Planning Panels determine the following types of DAs and modification applications:
    - Development with a capital investment value (CIV) over $30 million
    - Development with a CIV over $5 million which is:
        - Council related
        - Lodged by or on behalf of the Crown (State of NSW)
        - Private infrastructure and community facilities
        - Eco-tourist facilities
    - Extractive industries, waste facilities and marinas that are designated development,
    - Certain coastal subdivisions
    - Development with a CIV between $10 million and $30 million which is referred to the Planning Panel by the applicant after 120 days

[26] Stone, Yolanda, *Council Decision Making and Independent Panels,* The Henry Halloran Trust Research Report, 29 May 2014, Executive Summary.
[27] *Environmental Planning and Assessment Act 1979, Schedule 2, Part 4, cl 11.*

20. Developments which meet State Significant Development criteria are not determined by the Planning Panels.

Infrastructure contributions

21. It is a long-standing government policy that developers must contribute to the funding of local infrastructure. In NSW there are several types of developer contribution, including:
    - Local Infrastructure Contributions (ss7.11 and 7.12 contributions)
    - Special Infrastructure Contributions
    - Voluntary Planning Agreements

22. Outlined below is a brief description of the different types of developer contributions. The issue of transparency and clarity in relation to infrastructure contributions, specifically Voluntary Planning Agreements, is discussed further in Chapter 7.

Local infrastructure contributions

23. The Local Infrastructure Contributions system is administered by local councils. There are two types of local contributions:

    - Section 7.11 contribution where there is a demonstrated link between the development and the infrastructure that the contribution is funding. The contribution rate is charged per dwelling or per square metre.

    - Section 7.12 levies where there does not need to be a demonstrated link between the development and the infrastructure funded from the contribution. Here, the contribution rate is charged as a percentage of the estimated cost of the development.

24. These contributions are well established and well understood and were not raised by stakeholders as an issue during my consultations.

Special infrastructure contributions

25. Special Infrastructure Contributions (SICs) allow for contributions for new developments within a defined boundary called the special contributions area. SICs allow for the provision of infrastructure required to support a growing population, such as:

    - State and regional roads;
    - Transport facilities such as bus shelters and interchanges;
    - Regional open space, pedestrian links and cycleways; and
    - Social infrastructure such as schools, healthcare and emergency services.

26. The infrastructure schedule identifies the key pieces of infrastructure that can be delivered by SIC funding, and the levy is the per-dwelling or per-lot portion of the total infrastructure cost that must be paid by developers. The SIC levy is paid by developers to the State Government during the development assessment process. Alternatively, developers may seek approval from the Minister for Planning to dedicate land or build a piece of required infrastructure instead of making

a financial contribution. The delivery of infrastructure instead of a levy payment is known as a Works-in-Kind agreement.

27. SICs fund state and regional infrastructure which means a contribution may only be determined by the Minister for Planning. This is different to section 7.11 and 7.12 contributions plans above that are made by local government authorities to assist them with funding local infrastructure items within a LGA.

28. SICs are currently being prepared and proposed for all Planned Precincts and Growth Areas across Sydney and I am advised they are currently in place in the following areas in NSW:

- Western Sydney Growth Centres
- Warnervale Town Centre
- Wyong Employment Zone
- Gosford City Centre

Voluntary Planning Agreements

29. A Voluntary Planning Agreement (VPA) is a voluntary agreement between a planning authority (or 2 or more planning authorities) and a developer, "under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose".[28] VPAs are used an alternative or addition to s7.11 and 7.12 contributions and levies.

30. The EP&A Act requires public notice to be given of proposed planning agreements and copies must be made publicly available. The legislation provides that under the agreement a developer volunteers to fund: [29]

- Public amenities and public services
- Affordable housing
- Transport or other infrastructure.

31. The lack of guidance and transparency around VPAs was raised as an issue of concern by many of the stakeholders I met with. This issue is discussed further in Chapter 7.

The Independent Planning Commission

32. The Minister for Planning is the consent authority for State Significant Development applications. The Minister has delegated his power to make a number of decisions to senior officers of the Department of Planning and Environment. However, for contentious issues, or as directed by the Minister, the Independent Planning Commission (IPC) (previously known as the Planning Assessment Commission – PAC) is the consent authority.

[28] *Environmental Planning and Assessment Act 1979 s*7.4(1).
[29] *Environmental Planning and Assessment Act 1979 s*7.4.

33. The IPC was established under the EP&A Act on 1 March 2018. The key functions of the IPC are to:

    - Determine State significant development applications where there is significant opposition from the community
    - Conduct public hearings for development applications and other planning and development matters, or
    - Provide independent expert advice on any planning and development matter, when requested by the Minister for Planning or Secretary of the Department.

34. Members of the IPC are appointed by the Minister for Planning based on their qualifications and considerable expertise in a diverse range of planning-related fields. One member is appointed as the Chairperson of the commission. Members are individually appointed for terms of up to three years and cannot serve more than six years in total.

4. Independent Hearing and Assessment Panels (IHAPs)

1. As part of this review I have been asked to examine the effectiveness of the newly established Independent Hearing and Assessment Panels (known as IHAPs, but referred to as 'Local Planning Panels' in the legislation) in NSW.

2. In March this year the Government introduced a requirement for all local councils in the Sydney metropolitan and Wollongong City Council areas to establish an IHAP.

3. The intent of the IHAPs is to consider contentious development applications in local Council areas in order to depoliticise local planning decisions, reduce corruption risks and provide more consistent, transparent decision making. In his second reading speech the Minister noted that:[30]

   …the benefits of IHAPs extend not only to reducing corruption risks; they are also fundamental to providing strategic, streamlined and balanced decision-making. Panels can achieve greater certainty for all parties by providing rigorous and credible determinations on the merits of an application, reducing the likelihood of reviews and appeals. Panels also elevate the role of the council—they allow the council to focus on the strategic task of setting the overall vision, policies and controls for development in the local area. It is for these reasons that we are introducing this vital, game-changing reform to the planning system.

4. Prior to the legislation coming into effect making IHAPs mandatory in some Council areas, I am advised that approximately 15 Councils in NSW were already using various models of IHAPs.

5. The referral criteria for both development applications and planning proposals to be considered by the IHAPs has been set by the Minister for Planning. The referral criteria have two key objectives:

   - Ensure LPPs focus on contentious and complex development applications and applications with the greatest corruption risk, while Council staff continue to determine routine applications.
   - Build flexibility into the criteria to reflect differences in the types of development and community expectations across local government area.

6. The referral criteria for development applications is attached at Appendix 3. In brief, the IHAPs consider applications in the following circumstances:
   - Where there is a potential conflict of interest (for example, if Councillors or Council staff are a landowner or would benefit from the decision)
   - If the development is considered contentious
   - If the development application departs from the development standards
   - If it involves a sensitive development (for example, development of a heritage item).

[30] Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017, *Second Reading,* Mr Anthony Roberts (Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) Legislative Assembly Hansard – 08 August 2017, p.3.

Independent Hearing and Assessment Panel (IHAP) representatives

7. The IHAPs are made of four members - three of whom including the Chair are 'experts', and one community member.

8. The Minister for Planning, the Hon. Anthony Roberts MP, has appointed independent, expert Chairs for councils to appoint to their panels. Councils were required to also choose two expert members to appoint to its panel from a pool established by the Department of Planning and Environment and approved by the Minister for Planning. It was left up to Councils to recruit and appoint community members to the panels, and a guide was provided to assist with this process.[31]

9. Panel members are required to be expert in one or more of the following fields: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. Panel chairs are required to have expertise in law, or government and public administration.

10. Councillors, property developers and real estate agents are ineligible to be IHAP members as this undermines the objective of having DAs determined by independent experts that depoliticise the assessment process. This is inconsistent with the Regional and Sydney Planning Panels where there is no restriction on Councillors being Panel members. In fact, I am advised that on Regional and Sydney Planning Panels, 66 per cent of panel members are Councillors.[32]

Appointment of Chairs and technical experts

11. The Department managed the process for the appointment of IHAP Chairs and technical experts. An executive recruitment firm was engaged help process the applications for Chair positions. IHAP Chair applications were then reviewed by an advisory panel, comprising of members from the Law Society NSW, the Planning Institute of Australia, the Government Architect and the Deputy Secretary, Planning Services, of the Department of Planning and Environment. The advisory panel recommended appropriate Chairs to the Minister. All proposed Chairs were subject to probity and political donation checks. The Minister approved a primary Chair and two alternate Chairs for each IHAP.

12. Applications for the expert role were shortlisted by the advisory panel on the basis that they met one or more of the expertise requirements (in planning, architecture, heritage, the environment, urban design and economics, traffic and transport, law, or engineering) and on the basis of professional standing, experience, technical ability and broad understanding of the development assessment process.

13. Potential expert IHAP members with actual or potential conflicts of interest were required to disclose these conflicts. In addition, probity checks (including criminal and financials) and merit checks (regarding qualifications) were conducted. Councils were then required to choose at least two experts from the approved pool.

[31] https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/guide-to-recruiting-ihap-community-representatives-2017.ashx?la=en

[32] Information provided by the Department of Planning, from data available at https://www.planningpanels.nsw.gov.au/

14. Some stakeholders commented that to ensure technical experts had an appropriate understanding of the local community and the issues relevant to the area, they should be appointed by the local council. It was further suggested that the quality and operation of the IHAPs would be improved by including a requirement that one of the technical experts have current legal qualifications and experience in the Land and Environment Court. I am of the view that the current expertise and qualifications of technical experts is appropriate, however, this should be reviewed regularly to ensure the appropriate expertise is available on the IHAPs.

Appointment of Community representatives

15. Community representatives are selected from the local community and are appointed by local councils. The Department of Planning and Environment provided Councils with 'Guidelines for the selection of community IHAP representatives.[33]

16. The guidelines specify that local representatives should:
    - Be current residents within the relevant LGA
    - Have knowledge and awareness of the LGA and issues of concern to the local community
    - Be able to represent and communicate the interests of the local community
    - Have an understanding of the planning process and assessment issues (but are not expected to be experts)
    - Commit to attending the IHAP meetings and contribute constructively to the determination of applications
    - Be willing to adhere to the IHAP Code of Conduct and operational procedures.

17. Several stakeholders commented to me that there was a lack of understanding and clarity in relation to the role of community representatives, particularly if they possessed both planning and local expertise. Several stakeholders I spoke with about IHAPs were also concerned that the framework impeded on the 'democratic process'. It is, however, my view that the inclusion of the community representatives on the panel allows for an adequate balance between independence and democracy.

Reviews of the IHAP model

18. When IHAPs were established, the Hon. Anthony Roberts MP, Minister for Planning, committed to ensuring there was a robust evaluation framework in place to monitor the performance of the IHAPs. The Minister also committed to ensure the panels were delivering the intended policy outcomes including improved transparency, reduced corruption risk and consistency of planning decisions. As such, In February 2018, the Minister requested the Department of Planning and Environment undertake a review of the IHAP model to ensure it was robust and would minimise corruption risk as much as possible.

[33] https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/guide-to-recruiting-ihap-community-representatives-2017.ashx?la=en

19. The Department undertook this work in partnership with Boston Consultancy Group (BCG), and prepared a publicly available report with 21 recommendations to further strengthen the system.[34] The review found that overall "the IHAP model is robust and strikes a balance between offering strong procedural checks and balances, without hindering efficient panel operation or impacting on the overall efficient functioning of the planning system".[35] All of the 21 recommendations have been accepted and 11 have already been fully implemented. The implementation of the remaining 10 recommendations are on track or are ongoing.

20. In March 2018, the UTS Institute for Public Policy and Governance (IPPG) were appointed to develop a framework to monitor to and evaluate the implementation of the IHAPS. The objective of the framework will be to establish an evidence base, including collecting quantitative and qualitative data, to track overall panel performance and determine whether panels are delivering intended policy outcomes such as:

    - Improving transparency and consistency in the determination process;
    - Providing expert based decision making; and
    - Improving community confidence in local development decision making.

21. In March 2018, to support the IPPGs work, the Department of Planning and Environment Secretary signed a direction requiring councils to provide data about panel operations on the number of DAs assessed, assessment and determination timeframes, and appeals commenced. This work is ongoing.

22. In August 2018, I was appointed by the Minister to conduct this independent review of the governance of decision making within the NSW planning system, with a particular focus on the operation of the IHAPs. This has been, in essence, an early health check to determine whether the establishment and operation of the IHAPs are on track, and whether any early improvements can be identified to ensure the process is as robust as possible. As I outline in the following chapter, I am of the view that the introduction of mandatory IHAPs has been a positive addition to the planning system in NSW.

[34] *Minimising and monitoring risk in the IHAP framework*, available at http://www.planning.nsw.gov.au/~/media/Files/DPE/Reports/minimising-and-monitoring-risk-in-the-ihap-framework-2018-05-24.ashx

[35] *Minimising and monitoring risk in the IHAP framework,* p.4.

5. Comment on the establishment and operation of IHAPs

1. The vast majority of stakeholders agreed that the establishment of the mandatory IHAPs are a positive addition to the planning system in NSW. Many stakeholders commented that the existing governance rules for panels are robust and proportionate. In addition to stakeholder consultations, we surveyed all Councils subject to a mandatory IHAP and many of them reported the impact to be "extremely positive". Only two of the surveyed Councils reported the impact to be "extremely negative".[36] These Councils are clearly out of step with the rest of the affected Councils.

2. The Property Council of Australia, echoing the majority view, notes a positive aspect of planning reforms across jurisdictions is the introduction of "independent assessment panels that provide for the professional determination of non-routine projects. These reforms make the process of gaining planning approval more efficient and timely".[37] I agree with this view and can see that the introduction of the IHAPs is contributing to an improved planning system as DAs are being determined on their merits in a consistent and transparent way. There are adequate measures in place to manage conflicts of interest and minimise the risk of undue influence or corruption in the determination of DAs.

3. Overall, while the mandatory IHAPs have only been operating for six months, they appear to be functioning as intended. There do not appear to be any issues in relation to the establishment or operation of IHAPs that require any major interventions.

4. Outlined below is a summary of the positive aspects I have found in relation to the operation of the IHAPs. In the next chapter I have outlined some suggested changes to ensure the panels' continued smooth operation into the future.

Council feedback

5. During the early stages of the review, we met with Local Government NSW in the hopes of achieving a clearer, well rounded understanding of the council's opinion of the newly introduced mandatory IHAPs. They presented several concerns to me on behalf of councils across the Sydney metropolitan area and Wollongong, including the extent to which IHAPs are independent. The representatives from Local Government NSW also indicated that a number of affected councils believe that the IHAPs should not be mandatory.

6. In addition to meeting with Local Government NSW, we distributed a survey to all councils who have a mandatory IHAP operating within their organisation. Participants were asked to comment on:

    - How the introduction of mandatory IHAPs has changed decision making regarding local development in their council
    - How they would rate the impact of the mandatory IHAP in their council

[36] Data from council surveys (Appendix 7).
[37] Property Council of Australia, *Cutting the Costs: Streamlining State Agency Approvals*, November 2017, p.11.

- Whether the transition from an existing IHAP to the mandatory IHAP resulted in changes in how matters were being determined, and the nature of these changes
- Whether the mandatory IHAP process had affected transparency or consistency of decision making processes and how
- How the recent changes to the planning system affected the councils approach to strategic planning and assessment
- Using examples, how the changes have affected the efficiency of these processes
- Any significant issues they have observed as a consequence of the changes
- Any ways to further improve the operation of the IHAPs or Joint Panels

7. Analysis of the survey results indicated that Councils were primarily positive about the introduction of the IHAPs. Multiple participants noted that mandatory IHAPs had increased community involvement in the assessment process whilst also decreasing political influence, both of which was recognised as a welcome consequence.

8. Many Councils reported that the quality and constancy in decision making had increased, claiming the upsurge of expertise and decrease in political motivations had contributed to this outcome.

9. As noted in the previous chapter, the policy intent of the IHAPs was clearly outlined in the Ministers second reading speech.[38] In order to examine whether the establishment and operation of the IHAPs are meeting this intent, I have focused on some of the key benefits, as summarised by the Minister, and my conclusions are outlined below.

Are IHAPs depoliticising planning decisions?

10. One of the key policy reasons for the introduction of the IHAPs was to depoliticise planning decisions. In local government, the councillors traditionally have three main roles:
    - Establishing strategic development standards through the preparation of local environment plans
    - Considering development and rezoning applications
    - Acting as constituent representatives.

11. The combination of these roles has the potential to create conflict for Councillors. "The absence of a 'separation of powers', thus allowing councillors to both establish development standards and then assess applications against those standards, has been frequently criticised".[39] Further, as noted in the Independent Planning System Review by the Hon Tim Moore and the Hon Ron Dyer, public confidence in the planning system "has been eroded by the perception that politics

[38] *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017*, *Second Reading,* Mr Anthony Roberts (Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) Legislative Assembly Hansard – 08 August 2017.
[39] NSW Parliamentary Library Research Service, *Recent Developments in Planning Legislation, Briefing Paper No 16/06,* November 2006, Executive Summary.

can determine decision making, and a lack of community confidence in the integrity of the planning system over decisions about larger developments".[40]

12. Councils have reported that since the introduction of mandatory IHAPs, development applications are being determined on a technical basis by experts and that politics has been removed from the process.[41] A small number of stakeholders I met with did not support the IHAPs as they "undermine democracy and our role as elected representatives".[42] This was a minority view and appeared out of step with the prevailing view that IHAPs have successfully depoliticised decision making on DAs.

Are IHAPs reducing corruption risk?

13. There is a potential for actual or perceived corruption risks in circumstances where elected officials have decision making or approval powers that can involve significant windfall gains for property owners or developers. This is not a risk confined to NSW. A recent Queensland Crime Commission report found that "there are perceptions of compromised council processes and decision-making, especially where councillors have received campaign funding from donors involved in the property and construction industries. These perceptions are compounded by the failure of many councillors to adequately deal with their conflicts of interest".[43]

14. There have been many Independent Commission Against Corruption (ICAC) investigations in NSW that have shone a light on such practices, and there is no doubt still a perception in some communities of the potential for corruption in local government. One of the primary reasons for the introduction of the IHAPs was to remove the determination of contentious development applications from elected officials, and free up local councils to focus more on strategic planning decisions.

15. The majority of stakeholders I met with agreed that referring contentious and complex development applications to an independent panel for determination reduces the potential for corruption, some saying significantly so.

Are IHAPs streamlining decision making and ensuring rigorous determinations on the merits of an application?

16. While the mandatory IHAPs have only been in place for six months, most of the stakeholders I met with advised that the decision-making process is more streamlined and consistent, and as one stakeholder commented, they are 'much like the courts, everyone knows where they stand.'

17. Further, many stakeholders reported to me that the IHAPs have brought more rigour into the development application determination process. Stakeholders reported numerous benefits of the IHPAs including the professionalism of the decision making. Councils reported that "the consideration and determination of development applications is now being undertaken by

[40] White Paper, 'A new planning system for NSW', 2013, p13.
[41] Data from council surveys (Appendix 7).
[42] Data from council surveys (Appendix 7).
[43] *Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government,* Queensland Crime and Corruption Commission, October 2017, p. xii.

members who have the relevant experience providing a more robust and transparent process".[44] As one stakeholder commented, "the process is respected even if the decisions are hated".

18. In relation to planning proposals (rezonings) IHAPs are making recommendations to Council who then will make the decision. This "adds a further weight and level of probity to staff recommendations".[45]

Have IHAPs assisted in allowing the council to focus on the strategic matters?

19. I am mindful that in his second reading speech the Minister noted that an intended benefit of the IHAPs was to "elevate the role of the council—they allow the council to focus on the strategic task of setting the overall vision, policies and controls for development in the local area.[46] Many stakeholders who I have met report that the introduction of IHAPs has definitely provided more time for the councillors to engage "more effectively in strategic matters".[47]

20. Given the positive impact of IHAPs on the planning system in the Wollongong and Sydney council areas, I have recommended that they remain mandatory.

Recommendation 2: In recognition of the significant positive feedback and overall effectiveness of Independent Hearing and Assessment Panels (IHAPs), I recommend IHAPs should remain mandatory for Sydney metropolitan and Wollongong areas.

[44] Data from council surveys (Appendix 7).
[45] Data from council surveys (Appendix 7).
[46] *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017*, *Second Reading,* Mr Anthony Roberts (Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) Legislative Assembly Hansard – 08 August 2017.
[47] Data from council surveys (Appendix 7).

6. Gaps or risks identified in relation to IHAPs

1. As noted in the previous chapter, I am of the view that the establishment and operation of the mandatory IHAPs in Wollongong and Sydney has, to date, been well managed. However, there are several suggestions raised by stakeholders that would benefit from further consideration. Outlined below is a summary of these issues and my recommendations to address them.

Extending IHAPs to other regional centres

2. IHAPs are only mandatory in Greater Sydney and in Wollongong, and not across NSW or in other major regional hubs such as Newcastle and the Central Coast.

3. I accept that it may not be appropriate for IHAPs to be extended throughout NSW. The majority of stakeholders accepted that the corruption risks and pressure in regional NSW was not as high as in metropolitan areas due to land prices and the amount of development required to meet housing and business supply needs. Further, many stakeholders noted that there may be a shortage of skilled and experienced members in rural and remote areas, making it difficult to establish IHAPs.

4. However, there does not appear to be a clear rationale as to why IHAPs should not also be mandatory in Newcastle and the Central Coast. The Planning Institute of Australia, among others, have suggested that the IHAPs be expanded to other key regional centres.[48] Given the success of IHAPs in Sydney and Wollongong, I recommend that consideration be given to expanding the mandatory IHAPs to include the Central Coast and Newcastle.

Recommendation 3: That consideration be given to extending mandatory Independent Hearing and Assessment Panels to the Central Coast and Newcastle local government areas (LGAs).

Consistency between the Regional Panels, Sydney Planning Panels and the IHAPs

5. Some stakeholders raised the issue of a lack of consistency between the Sydney Planning Panels, the Regional Panels and the IHAPs. There seems to be a lack of understanding in the community about the different role of each of the independent Panels. To a person not familiar with the planning system, it does seem difficult to work out which independent panel may be considering a development application. This confusion is amplified as there seems to be a lack of consistency between the rules for membership on each panel, the tenure of membership and the requirement for IHAP members to rotate. It seems to me that to enhance the community understanding of the role of independent panels, it would assist if the panels were consistent. This would allow for an easier and simpler explanation in one set of explanatory materials.

6. One inconsistency raised with me between the establishment and make-up of the Sydney Planning Panels, the Regional Panels and the IHAPs is the rules for panel membership. Councillors are not eligible to be members on IHAPs, however, there are no such restrictions on the Regional or

[48] Planning Institute of Australia, *PIA submission on Kaldas Review: working towards a world class NSW planning system,* 22 October 2018, p.3.

Sydney Planning Panels. The establishment of IHAPs was intended to depoliticise the consideration of development applications, and therefore I am of the view that it is appropriate that councillors are *not* eligible to sit on IHAPs. However, it is arguable that the same rules should apply to the Regional and Sydney Planning Panels. The focus of my Review has primarily been on IHAPs and I have not had the opportunity to consult on, or examine, the other planning panels in detail. I therefore make no further comment in relation to whether it is appropriate for local government representatives to sit on Sydney or Regional Planning Panels, however, this may be one issue the Department wishes to consider when examining the issue of consistency between the Panels.

7. There is also inconsistency in the approach to tenure for members of IHAPs and members of District Panels. The legislation provides that a member of a 'planning body' holds office for a period not exceeding three years, however, they are eligible for re-appointment after three years.[49] In terms of District Panels, a member may not hold office for more than nine years. This is inconsistent for the tenure periods for the Independent Planning Commission and the IHAPs where a member may not hold office for more than six years in total. [50]

8. Several key stakeholders noted there was an inconsistency between the governance procedures for Regional Panels and IHAPs. It was noted that for Regional Panels there is no requirement for Chairs and members of regional panels to rotate. Given the Regional Panels deal with higher value development applications than IHAPS, it was suggested that there be a requirement for them to also rotate members to ensure consistency and reduce the potential for corruption risks. As I have noted above, I have not examined the Regional Panels in detail, however, am of the view this issue should be considered when the issue of panel consistency is reviewed by the Department.

Recommendation 4: That the Department of Planning and Environment give consideration to ensuring consistency and providing greater clarity in relation to the Independent Hearing and Assessment Panels and Regional/District Panels, for example, in relation to:

a) Tenure of panel members

b) Rotation of IHAP panel members

c) Restrictions on who can be a panel member

9. Some stakeholders raised the issue that probity checks are mandatory for expert IHAP members, but not mandatory for community representatives. It seems to me that probity checks should be a consistent feature of IHAPs in order to avoid perceived or actual conflicts. I have therefore recommended that the Department consider mandatory probity checks for community representatives.

[49] *Environmental Planning and Assessment Act 1979, Schedule 2, Part 4, cl 11.*
[50] *Environmental Planning and Assessment Act 1979, Schedule 2, Part 4, cl 11.*

Recommendation 5: That the Department of Planning and Environment consider undertaking mandatory probity checks for Independent Hearing and Assessment Panel community representatives, similar to the appointment process of the Chairs and technical experts.

Deliberation of IHAP decisions

10. Schedule 2 of the EP&A Act provides that a Planning Body (including IHAPs and Regional Panels) is *required* to conduct its meetings in public.[51] I am advised that Regional Panels make their decisions in public on the day of deliberation. The EP&A Act allows for the Minister to issue directions in relation to the establishment and procedures of IHAPs.[52]

11. On 23 February 2018, the Minister issued Operational Procedures for how IHAPs are to operate. These are included at Appendix 4. According to these procedures, IHAPs may either "adjourn the public meeting to deliberate before reconvening for voting and determination or close the public meeting for deliberation and/or voting and determination".[53] The procedures suggest that before the adjournment, the chair should publicly state the reasons for the adjournment and after reconvening the meeting the chair should summarise the matters discussed in adjournment.

12. Furthermore, in September 2018, the Department released the 'IHAP – Best Practice Meeting Procedures' (Appendix 5) which indicate a panel may adjourn the meeting (to a closed session) where:
    - a panel briefing is required to hear confidential or sensitive information, or
    - the panel wishes to confer amongst itself before reconvening the meeting for voting and determination.

13. During my consultations it became clear the current practice of many of the IHAPs is to retire to deliberate in private and then return to the public forum to provide their decision. It was suggested to me during a few consultations that this was contrary to requirements under the EP&A Act. Several participants from the Council survey recommended that the panel should deliberate in public to increase transparency and community confidence in the system. Further to this, some stakeholders reported that IHAPs were also having additional meetings with Council staff during these private deliberations.

14. The majority of IHAP chairs and members described this private deliberation time as important to ensure they had time to consider and discuss the proposal in detail amongst themselves. They were strongly of the view that it would not be appropriate to conduct these deliberations in a public forum, despite some stakeholders believing it should be done publicly in the same way Council previously did.

[51] *Environmental Planning and Assessment Act 1979* Schedule 2, Part 5, clause 25(2).
[52] *Environmental Planning and Assessment Act 1979, s*9.1(2) (b1).
[53] Local Planning Panels Direction – Operational Procedures, section 3.3(5), issued under section 9.1 of the *Environmental Planning and Assessment Act 1979.*

15. I am of the view that it is appropriate to continue to allow the IHAPs to deliberate in private in line with the Minister's direction. As in a court or tribunal, it seems reasonable to provide a forum for frank discussion among decision makers to occur away from the public, provided the decision is handed down in public and the reasons for the decision are clear and coherent and publicly available. However, there appears to be ambiguity between the legislation and IHAP Operational Procedures. I am therefore recommending that the Department clarify the issue - with the intent being that private deliberation should be permitted. There should also be clarity on whether panel members can or cannot meet with Council staff during deliberations and what record is made of those meetings. If legislative amendments are required to clarify this process I would support that.

Recommendation 6: That the Department of Planning and Environment clarify the issue of Independent Hearing and Assessment Panel meeting procedures with the intent being that private deliberation should be permitted. There should also be clarity on whether panel members can, or cannot, meet with Council staff during deliberations and what record is made of those meetings.

Appointment of members to several IHAPs

16. During the Budget Estimates hearings on 31 August 2018, the Minister gave an undertaking that I would look at the issue of whether there is a corruption risk of having one person appointed to several panels.[54] There seems to be a high degree of crossover of chairs, across IHAPs, and I am advised that all but five chairs also sit as alternate chairs. The maximum number of IHAPs for any one person is four as chairs, alternates or a combination of both. Furthermore, many of the experts on IHAPs are also involved in JRPPs, design panels and other planning committees, so there is clearly a high degree of crossover of members on planning panels in NSW. In relation to IHAPs, I am advised that 123 expert members have been appointed by either local councils or the Minister (from an approved list of 218 experts). Sixty-four of these experts sit on more than one panel.[55]

17. From my research and consultation with stakeholders, there does not appear to be evidence demonstrating that multiple membership on IHAPs is a corruption risk. The remuneration for panel members is set at a level that would generally require panel members to work in a capacity other than on the panels. As several stakeholders noted, the ability for panel members to work in another capacity is constrained by the conflict of interest provisions which often prohibit members from continuing to work as planning consultants, planning lawyers or other planning professionals. I consider these restrictions to be appropriate to ensure the integrity of the independent panels. However, this does result in members often seeking appointment on numerous panels to ensure financial viability.

[54] NSW Parliament Budget Estimates transcript, the Hon. Anthony Roberts, Minister for Planning, Minister for Housing, and Special Minister of State, Friday 31 August 2018, p 14.
[55] Budget Estimates Answers to Questions on Notice, QoN-5, https://www.parliament.nsw.gov.au/committees/pages/budget-estimates.aspx

18. On balance, I consider the corruption risk created by panel members being appointed to numerous panels to be far less than that of members continuing employment in the planning system that may contravene conflict of interest provisions. Furthermore, I am of the view that the appointment process for Chairs and expert members is rigorous and appropriate probity checks have been carried out on each member.

19. However, given the IHAPs have only been in operation for six months, I have recommended that this issue be monitored on an annual basis. The annual review should include a review of conflicts of interest as well as performance issues of those on multiple panels. This could include an examination of whether multiple memberships are resulting in panel members to be over-stretched or influencing matters too broadly. I have recommended the Department review this issue on an annual basis.

Recommendation 7: The Department of Planning and Environment conduct an annual review of multiple membership on Independent Hearing and Assessment Panels to ensure no conflicts of interest or other issues arise.

Threshold for matters to be considered by the IHAP

20. On 23 February 2018, the Minister issued the referral criteria (attached at Appendix 3), outlining the circumstances under which councils must refer a development assessment to an IHAP. The issue that arose most often in my consultations was that the criteria lacks suitable flexibility. The example provided by several stakeholders was that an item is considered 'contentious' if it is the subject of "10 or more unique submissions."[56] It was put to me that there are some items which may only receive 5 or 6 objections, however, the objections were about substantial matters. Conversely there are some items that may receive 15 objections of a very minor nature that can be easily addressed by way of consent conditions and may not call for IHAP consideration. In the survey that we sent to councils, many of them stated that the existing guidelines for referral criteria required further consideration to better reflect their requirements.

21. I am advised that the Department appropriately sought ICAC feedback when drafting the referral criteria and ICAC emphasised the need for clear and certain criteria. ICAC noted that any system which allows discretion poses a higher corruption risk. Therefore, when establishing the referral criteria, it was determined that Councils should not be provided with flexibility to refer any matter to an IHAP based on the subjective opinion of a Council officer or General Manager. If a development application is thought to be particularly contentious or complex and does not trigger referral to an IHAP, there are other options for local councils to deal with it. For example, peer review of the assessment by multiple senior planners.

22. The issue of greater flexibility in referring matters to IHAPs was raised by several Councils and IHAPs. Some stakeholders requested flexibility to allow Councils to refer additional applications to the panel if they were of the view the matter was contentious or would benefit from the expertise of the IHAP consideration. I consider it is appropriate for clear and certain criteria for

[56] As outlined in the Local Panels Planning Direction – Development Applications, issued by the Minister on 23 February 2018, http://planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Independent-Hearing-and-Assessment-Panels/~/media/39E7A06B93DC46F4818E03EF5ABFD2EC.ashx

matters to be referred to the IHAPs for consideration. There should be not be a discretion for Council staff or Councillors to determine not to refer an issue to the IHAP. However, considering the IHAP process provides greater expertise and independence to the consideration of DAs, I do not see a corruption risk in providing greater flexibility to Councils to recommend more matters to the IHAPs than the referral criteria currently allow. I am also of the view that the IHAP provides greater transparency in decision making than other mechanisms used for dealing with contentious applications (for example, having a matter peer reviewed by Council staff). I therefore support the view there should be greater flexibility to refer more matters to the IHAPs and have recommended the Minister consider amending the directions.

Recommendation 8: The Minister give consideration to amending the "Local Planning Panels Direction – Development Applications" to provide greater flexibility for local councils to refer additional matters to Independent Hearing and Assessment Panels for consideration.

Conflicts of interest

23. In their draft report, the IPPG report found that there was significant variance among IHAP members, particularly community representatives, of what may constitute a real or perceived conflict of interest. To address this concern, the Minister approved changes to the Codes of Conduct for Local Planning Panel members and for Sydney and Regional Planning Panel members. On 21 August 2018, the Department of Planning and Environment advised that all Council General Managers and CEOs of the amended codes.

24. The amendments to the codes of conduct provide clarification to panel chairs and members of the importance of declaring and addressing conflicts of interest prior to sitting on a matter. The revised Code of Conduct for IHAPs are in Part 4 (attached at Appendix 6). They require all panel members to sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on the relevant council's website as soon as practicable. Failure to adhere to the Code of Conduct for IHAPs is "the responsibility of councils to address. In cases of serious breaches council has the option to remove a panel member from office (clause 16 of schedule 2 of the EP&A Act)".[57]

25. I am of the view the revised Code of Conduct for IHAPs is appropriate to ensure that members are required to actively turn their mind to each matter on the agenda to determine if a conflict of interest exists. As I discuss in Chapter 8, the introduction of an Ethics Unit may also assist in relation to conflicts, as panel members can seek independent advice from the Ethics Unit.

26. Many stakeholders I met with also shared this view. In fact, it was suggested a number of times that the same standard of transparency and accountability be applied to all key decision makers, namely local council staff. I believe this could contribute significantly to the quality of the planning system, considering the high percentage of applications being considered by Council staff under

[57] Code of Conduct for Local Planning Panels, August 2018,

delegation. While I acknowledge these applications are generally smaller and less likely to provide windfall gains in the event of corruption, the potential for 'mateship or cronyism' decisions are probably quite high. Some stakeholders suggested that a requirement for conflict of interest declarations for key staff decision makers should be required.

27. I note that The Minister for Local Government has publicly released the soon to be prescribed 2018 Model Code of Conduct for Local Councils in NSW.[58] Once prescribed, the new code and associated procedures will apply to more than 45,000 staff and nearly 1,300 councillors at 128 local councils across NSW, to provide a robust framework for ethics, accountability and transparency in NSW.

28. The new Model Code of Conduct introduces strict new requirements including:

- Banning councillors from accepting gifts valued at more than $50
- Mandatory reporting of all gifts regardless of value in the Council gift register
- Councillors with a pecuniary interest cannot access Council information about the matter
- Suspensions for pecuniary interest breaches will count towards the "three strikes and you're out" scheme introduced in 2015 where councillors face automatic disqualification when they are suspended three times for misconduct
- Councillors must declare new interests more regularly in official returns of interest lodged with their council
- Councillors must declare in official returns of interest if they are a property developer
- New standards relating to discrimination and harassment, bullying, work health and safety, behaviour at meetings, use of social media, access to information and maintenance of Council records.

29. I am advised that a new Regulation will shortly give effect to the updated code. After the new code and procedures are prescribed, councils across NSW will have six months to adopt a Code of Conduct and associated procedures that meet the new requirements.

30. Given there is currently significant work underway in this area, I do not consider it necessary to make a recommendation with respect to improve Codes of Conduct for local government representatives and employees.

Costs and resources provided to the IHAPs

31. During the consultation process, several stakeholders raised the issue that the IHAPs did not have their own resources and were reliant on the Council to provide appropriate resourcing. Stakeholders also raised the issue of costs and noted that the IHAPs can be both costly and time consuming for Councils. Some Councils in the survey results also suggested that the increase in Council expenditure would warrant financial assistance from the Department.

[58] https://www.olg.nsw.gov.au/strengthening-local-government/conduct-and-governance/model-code-of-conduct

32. I note that Councils are required to provide secretariat support for their IHAPs, whereas the Department provides secretariat support for the Regional and Sydney Panels. I have commented on the inconsistency between the panel secretariat support in Chapter 6.

33. The Government has previously announced that it will monitor the costs of establishment and implementing IHAPs to ensure there is no significant cost burden to Councils, and I am advised that this monitoring is ongoing. When questioned on this issue during the Budget Estimates Hearings, the Deputy Secretary responded that as the IHAPs have only been operating for six months, it is "still too early to determine the net cost of operating panels. Certainly, there has not been enough time elapsed yet to assess one of the key savings attached to panels, which is fewer appeals to the Land and Environment Court and significantly reduced legal costs for councils that have had those panels in place for some time, preceding the introduction of the mandatory panels. We are anticipating that it will take some time for the full impacts to be adequately assessed".[59] I am advised that the Department is continuing to actively monitor this issue.

Rotating panel members

34. The Operational Procedures (see Appendix 4) provide that the IHAP Chairs and any alternate chairs are to rotate presiding over panel meetings, to ensure variable panel composition and to lessen the risk that panel members will be subject to undue influence. As noted previously, several key stakeholders raised the rotation of panel members as an inconsistency between the governance procedures for Regional Panels and IHAPs. Regional Panels do not have a requirement to rotate members. Given the Regional Panels deal with higher value development applications than IHAPs, it was suggested by stakeholders that there be a requirement for regional panels to also rotate to ensure consistency and reduce the potential for corruption risks.

35. Some stakeholders reported concerns in relation to the requirement to rotate panel members due to knowledge loss and possible disruption. A key stakeholder submitted that 'the members of the IHAPs are shuffled to frequently, which results in inconsistent decision making.[60] Some Councils also reported that it was costly to have rotating panel members, particularly in instances whereby a complex matter is deferred by an IHAP and then considered by a different panel which then needs more time to review and consider a matter.

36. As I have outlined above, while I have not examined Regional Panels in detail, I am of the view that the Department should consider this issue when undertaking a review of the consistency between the panels (as noted in Recommendation 4).

Appeals of IHAP decisions to the Land and Environment Court

37. The legislation provides that if a determination or decision of a Sydney district, regional planning panel or a local planning panel (IHAP) is appealed, "the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal".[61] While some IHAP Chairs report delegating this function to the Council's General Manager, others report that this has been a complex difficult issue to navigate,

[59] Budget Estimates Transcript, Deputy Secretary, Policy and Communications, p.13.
[60] As noted in the Urban Taskforce submission, 20 September 2018, p. 2.
[61] *Environmental Planning and Assessment Act 1979* s8.15(4).

particularly in instances whereby the IHAP decision conflicts with the initial Council staff recommendations. This is an area that I have recommended requires greater clarification and guidance.

Recommendation 9: That the Department of Planning and Environment consider providing greater guidance and clarity to local councils and Independent Hearing and Assessment Panels in relation to decisions of those Panels that have been appealed to the Land and Environment Court, including:

d) Who should appear before the court
e) If Council staff appear before the court, who should instruct Council
f) Clarity in relation to resourcing for Independent Hearing and Assessment Panels in court matters

Complaints in relation to IHAP members

38. On 21 August, the Department of Planning and Environment advised all Councils of an additional pathway for complaints to be made about local planning panels. The Department's IHAP webpage and the Department's complaints management page were updated to provide information on the revised process, including an email address and telephone number that stakeholders can use to make IHAP-related complaints.

39. When a complaint is made, the Department's Customer Service and Complaints Management team will register it and then direct the complaint to the relevant Council for resolution. Councils were advised that any Code of Conduct complaint should be dealt with under the Code of Conduct for Local Planning Panel Members, and all other complaints should be dealt with under Council's routine complaint management process. If the complainant is dissatisfied with the way in which Council has handled the matter, the Department can be asked to review it.

40. All comments or complaints in relation to the government's policies or procedures that govern the operations of the local planning panels are managed by the Department. If allegations of corrupt conduct, misconduct or serious waste of resources are made, the complainant will be encouraged to approach the ICAC or the NSW Ombudsman directly. The Department will arrange a referral where required. I am of the view that the current updated complaints mechanism is effective, however, the Department should to continue to monitor this issue.

41. The proposed Ethics Unit, discussed in Chapter 8, while not a complaints management body, would be well placed to review complaints and identify whether there are any consistent patterns or themes that may suggest either further amendments to operating procedures may be required or if there is an additional need for education for IHAPs, Councils or the community.

7. Gaps or risks identified in relation the NSW planning system

1. As I have noted in previous chapters, the primary focus of this review has been on the introduction and operation of the IHAPs. However, the Terms of Reference require me to "assess the structure and governance of the planning system in NSW" and "consult with stakeholders to identify governance issues that they feel require consideration or which risk the integrity of the system". Given the complexity of the planning system in NSW and the timeframe for my review, I have not had an opportunity to examine each part of the planning system. However, I have consulted with a wide range of stakeholders across the system, including developers, community groups, Councils, panel members and government representatives. Through these consultations, several issues have emerged as potentially requiring clarification or improvements to the system. Outlined below are my findings and recommendations on these issues.

Infrastructure Contributions

2. Significant concerns have been raised by numerous stakeholders regarding VPAs and other methods of infrastructure contributions obtained from proponents. The concerns revolve around inconsistencies, ambiguity of intent and uncertainty around the use of the funds collected. Having said that, there also appears to be consensus that a form of contribution is not only desirable but is fair if it is applied consistently and transparently for the greater good of the community. I agree with that opinion. It is my opinion that the issue of contributions, whether they be VPAs, SICs or otherwise, should be looked at holistically and applied consistently across the system to ensure certainty, fairness and making sure it complies with the strategic aim.

3. In Chapter 3, I provided a brief overview of the various infrastructure contributions in NSW. Infrastructure contributions are an essential part of the planning system as they help fund essential works and services for new communities including roads, open spaces, local sports and community facilities. However, many stakeholders commented to me that the current system of infrastructure contributions is not as coherent or as transparent as it could be.

4. While it seems there is a framework in place for each Council and within the Department to obtain and spend infrastructure contributions, it does not seem to me that there is a standard system for collection, monitoring or auditing contributions to ensure a fair and equitable system. Many stakeholders reported that the amounts paid in VPAs varied widely, not just between Councils, but also between different developments within Council areas with seemingly no rationale or transparency as to why the amounts varied. Similarly, Councils are required under the legislation to maintain a register for all contributions under ss7.11 and 7.12.[62] However, it does not appear that contributions information is regularly audited or monitored, or that there is any systemic auditing to ensure that infrastructure contributions have been spent as intended.

[62] *Environmental Planning and Assessment Regulation 2000*, Clause 34.

5. As I have discussed in Chapter 2, the Victorian Infrastructure Contribution Plan Guidelines are comprehensive, and I am of the view a similar document would be useful in NSW. The guidelines provide an overview of the purpose of infrastructure contributions and how they are used. The guidelines also state that there should be clear and transparent records on the amounts collected and what it is spent on. The "Infrastructure levies must be used for the purpose for which they are collected, and proper financial accounts should be kept to demonstrate this. The method for calculating and applying levies is clear and simple to understand and the collection and use of levies is reported on regularly". [63]

6. I am of the view that it would be a valuable exercise for the Department to consider a complete and thorough analysis of all infrastructure contributions in NSW. I am of the view that centralised gathering of contribution data and analysis of the spending of those funds is the first step towards a better-informed decision-making process on this issue generally. As stated previously, a holistic approach should be considered but needs to be definitively informed of the status quo. I have therefore recommended the Department look at undertaking an audit and centrally gather data to enable a complete evidence-based analysis of infrastructure contributions throughout NSW. I am aware that this is a large piece of work that may take some time. In the interim, I have recommended that immediate steps be taken to improve the transparency of the VPA system as outlined below.

Recommendation 10: That the Department of Planning and Environment consider undertaking an audit of all infrastructure contributions and spending of same in NSW to enable evidence-based decision-making on the collection and monitoring of those contributions.

Voluntary Planning Agreements

7. One issue that was raised consistently by many of the stakeholders I met was the perception of unfairness and lack of transparency in relation to Voluntary Planning Agreements (VPAs). A VPA is a voluntary agreement between a planning authority (or two or more planning authorities) and a developer, "under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose". [64]

8. The legislation provides that under this agreement a developer volunteers to fund: [65]

   - Public amenities and public services
   - Affordable housing
   - Transport or other infrastructure.

[63] Infrastructure Contribution Plan Guidelines, Victorian Department of Environment, Land, Water and Planning, October 2016, p.10.
[64] *Environmental Planning and Assessment Act 1979 s*7.4(1).
[65] *Environmental Planning and Assessment Act 1979 s*7.4.

9. Contributions can be made through the:

    - Dedication of land
    - Monetary contributions
    - Construction of infrastructure
    - Provision of materials for public benefit and/or use.

10. VPAs provide important funding, as Councils have limited opportunities to raise funds needed to deliver appropriate infrastructure to support growth and provide amenities for its local community. Local government rates are pegged which also limits the recurrent funding available to invest in infrastructure. As a result, Councils increasingly rely on VPAs as a way of securing infrastructure funding.

11. Aside from the legislative framework outlined above, there are few requirements on how parties enter a VPA and the public benefits a VPA may provide. The existing Practice Note on Voluntary Planning Agreements was released by the Department in July 2005. The Practice Note seeks to provide best practice guidance, but it is not legally binding and there is no requirement for parties to have regard to the Practice Note when entering a VPA.

12. The Department developed an updated Practice Note in 2016 which was publicly exhibited for six weeks between 4 November 2016 and 27 January 2017. The intention was to strengthen and provide greater transparency for VPAs. Forty-eight submissions were received from stakeholders. I am advised that the Department is currently considering how the VPA policy framework can be improved.

13. Stakeholder feedback indicates that the current VPA system does not encourage transparent, strategic infrastructure planning and delivery. The current system is vulnerable to corruption as there is a perception that an uplift in land value can be bought through the VPA process. Indeed, one stakeholder went as far as describing VPAs as a 'legal brown paper bag.' In addition, many stakeholders commented that VPAs were not voluntary. Indeed, they were almost a requirement for getting a large development approved. I am mindful that VPAs have an important role in providing for public amenities, however, perhaps it is misleading to call them 'voluntary' contributions. While the legislation states that "*A planning agreement* is a *voluntary* agreement or other arrangement"[66], it seems to me that the Department may wish to consider whether they should be termed simply as 'Planning Agreements'.

14. As with any element of discretion or flexibility in planning decision making, stakeholders have concerns surrounding the governance, probity and transparency of VPAs. While many of the Councils that I spoke to confirmed that VPAs can be effective to provide critical infrastructure that otherwise may not funded, almost all agreed that VPAs needed to be more robust and transparent.

[66] *Environmental Planning and Assessment Act 1979 s*7.4(1).

15. I am of the view that the Department should consider issuing an updated Practice Note for VPAs to ensure that appropriate guidance is provided to developers and Councils when entering a VPA. As noted in their public submission, the Planning Institute of Australia urged "the NSW Department of Planning and Environment (the Department) to draft an updated direction or practice note dealing with principles of probity and practice for VPAs to make it absolutely clear that there is no perception that development rights are 'for sale'".[67] The updated practice note can improve the use of VPAs and should seek to:

    - Underpin VPAs with proper strategic infrastructure planning, delivering on the commitment to community to provide appropriate growth infrastructure;
    - Ensure identified infrastructure reinforces the link between public benefit and the proposed development, and must not include additional, unrelated items sought by local councils;
    - Prevent Council from requiring a VPA to progress a planning proposal – planning decisions cannot be bought or sold.

16. Delivery of the VPA framework will discourage corruption in the planning system by ensuring that the infrastructure needs of an area are identified upfront and the VPA process is transparent to the local community. There should be no perception of either developers purchasing additional benefits, or of Council financially benefitting from a proposal that would otherwise not be approved. This framework should also include a requirement for reporting on, and auditing of, where the funds from the VPAs are being allocated. This will further ensure transparency, compliance and accountability.

17. It was suggested to me by some stakeholders that VPAs should be submitted to IHAPs for formal endorsement before they are entered to ensure the public benefit has been clearly articulated. While this may have the additional benefit for ensuring VPAs have been negotiated and agreed upon in a transparent and consistent way, I am of the view that this would create an additional burden on the newly formed IHAPs and am therefore not recommending IHAPs act as an oversight body for VPAs. I am of the view that an updated Practice Note should provide for appropriate clarity and transparency.

Recommendation 11: That the Department of Planning and Environment update the Practice Note for Voluntary Planning Agreements to ensure consistency and transparency. To ensure Councils consider the Practice Note when negotiating or preparing a Voluntary Planning Agreement, the Minister consider issuing a Ministerial Direction requiring Councils to have regard to the Practice Note.

Recommendation 12: The updated Voluntary Planning Agreement framework should also include requirements for reporting and auditing where the funds are being allocated. This will further ensure transparency, compliance and accountability.

[67] PIA Policy Paper: Voluntary Planning Agreements (VPAs), p.1. at https://majorprojects.accelo.com/public/47ccfa5b32e450b49df9257f9411f546/Final%20VPA%20paper%20v12.pdf

Private certifiers

18. Building certifiers are responsible for inspecting building work at critical stages and certifying compliance with development consent. The Building Professionals Board accredits and regulates certifiers in NSW and is responsible for investigating complaints and taking disciplinary action against accreditation holders.

19. In 2016, the Independent Review of the *Building Professionals Act 2005* ('the Lambert Review'), found there was a "lack of clarity about the roles, responsibilities, functions and accountability of private certifiers, which is clearly a major deficiency given the importance of the role of private certifiers for the functioning of the regulatory system. There is not in place at present a practice guide for how building certifiers should approach their function statement and no program of audit to assess how well they are undertaking their function."[68] Many of the stakeholders I met with agree with the conclusions of the Lambert Review that there was a "less than ideal working relation between private certifiers and councils, at least in the metropolitan areas of the state, with a particular problem being confusion about respective roles in compliance and enforcement". [69]

20. I note the Government response to the Lambert Review "identified key legislative areas which could be improved to clarify a certifier's role and responsibilities, enhance independence, strengthen disciplinary procedures and facilitate better coordination of certifier functions". [70] In response to the review and following a period of consultation, the Government recently introduced the *Building and Development Certifiers Act 2018,*[71] which strengthens the certification regime by:

    - Providing for the registration of persons to carry out certification work
    - Placing certain obligations on certifiers to address indemnity and potential conflicts of interest
    - Allowing the Secretary of the Department of Finance, Services and Innovation to take disciplinary action against registered certifiers
    - Requiring consumers to be provided information about the role of registered certifiers before entering into certain contracts and prevent consumers being unduly influenced when selecting a registered certifier with respect to work carried out under those contracts.

21. In addition to the legislative amendments, the Government has also recently released Options Paper 'Improving Certifier Independence' which has been released to the public for comments.[72]

22. This Options Paper recommends three options for consideration in selecting certifiers for development of a certain class (for example, development above three stories with a total

[68] Michael Lambert, *Independent Review of the Building Professionals Act*, Final Report, October 2015, p.15.
[69] Michael Lambert, *Independent Review of the Building Professionals Act*, Final Report, October 2015, p.15.
[70] http://bpb.nsw.gov.au/news/building-and-development-certifiers-bill-2018
[71] *Building and Development Certifiers Act,* passed on 24 October 2018, assented 31 October 2018.
[72] Options Paper - 'Improving Certifier Independence' at http://bpb.nsw.gov.au/sites/default/files/public/Improving%20Certifier%20Independence%20-%20Options%20Paper.pdf

floor area greater than 2,000 square meters and with a value of $5 million or more) that would require the development to be subject to one of the rotation options in the paper.

23. The three options proposed in the paper are:
    - The rotation scheme: This option involves establishment of an eligibility list with certifiers who are selected at random from the list, similar to a lottery system.
    - The cab rank scheme: This option involves the establishment of an eligibility list where the next available certifier would be appointed to work on a development that met the thresholds, similar to a cab rank.
    - The time limit scheme: This option involves enforcing a limit on the amount of time a certifier can continually work for the same client and would require the certifier to take a three-year break from the client after a certain period.

24. While I note that several stakeholders during this review raised the potential corruption risk in the use of private certifiers, given there has been significant recent legislative amendments and ongoing work to examine the role of certifiers, I do not propose to make a recommendation in relation to this issue.

Improving coordination between Government agencies and concurrence of approvals

25. The Property Council of Australia (PCA) has identified that concurrence and referrals in development approvals is an area that requires "coordinated reform across the country".[73] The PCA conducted a jurisdictional analysis of concurrence and referral practices in development approvals and was critical of all jurisdictions except Queensland.

26. Many of the stakeholders I met with outlined Queensland State Assessment and Referral Agency (SARA) as an excellent model of a whole-of-government approach for assessing developments, against state interests. SARA commenced in Queensland in 2013 and is a single assessment manager and referral agency for all development applications where the state has an interest.[74] While the Queensland system is held in high regard by industry, it is important to note that the structure of the Queensland planning system is different to NSW, and as the PCA notes, therefore "the answer is not as simple as replicating the SARA model across the country".[75]

27. Concerns surrounding concurrences and referrals are clearly a long-standing. I note that in 2012, the Hon. Tim Moore and the Hon. Ron Dyer recommended the establishment of an Assessment Facilitation Unit within the Department of Planning to ensure smooth and efficient consideration of applications. It was recommended that "two officers from each of Roads and Maritime Services, the Office of Environment and Heritage (one from each of the environment protection and national parks strands) and the Office of Water are to be seconded to the Assessment Facilitation Unit. The role of the seconded officers will be to

[73] Property Council of Australia, *Cutting the Costs: Streamlining State Agency Approvals*, November 2017, p.7.
[74] Property Council of Australia, *Cutting the Costs: Streamlining State Agency Approvals*, November 2017, p.25.
[75] Property Council of Australia, *Cutting the Costs: Streamlining State Agency Approvals*, November 2017, p.15.

obtain concurrence comments and/or conditions for development proposals being assessed by their own organisation".[76]

28. The 2013 White Paper and draft Planning Bill expanded on the Moore/Dyer proposal and outlined a proposal for a one stop shop to be established within the then Department of Planning and Infrastructure. The aim of this model was to "issue a single general terms of approval or provide advice or recommendations as if it were the agency whose advice or concurrence was needed".[77] The proposed one stop shop was to have four key functions: [78]
    - Provide a single point of contact for business, industry and councils
    - Ensure speedy assessment
    - Ensure a consistent approach across government, resolving any conflicts between agencies
    - Drive the implementation of the referral reform toolkit and allow for reporting on a whole of government basis on the effectiveness of implementation

29. I note that while concurrence of approvals is frustrating for applicants, it is also important to balance the need for a quick and efficient process with a thorough consideration of an application, for example, if there is a flood or bushfire risk or traffic concerns in relation to the project. The PCA notes that "to focus solely on the time taken for an agency response to be generated, however, can be misleading. Poor advice can still be given quickly and poorly informed decisions that are made in haste can take a lot of time and effort to unravel".[79] Therefore, the solution needs to focus on the completeness and thoroughness of the advice, as well as the timeliness.

30. I am advised that the Government has introduced legislative reforms on integrated development (development that requires approval under multiple Acts). These reforms are likely to have a positive impact on the approvals process once enacted. As part of the 2017 reforms, the Government introduced "a step-in power to ensure that agency advice is provided and that any identified conflicts are resolved in a timely manner".[80] The intention of the step-in power is not for the Department to take over the role of agencies. "The secretary's step-in power is reserved for situations where, for example, an agency has not responded to a request for advice or granted general terms of approval within statutory time frames, or when different agencies' advice conflicts. The department's role is to facilitate the removal of any roadblocks. The secretary would only exercise this power subject to the same assessment considerations as agencies themselves would need to take into account". [81] I am advised that the Regulation is currently being drafted to activate the Secretary's step-in power.

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[76] Tim Moore & Ron Dyer, *The Way Ahead for Planning in NSW – Recommendations of the NSW Planning System Review,* May 2012, p.23.
[77] White Paper, **'**A new planning system for NSW', 2013, p.105.
[78] White Paper, **'**A new planning system for NSW', 2013, p.108.
[79] Property Council of Australia, *Cutting the Costs: Streamlining State Agency Approvals*, November 2017, p.13.
[80] *Environmental Planning and Assessment Amendment Bill 2017,* Second Reading on motion by Mr Scot MacDonald, on behalf of the Hon. Don Harwin, 18 October 2017, p.3.
[81] *Environmental Planning and Assessment Amendment Bill 2017,* Second Reading on motion by Mr Scot MacDonald, on behalf of the Hon. Don Harwin, 18 October 2017, p.3; *Environmental Planning and Assessment Act,* section 4.47(4A).

31. I note that there is considerable work underway to improve the process for concurrences and referrals. I am therefore recommending that this issue continue to be monitored to allow for a future assessment of whether the process has improved. In the next chapter, I have recommended the Department give consideration to establishing a regular quarterly forum as a basis for further discussion. I am of the view that such a regular forum, combined with the policy and technological reforms underway, will work towards improving the concurrence and referral system in NSW.

Recommendation 13: While recognising the significant work underway to improve concurrences and referrals, I recommend that this issue continue to be monitored with a view to the development of a transparent technological solution.

Independent Planning Commission – Merit appeal rights

32. Under the EP&A Act, the Minister for Planning or the Greater Sydney Commission may formally ask the Independent Planning Commission to hold a public hearing on a development application or any other planning matter at any time. If a request is made, the Commission *must* hold a public hearing, it is not discretionary. If a public hearing is held, merit appeal rights to the NSW Land and Environment Court are extinguished. The decision to direct the IPC to hold a public hearing properly resides with the Minister and is determined on a case-by-case basis, having regard to the complexity of a matter and the level of public interest.

33. A merits review is an administrative reconsideration of a case. So, in relation to a merits review of a planning decision, the Land and Environment Court becomes the new decision maker and makes the decision within the same legislative framework as the primary decision maker, for example the IHAP, the Council or other planning body. The Court will either uphold the original decision or overturn the original decision and make a fresh determination. Merit appeals are important as they "provide a safeguard against biased decision-making by consent authorities and enhance the accountability of these authorities".[82]

34. Some stakeholders were of the view that extinguishing third party appeal rights "disempowers disaffected community groups and expresses the view that it deprives the public of the benefit of good decision-making in environmental matters and consequently serves to undermine the integrity of the planning system."[83] Further, I note that the ICAC has recommended on several occasions that third party appeal rights should be expanded to improve transparency and accountability of planning decisions.[84]

35. While I note merits review is an important part of the planning system, I am also cognisant of the benefits provided by an IPC hearing, as opposed to a court hearing. In court, the evidence is presented in an adversarial way, and the Judge or Commissioner reaches a decision on the evidence presented during the hearing. The Judge or Commissioner is bound to only consider

[82] *Anti-corruption safeguards and the NSW planning system,* ICAC Report, February 2012, p.20.
[83] NSW Environmental Defenders Office, *Merits Review in Planning in NSW",* July 2016, p.2.
[84] *Anti-corruption safeguards and the NSW planning system,* ICAC Report, February 2012, pp.22-23.

that evidence. However, IPC public hearings are inquisitorial, and this means the Commission is not bound to only consider the evidence put to it.

36. There are significantly reduced costs with an IPC hearing, particularly for the community, when compared to the cost of court litigation. Also, there is generally a greater opportunity for community participation at an IPC hearing, as more people have face to face contact with the Commission than would be available in a merit appeal. The IPC hearing process results in an independent, publicly-available report from the IPC. Unlike the court, IPC can recommend further investigation and assessment of matters before a proposal is determined. The IPC hearing also provides a quicker process and outcome than through the court. As the IPC is akin to a court hearing, I am of the view that it may not be inappropriate to extinguish the merits review process if an issue has already been before an IPC public hearing. It would seem a waste of public resources to have a matter also reviewed by the courts once the IPC has decided on it.

37. My view is that the decision to direct the IPC to hold a public hearing properly resides with the Minister and is determined on a case-by-case basis, having regard to the complexity of a matter and the level of public interest. It would be inappropriate for a Department official to determine when a public hearing should be held.

Independent Planning Commission – secretariat support

38. The Independent Planning Commission (IPC) of NSW was established as a standalone, independent agency on 1 March 2018.

39. The IPC Secretariat provides professional and technical support to the Commission and its members. While the IPC is separate from the Department, the secretariat staff are in fact Department of Planning and Environment employees. This has been raised as an issue that impacts on the independence, both real and perceived, of the IPC.

40. Staff employed by the IPC are employed by the Department and therefore, at some stage, may be expected to return to their home agency. This may create issues for staff, for example, in situations where the Commission is critical of the Department. Part of the role of professional staff at the IPC is to critically review the recommendations and reports prepared by the Department of Planning and Environment. This can put staff at the IPC in a difficult position, as they may not feel completely comfortable in providing frank and fearless advice to a Department which they may not feel they are completely independent from.

41. Stakeholders noted that the IPC does not have its own resources and instead relies heavily on the Department to facilitate numerous key functions, potentially impacting their independence. Although IPC can engage its own experts, stakeholders commented that 'they rarely do so, and they rely on the Department for summary reports'. Some stakeholders concluded that the community considers the IPC to be somewhat dependent on the Department, creating a culture that facilitates real or perceived conflicts of interest.

20. I am of the view that it is critical to ensure the independence of the IPC, both real and perceived. For this reason, I have recommended that the Chair of the IPC liaise with the Secretary of the Department of Planning and Environment to clarify the independence of the

Commission and its staff. The Secretary and the Chair should consider entering into a contemporary Memorandum of Understanding (MOU) to achieve that objective.

Recommendation 14: The Chair of the Independent Planning Commission continue to liaise with the Secretary of the Department of Planning and Environment to enshrine and clarify the independence of the Commission and its staff. The Secretary and the Chair should consider a contemporary Memorandum of Understanding to achieve that objective.

Technology – including access to information

42. Many stakeholders raised concern over the complexity of the NSW planning system and how difficult it is to find and navigate the information available on various websites. Information on the Department of Planning and Environment website does not seem to be user-friendly or customer-focused.

43. To address this, it is envisaged that ePlanning program will improve the customer experience of the planning system. The ePlanning program was established in 2013 to provide for the digital transformation of the NSW planning system and to deliver services via the NSW Planning Portal. Since that time, the program has delivered a range of capabilities for customers and stakeholders to support the 'investigate' stage of the planning assessment process and establish a significant foundation for the future digital planning environment. The key foundation elements include the establishment of the NSW Planning Portal, the spatial data reform initiatives including the technical specifications, improved data quality and open access to data. A comprehensive review of the objectives and approach to the ePlanning program undertaken in late 2017 identified opportunities to improve scope alignment, ePlanning digital capability and the technology scalability to support ePlanning to meet its objectives.

44. The NSW Planning Portal aims to provide both an integration and facilitation role, supporting information and financial transactions across NSW Government agencies and providing a consolidated, single source of truth to support planning activity across the state. This will enable Councils to continue to maintain their responsibilities over development assessment processes using its own systems, while providing real-time data in standardised formats to enable visibility of planning activity to meet required data standards managed by the Department. The portal will provide an integrated solution for State Significant Infrastructure, State Significant Development and Complying Development Certificate applications across NSW.

45. It may seem that the ePlanning project stalled in 2017, however, I am advised that in late 2017, ePlanning determined that a pivot was required to reflect changes in planning legislation and recognise digitisation that had occurred across the planning system. This pivot will see the NSW Planning Portal become a hybrid of facilitator and integrator models. I have met with the team responsible for the ePlanning program and note the significant effort undertaken to deliver an improved, streamlined and transparent process for development applications in the near future. I commend the effort of the ePlanning team to date in

developing the delivery of digital services that will transform and streamline transactions by integrating processes and procedures. The digital transformation will assist all participants involved in planning and development by increasing efficiency, centralising data storage and accessibility, utilising assets and resources, decreasing time loss and optimising performance. I have therefore recommended the team continue to be appropriately supported to continue to implement this project.

Recommendation 15: That the Department of Planning and Environment continue to provide appropriate support to the implementation phase of the ePlanning project.

Modification of consents

46. After a development application has been granted, the consent authority may consider a modification to the original development approval.[85] Some stakeholders suggested that all minor modifications, such as those involving "minor error, mis-description or miscalculation,"[86] or with minimal environmental impact,[87] should be considered by Council (or the equivalent consent authority). They suggest that more complex modifications which significantly differ from the original application should be considered by the IHAP.

47. To approve a modification to a DA, the legislation requires that the consent authority (or the Court on appeal) must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).[88]

48. Many of the stakeholders I met with raised the issue of modifications as a corruption risk. Conversely, others raised the issue of obtaining modifications as being too difficult. Some suggested there should be a "presumption against approval if significant modifications are applied for."

49. In view of the time limits and scope of this Review, I was not in a position to gather empirical evidence of the status quo in relation to DA modifications. Accordingly, I do not feel I am able to make an informed recommendation on this issue. I simply raise it as a matter that may warrant further consideration by the Department.

[85] *Environmental Planning and Assessment Act 1979, s4.55.*
[86] *Environmental Planning and Assessment Act 1979, s4.55(1).*
[87] *Environmental Planning and Assessment Act 1979, s4.55(1A).*
[88] *Environmental Planning and Assessment Act 1979, s4.55(1A) (b).*

8. Improving the integrity of the system

1. My Terms of Reference require me to "identify actions, procedures or processes or steps" that could or would:
   - Improve the integrity of the system or
   - Improve the visibility of the integrity of the system.

2. As such, I have made some recommendations below that I believe may improve the integrity of the planning system.

Establishment of an Ethics Unit

3. Planning systems in all jurisdictions have at times been exposed to integrity risks. The nature of planning, and the potential profits resulting from planning decisions unfortunately can expose the planning system to corrupt activities. This is evident by the long involvement of the ICAC in investigating actual or potential corrupt conduct in the planning system of NSW. Since it was established in 1989, the ICAC has produced over 30 reports on the NSW planning system.

4. I note the Department of Planning and Environment has taken some initiative to address these integrity risks, with the introduction of the Manager, Ethics and Integrity role being particularly commendable. This role has a number of core functions which ultimately oversees the conduct of Department staff in accordance with the ethical conduct framework and its Fraud and Corruption Prevention Plan. While acknowledging the recently establishment of the Manager of Ethics role, I have recommended in this report that the Government consider establishing an Ethics Unit, similar to the United Nations Ethics Divisions. The Ethics Unit should be comprised of people who are employed to work solely on ensuring the highest standards of integrity in the planning system. This would expand the role and resourcing required of this crucial function. Many stakeholders that I spoke to agree this would be a positive addition to the planning system.

5. I have seen how effective such a unit can be based on my experience with the United Nations, where I was Director of Internal Oversight Services for the United Nation's Relief Works Agency. The United Nations Ethics Office was established in 2006 with the aim of ensuring the highest standards of integrity of staff members. The Ethics Unit "is a resource for those who seek advice before engaging in an activity, to avoid and manage conflicts of interest. By providing clear and action-oriented advice, the office helps staff carry out their jobs professionally and fairly...".[89]

6. In a 2010 report on the United Nations ethics function, it was noted that "As ethics offices become entrenched in the organizations, resources devoted to conflict management would decline. A model ethics office has a mandate, clear goals, vision, infrastructure and funding".[90]

[89] http://www.un.org/en/ethics/

[90] *Ethics in the United Nations System,* Prepared by M. Deborah Wynes and Mohamed Mounir Zahran Joint Inspection Unit, Geneva 2010. p.iii

7. The United Nations Ethics Office offers five lines of service:

    - Confidential ethics advice
    - Ethics awareness and education
    - Protection against retaliation for reporting misconduct
    - Financial disclosure program
    - Promotion of coherence and common ethics standards across the United Nations family

8. I can see the benefit of a similar structure within the NSW planning system. Unlike the role of the Manager, Ethics and Integrity, the Ethics Unit would not take or investigate specific complaints against the conduct of Department staff. Rather, the unit's aim would be to provide pre-emptive advice on corruption risks within the system. The unit could also consider issues of perceived or actual conflicts of interest and provide advice or recommendations on whether a conflict exists and give advice to mitigate or manage conflicts. The unit would systematically and regularly inspect codes of practice and existing frameworks to ensure compliance. It would also provide an opportunity to ensure the Department is aligned with the NSW Public Service Ethical Framework which suggests that "Agencies need to assess their current systems, policies, work practices, procedures and employee behaviours to ensure they align with the objective, values and principles of the Ethical Framework".[91]

9. I have considered whether this unit should be located within the Department, or with an external body. My experience with the UN has illustrated that an Ethics Division can form a strong educative role and provide invaluable advice and guidance to those involved in the system. However, it is also important that there the unit has an appropriate level of independence. I note that under sections 25 and 30 of the *Government Sector Employment Act 2013,* Department Secretaries and Agency Heads are appropriately responsible for the general conduct and management of their Department or Agency in accordance with the core values of the Ethical Framework. I am therefore of the view that it is appropriate for the Ethics Unit to be established within the Office of the Secretary within the Department of Planning and Environment, reporting directly to the Secretary. To ensure Department cooperation with the unit, it is recommended that the unit be led by an appropriately senior person, for example, at the Executive Director level. It would be, in essence, an evolution of the recent initiative establishing the position of Manager of Ethics.

Recommendation 16: The Department of Planning and Environment establish an Ethics Unit, similar to the United Nations Ethics Divisions, which reports directly to the Secretary of the Department.

[91] NSW Public Service Commission, *'Behaving Ethically: A guide for NSW government sector employees',* October 2014, p.106.

Planning System Cooperation

10. My Terms of Reference require me to "consider the interactions between the NSW planning system's governance and agencies, other government agencies, and other levels of government". It has become clear from my consultation with several stakeholders and industry groups that engagement is lacking between the Department of Planning and Environment and other critical departments. There does not appear to be a regular systematic forum for agencies to meet and share ideas and learnings. While noting that some interagency forums exist, I am of the view that there could be regular quarterly forums between senior representatives from the Department and related government agencies at both a state and local level.

11. Such regular engagement between agencies would assist in streamlining the concurrence approvals, as mentioned in the previous chapter, as well as contributing significantly in knowledge sharing and cooperation between all sectors of the NSW planning System.

Recommendation 17: While noting that some interagency forums exist, that the Department of Planning and Environment give consideration to the establishment of a regular quarterly forum for CEOs as a basis for strategic issues and policy discussions of planning related issues.

Registration or accreditation of Planners

12. The 2013 White Paper, *A New Planning System for NSW,* explored the concept of planning culture in NSW, recognising that 'planning is a vehicle which cannot be fixed by only looking at the engine. You need to change the way the machine is driven.[92] One of the key points raised in the white paper considered the need for an increase in skills, resources, training and development within the NSW planning system.[93]

13. Several stakeholders queried whether Planners should be registered and certified in line with other similar professions, such as architects. The Planning Institute of Australia (PIA) is of the view there is a "lack of recognition, vigour and value of the skills planners bring to the profession".[94] Many stakeholders raised the issue that there is no accreditation process for planners in Australia and that no formal qualifications are required to call oneself a 'planner'. While there are many highly skilled and qualified planners in the system, there are other planners with no formal qualifications at all. The PIA recommends the "Government look to implement changes to ensure qualified planning professionals who have proven their competency are installed in (at least) all the planning related decision-making positions across State and Local Government'. [95] PIA argue this will improve transparency, community confidence in the planning system, lift the standards of advice and decision making and provide a better recognition for planning professionals.

[92] White Paper, '*A new planning system for NSW*', 2013, p.35.
[93] White Paper, '*A new planning system for NSW*', 2013, p.35.
[94] *NSW Planning Profession – Registered Planners,* Planning Institute of Australia (undated – provided in person in consultations on 29 August 2018)
[95] *NSW Planning Profession – Registered Planners,* Planning Institute of Australia.

14. I understand this has been raised in previous forums, for example, in a 2012 report the ICAC noted that "an individual employed as a government planner need not have a town planning degree or equivalent. Furthermore, planners are not required to undertake continuing professional development to maintain, develop or increase their professional competence. This is inconsistent with other professions".[96] The ICAC recommended a scheme be introduced requiring planning practitioners to participate in continuing professional development in order to "maintain the professional competency and standards of planners and safeguard their professional status by demonstrating that they are suitably qualified. [97]

15. The Hon. Tim Moore and the Hon. Ron Dyer in their 2012 report noted that "Planners, like many other professions, must keep abreast of changes in society and knowledge. In this regard, we recommend that continuing professional education be made compulsory for council and State government professionals involved in the planning process".[98] In the 2015 independent review of the *Building Professionals Act* by Michael Lambert, "the accreditation of town planners was proposed by a number of organisations as a way of ensuring appropriate expertise was available to be applied to the assessment of whether the CC met the development consents."[99] Mr Lambert recommended in his report that "It is proposed that BPB allow for the accreditation of town planners who building certifiers can draw on for expert advice."[100] However, I note the Government did not support the recommendation at that time as a case for accreditation of town planners.

16. A key benefit of requiring Planners to be registered and accredited would include the requirement to adhere to an industry Code of Conduct with appropriate sanctions or consequences for non-compliance. I note that South Australia is currently consulting on a new "Accredited Professionals Scheme" which is a key arm of the new planning system created under the South Australian *Planning, Development and Infrastructure Act 2016*. Under the proposed new Scheme, "planning and building professionals who are involved in assessing development applications will be expected to maintain minimum standards of professional practice and produce evidence that they are sufficiently qualified to make key decisions at certain levels".[101] Accredited Professionals will be registered in a central database and "will be required to hold all necessary insurance, comply with an Accredited Professionals Code of Conduct, participate in annual compliance checks and undertake specified units of Continuing Professional Development." [102] The public consultation in South Australia was open until 17 October. It will be instructive to examine the submissions and the final South Australian scheme as a potential model for a similar scheme in NSW.

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[96] *Anti-corruption safeguards and the NSW planning system,* ICAC Report, February 2012, pp.11-12.
[97] *Anti-corruption safeguards and the NSW planning system,* ICAC Report, February 2012, p.12.
[98] Tim Moore & Ron Dyer, *The Way Ahead for Planning in NSW – Recommendations of the NSW Planning System Review,* May 2012, p.10.
[99] Michael Lambert, *Independent Review of the Building Professionals Act*, Final Report, October 2015, p.338.
[100] Michael Lambert, *Independent Review of the Building Professionals Act*, Final Report, October 2015, p.218.
[101]https://www.saplanningportal.sa.gov.au/planning_reforms/new_planning_tools/accredited_professionals_scheme
[102]https://www.saplanningportal.sa.gov.au/planning_reforms/new_planning_tools/accredited_professionals_scheme

Recommendation 18: That the Department of Planning and Environment monitor the development of the South Australian scheme in relation to accreditation of Planners and review in twelve months' time the desirability of progressing a similar scheme in NSW.

Approvals of major infrastructure commitments

17. During my consultations some key stakeholders suggested there is a lack of transparency surrounding State Significant Development. As mentioned in the White Paper and the Dyer/Moore review, public confidence in the planning system "has been eroded by the perception that politics can determine decision making, and a lack of community confidence in the integrity of the planning system over decisions about larger developments".[103] This issue was also highlighted in the August 2018 Legislative Council Committee report on the Windsor Bridge replacement project.[104] The Windsor Bridge report recommended that "the NSW Government, in developing proposals for significant capital works, identify and implement an appropriate mechanism through which to communicate the justification and need for such projects to foster community trust and promote transparency".[105]

18. The report also noted that "the NSW Government has committed to a significant portfolio of capital works in recent years, some of which have been the subject of community concern, opposition or misunderstanding. It is incumbent on the government to better communicate the justification and need for such projects to foster community trust and promote transparency."[106] It seems from this report and the stakeholder consultation that this is an area that could do with some improvements.

19. In view of this issue having been identified in two previous reviews, and the significance of this issue affecting public perception of major projects, I believe consideration should be given to ensuring that the approval of major projects be given in principle and also the subject to an appropriate planning approval process.

Recommendation 19: That consideration be given to enshrining the principle that major infrastructure commitments should be approved in principle, but be subject to appropriate planning approval.

[103] White Paper, *'A new planning system for NSW'*, 2013, p13.
[104] NSW Parliament, Legislative Council. Portfolio Committee No. 5 – Industry and Transport NSW, Report 48, *Windsor Bridge replacement project*, August 2018.
[105] NSW Parliament, Legislative Council. Portfolio Committee No. 5 – Industry and Transport NSW, Report 48, *Windsor Bridge replacement project*, August 2018, Recommendation 2, p.x,
[106] NSW Parliament, Legislative Council. Portfolio Committee No. 5 – Industry and Transport NSW, Report 48, *Windsor Bridge replacement project*, August 2018, Recommendation 2, p.21.

State Significant Development

20. I note that a recent independent review of the Department's assessment reports for State Significant Developments by Lisa Corbyn made several recommendations to improve the assessment process.[107] The Department has accepted all the recommendations in the report and have provided a summary of reforms and actions to improve the assessment of state significant projects including:
    - Statutory reforms – the EP&A Act amendments provided that from 1 July 2018 all decision makers are required to publicly notify the specific reasons for the decision, and importantly, how community views have been taken into account in making the decision.
    - Guidelines - The Department is currently drafting a series of guidelines known as the 'EIA Improvement Project' which is intended "to drive earlier and better engagement with affected communities, to improve the quality and consistency of all assessment documents including environmental impact assessment documents, and to ensure these documents focus on the matters with the greatest potential impact and of greatest concern to the community".[108]
    - Consultation and Engagement - in addition to the formal statutory consultation requirements, the Department advises that "senior Departmental staff will continue to undertake site visits and meet with landowners and community groups for all new State significant projects".[109]

21. I am of the view that the Department is heading in the right direction to improve public communication on major infrastructure developments and this will enhance community trust in the planning system. To improve this process, I note the Department recently released its Community Participation Plan for community consultation.[110] In its draft form, the plan indicates the Department's objectives for community engagement, the approach it will take to achieve these objectives, as well as the required exhibition timeframes. While this is still in its draft stage, it appears to be an effective initiative in addressing the shortcomings surrounding community participation on State Significant Developments.

Creating a positive planning culture

22. I note there has been a significant effort led by the Secretary in relation to enhancing the culture and accessibility of the Department, and I recommend that these efforts are continued and supported.

23. A key focus of the proposed 2013 reforms was to make the planning system in NSW "simpler, more certain, more strategic and performance based, working within a positive planning culture. Decision making under the new system will be transparent and accessible, with people, businesses and organisations having the choice to be fully engaged in the decisions

[107] Corbyn, L., *Independent Review of Department of Planning and Environment Assessment Reports*, 25 August 2017, available at https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Departments-response-to-assessment-report-2018-09-12.ashx

[108] Department Response to Lisa Corbyn report available at: https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Departments-response-to-assessment-report-2018-09-12.ashx

[109] Department Response to Lisa Corbyn report.

[110] https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Exhibition-of-draft-community-participation-plan

that shape their local area and economies. Strategic planning will be fully integrated in land use planning decisions."[111] The White Paper made several recommendations to improve the culture with the planning system, including "monitoring and reporting on the actions for culture change and lessons learnt on an annual basis, to provide a report card on the health of the culture of the NSW planning system".[112] I consider this to be an excellent idea. I am of the view it could be a function undertaken by the new Ethics Unit that I have recommended above, if established.

24. No matter how well-designed, a planning system cannot efficiently achieve its outcome without an appropriate culture.[113] Despite the reforms in recent years, many stakeholders report that the current planning system is overly adversarial and does not have a 'positive planning culture' and is not appropriately engaging the community in planning decisions. The Productivity Commission has reported "that consultation on development strategies is viewed by communities in several jurisdictions as 'superficial window dressing'"[114] which contributes to community resistance to development proposals. This view aligns with the feedback I received from many key stakeholders.

25. Commendably, the Department has taken several initiatives to address cooperation both internally and throughout the community. For instance, 2018 was named the Year of Communication, a year-long campaign to improve the way the Department communicates both internally and with stakeholders. Many Department employees nominated themselves as *communication champions,* to help facilitate this initiative both internally and externally. I am advised that the endeavour has, thus far, proven to be extremely successful internally. Research shows that 80 per cent of staff surveyed in August claimed they are consequently more aware of the importance of good communication, and 60 per cent implementing skills they have subsequently learned.

26. The initiative has also proven successful with respect to external engagement. Community consultation sessions increased by 73 per cent, while responses to the Department's surveys increased by 93 per cent compared to 2017. In 2018 thus far, the Department facilitated 144 external engagement sessions with 7326 attendees. In addition, the Department has also delivered a number of crucial community awareness campaigns, namely the *Summer Helpful Hints Campaign* and the *Energy Affordability Campaign.*

27. While it is clear to me that the Department has made significant efforts in improving the culture within the NSW planning system, specifically in relation to communication and collaboration, I believe it is important that these initiatives continue.

[111] White Paper, '*A new planning system for NSW*', 2013, p.15.
[112] White Paper, '*A new planning system for NSW*', 2013, p. 34.
[113] White Paper, '*A new planning system for NSW*', 2013, p.35.
[114] Australian Productivity Commission, *Shifting the Dial: 5 year productivity review, supporting paper no.10, Realising the Productive Potential of Land,* 3 August 2017, p.11.

APPENDIX 1 – Terms of Reference

Terms of Reference

Introduction

The governance of decision making within the planning system has undergone significant improvements over the last few years including strengthening the role of the Independent Planning Commission, the introduction of local planning panels and the most significant review of the *Environmental Planning and Assessment Act 1979* (EP&A Act) since its inception.

It is timely following these rereview the integrity of decision making and undertake a holistic review of governance across the planning system in order to:

- Confirm that the recommendations of the 2018 review of the IHAP framework are being implemented; and
- Identify areas for improvement to ensure best practice against international standards, including in interactions between levels of government.

The Review is to inquire into and make recommendations in relation to the decision-making governance framework in the New South Wales Planning system.

The Review is to:

1. Assess the structure and governance of the planning system in NSW;
2. Consult with stakeholders and identify governance issues that they feel require consideration or which risk the integrity of the system;
3. Consider interstate and overseas planning and other administrative systems to ensure that relevant best practice options are considered for inclusion in New South Wales;
4. Consider the interactions between the NSW planning system's governance and agencies, other government agencies, and other levels of government;
5. Consider technological solutions to governance challenges;
6. Identify actions, procedures, processes or steps that could or would:
    - Improve the integrity of the system; or
    - Improve the visibility of the integrity of the system.
7. Consider any other matters that the Reviewer reasonably considers should be included and that is not otherwise dealt with in the above

The Reviewer is to provide:

- An interim report to the Secretary by 30 September 2018; and
- A final report by 30 November 2018.

APPENDIX 2 – Consultations

1. Professor Mary O'Kane, Chair of the NSW Independent Planning Commission
2. Anna Summerhayes, Counsel assisting the NSW Independent Planning Commission
3. Tim Hurst, Chief Executive, Office of Local Government
4. The Hon. Justice Brian John Preston SC, Chief Judge, Land and Environment Court
5. Lucy Turnbull AO, Chief Commissioner, Greater Sydney Commission
6. Sarah Hill, CEO, Greater Sydney Commission
7. Tony Recsei, 'Save our Suburbs'
8. David Shoebridge, Member of the Legislative Council
9. David Morris, Chief Executive Officer, Environmental Defenders Office
10. Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office
11. Nari Sahukar, Senior Policy and Law Reform Solicitor, Environmental Defenders Office
12. Steven Head, General Manager, Hornsby Shire Council
13. James Farrington, Planning Division Manager, Hornsby Shire Council
14. Mr Pickles, Hornsby Shire Council
15. Michael Edgar, General Manager, The Hills Shire Council
16. David Broyd, Planning Institute of Australia
17. Jenny Rudolph, Planning Institute of Australia
18. Independent Hearing and Assessment Panel Chairs:
    - David Lloyd
    - Julie Walsh
    - Richard Pearson
    - Marcia Doheny
    - Paul Stein
    - Mary-Lynne Taylor
19. Better Planning Network (Sue Ingham, John Sutton, Terese Doyle)
20. Clr Darcy Byrne, Mayor, Inner West Council
21. Denise Watson, Inner West Council
22. John Warburton, Deputy General Manager, Inner West Council
23. Giselle Tocher and Anthony Pedroza, Independent Commission Against Corruption
24. Aaron Gadiel, Planning and Environmental lawyer, Mills Oakley
25. Mr Michael Daley, Member of the Legislative Assembly, Member for Maroubra, Shadow Minister for Planning and Infrastructure
26. Chris Johnson, CEO Urban Taskforce Australia
27. Urban Taskforce members (group consultation) including:
    - Dominic Sullivan (PAYCE)
    - Gavin Carrier (VIG)
    - David Tierney (TITFA),
    - Annie Manson (UTF)
    - Stephen McMahon (Macarthur Development)
    - Gerry Beasley (Walker)
    - David Tanevski (KWC)

- Sarkas Nassif (Holdmark) (UTF)
- Matthew Lennartz and Walter Gordon (Meriton)

28. Shaun McBride, Chief Economist, Local Government NSW
29. Kylie Yates, Director Advocacy, Local Government NSW
30. Clr Linda Scott, President Local Government NSW, Councillor City of Sydney
31. Liza Booth and Chris Drury, Law Society NSW
32. David Johnson (IHAP panel member and former PAC Commissioner)
33. David Farmer, General Manager, Wollongong Council
34. Andrew Garfield, Director, Planning and Environment, Wollongong Council
35. The Hon (Rob) Robert Stokes, MP Minister for Education (former Minister for Planning)
36. Mr Ron Hoenig, Member of the Legislative Assembly, Member for Heffron
37. Georgina Woods, Lock the Gate
38. Jackie Kirby, Sister Jocelyn Kramer and Father Paul Maunder, Scenic Hills Association
39. Monica Barone, Chief Executive Officer, City of Sydney Council
40. Graham Jahn, Director of Planning, Development and Transport, City of Sydney Council
41. Anthony Lenehan, General Council, City of Sydney Council
42. Elliot Hale and Sam Stone, Urban Development Institute of Australia
43. Sydenham to Bankstown Alliance (Peter Olive, Anne Nolan, Barbara Coorey and Karen Campbell).
44. Warwick Giblin, Managing Director, OzEnvironmental Pty Ltd.
45. Jane Fitzgerald, NSW Executive Director, Property Council of Australia
46. Alan O'Toole and Jonathan Harris (representatives from Helensburgh land action groups).

APPENDIX 3 – Local Planning Panel Directions – Development Applications

APPENDIX 4 – Local Planning Panels Direction – Operational Procedures

APPENDIX 5 – Independent Hearing and Assessment Panels – Best Practice Meeting Procedures

APPENDIX 6 – Code of Conduct for IHAPs

APPENDIX 7 – Council Survey Data

Reference Material

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2. White Paper, '*A new planning system for NSW'*, 2013.

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25. Planning Institute of Australia, PIA submission on Kaldas Review: working towards a world class NSW planning system, 22 October 2018.

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27. NSW Environmental Defenders Office, Merits Review in Planning in NSW", July 2016.

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information and privacy commission new south wales

Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the *Government Information (Public Access) Act 2009 (NSW)*

September 2019

Contents

Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the *Government Information (Public Access) Act 2009 (NSW)*

The Information Commissioner is empowered under sections 12(3) and 14(3) of the *Government Information (Public Access) Act 2009 (NSW)* ("GIPA Act") to issue guidelines to assist agencies regarding the public interest considerations in favour of, or against, disclosure.

These Guidelines, made pursuant to those sections of the GIPA Act, are made to assist local councils to determine the public interest considerations for and against disclosure of information contained in the returns disclosing the interests of councillors and designated persons as required by clause 1(2)(a) of Schedule 1of the *Government Information (Public Access) Regulation 2018 (NSW)* ('the GIPA Regulation').

These Guidelines supplement the provisions of the GIPA Act. Agencies must have regard to them in accordance with section 15(b) of the GIPA Act.

The Guidelines have been developed in consultation with the Office of Local Government, and the Privacy Commissioner.

The operation and effectiveness of the Guidelines will be reviewed after two years or as required by any intervening developments relevant to the Guideline.

Elizabeth Tydd

IPC CEO, Information Commissioner
NSW Open Data Advocate

September 2019

Overview

Part 4 of the *Model Code of conduct for Local Councils in NSW (2018)* (Model Code) requires a councillor or a designated person to complete and lodge with the general manager a return disclosing his or her pecuniary interests. That return may contain personal information about each councillor and designated person, including his or her name, address and signature, as well as information about property and share holdings, gifts received, debts owed, other sources of income, and positions held in a trade union or business or professional organisation. The form of the return is set out in Schedule 2 of the Model Code.

Mandatory proactive release, also known as open access information, is one of the four information access pathways under the GIPA Act. Proactive release advances the object of the GIPA Act to "maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective …" The GIPA Act contributes to the building of an integrity culture through the establishment of a framework based around the principles of pro-active disclosure and a presumption in favour of public interest disclosure.

The mandatory proactive release provisions of the GIPA Act and the GIPA Regulation apply to the disclosure of information contained in returns disclosing the interests of councillors and designated persons. The combined effect of the GIPA Act and the GIPA Regulation is that the information in the returns needs to be disclosed on the website of each local council, unless to do so would impose unreasonable costs on the council, or if the council determined there was an overriding public interest against disclosing the information.

In order to decide whether there is an overriding public interest against disclosure, councils need to apply the public interest test, and weigh the public interest considerations in favour of and public interest considerations against disclosure.

This Guideline recognises that disclosing the information in the returns furthers openness, transparency and accountability in local government. It also facilitates the identification and management of potential conflicts of interest that might arise where councillors and other staff participate in decisions from which they may derive, or be perceived to derive, personal or financial benefit.

However, the returns may contain personal information about the person concerned, and, potentially, about third parties such as family members. This is information which individuals may have concerns about disclosing publicly on a website and may object to publication following consultation under the GIPA Act.

Section 6(4) of the GIPA Act requires agencies to "facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available, if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record, and it is practicable to delete the matter".

The fact that information is open access information is an important factor in favour of disclosure which must be balanced against any applicable considerations against disclosure, as was noted by the NSW Civil and Administrative Tribunal Appeal Panel in two recent cases[1]. In *Webb v Port Stephens Council (No. 3)* [2018] NSWCATAP 286, the Appeal Panel stated at paragraph 77:

> *Where the information in issue is in fact open access information, as noted by the Appeal Panel in McEwan, this is an "important factor in favour of disclosure" (in addition to other relevant factors in favour of disclosure, including the general public interest in favour of disclosure provided for in s12(1) of the GIPA Act) when it comes to determining whether the balance lies between a public interest consideration against disclosure and the public interest in favour of disclosure.*

Open access information should be available free of charge on a website maintained by the relevant agency. Open access information can also be made publically available in other ways, however at least one of the ways in which the information is accessible must be free of charge.[2]

Consequently, this Guideline provides that the requirement in Clause 1(2)(a) of Schedule 1 of the GIPA Regulation, that returns of councillors and designated persons be released as part of local councils' open access information, should be interpreted as follows:

- The returns should be made publicly available on the council's website free of charge unless there is an overriding public interest against disclosure or to do so would impose unreasonable additional costs on the council
- The fact that a return of interests is open access information is a factor in favour of disclosure in balancing the public interest
- In the circumstances where council decides that there is an overriding public interest against disclosure of the return, consideration should then be given to whether it is practicable to release an edited copy of the return (for example redacting the individual's signature or residential address) in accordance with section 6(4) of the GIPA Act
- If it is practicable to do so, then the information should be deleted from a copy of the return and the remainder of the return made available on the council's website
- Where information is deleted from a return, council should keep a record indicating, in general terms, the nature of the information redacted in accordance with section 6(5) of the GIPA Act
- Copies of publicly available information about returns may be made in accordance with clause 5(1)(b) of the GIPA Regulation.

Releasing the information contained in the returns of councillors and designated persons in this manner facilitates the legitimate public interest in having access to the information, while protecting the individual's right to privacy and safety.

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[1] *McEwan v Port Stephens Council [2018] NSWCATAP 211, Webb v Port Stephens Council (No. 3) [2018] NSWCATAP 286*

[2] GIPA Act sections 6(2);6(3)

Part 1: Returns disclosing the interests of councillors and designated persons

What is a return?

1.1 Part 4 of the Model Code establishes the requirements for the disclosure of pecuniary interests by councillors and designated persons. This includes disclosures of interests in written returns (returns of interests) and disclosures of pecuniary interests at meetings. This Guideline deals only with requirements in relation to written returns of interests and does not affect the obligations of councillors or committee members to disclose pecuniary interests at meetings.

1.2 The Model Code is made under section 440 of the *Local Government Act 1993* (NSW) (LGA) and Part 8 the *Local Government Regulation 2005*. Part 4 of the Model Code replicates and replaces the requirements previously set out in sections 441- 449 of the LGA.

1.3 Clause 4.21 of the Model Code requires that councillors and designated persons prepare and submit written returns of interest within three months after:

- becoming a councillor or designated person, and
- 30 June of each year, and
- becoming aware of an interest they are required to disclose.

1.4 A 'designated person' is defined in clause 4.8 of the Model Code as:

- *the general manager*
- *other senior staff of the council*
- *a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under the LGA or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest*
- *a person who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.*

1.5 Clause 4.1 of the Model Code defines a 'pecuniary interest' as one involving a "reasonable likelihood or expectation of appreciable financial gain or loss to the person". Clause 4.2 provides that a person "will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6" (which are interests that do not have to be disclosed).

1.6 For the purposes of the Model Code, a pecuniary interest is one held by the councillor and designated person, or his or her spouse, de facto partner, relative, partner or employer, or a company or other body of which the person, or a nominee, partner or employer of the person, is a shareholder or member.[3] However, a person is not taken to have a pecuniary interest in a matter:

a) *if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body; or*

b) *just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown; or*

c) *just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.*[4]

1.7 The returns are designed to promote openness and transparency in local government, and to avoid a conflict of interest on the part of councillors and senior council staff who exercise decision-making functions.

What information do the returns contain?

1.7 Part 2 of Schedule 1 of the Model Code sets out the matters that must be disclosed in the returns of interests in the following categories:

- interests in real property: clauses 5 - 8
- gifts: clauses 9-11
- contributions to travel: clauses 12-14
- interests and positions in corporations: clauses 15-18
- interests as a property developer or a close associate of a property developer: clauses 19-20
- positions in trade union and professional or business associations: clauses 21-22
- dispositions of real property: clauses 23-25
- sources of income: clauses 26-30
- debts: clauses 31 - 33
- discretionary disclosures: clause 34 (A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of the Schedule).

1.8 The form of the return is provided in Schedule 2 of the Model Code.

[3] Clause 4.4 of the Model Code

[4] Clause 4.5 of the Model Code

Disclosure under the LGA now replaced with the GIPA Act and Regulations

1.9 The LGA previously required that the current version of the return of interests of councillors and designated persons was to be made available for public inspection free of charge.

1.8 In 2009, the GIPA Act replaced section 12 of the LGA with the mandatory proactive release provisions in sections 6 and 18 of the GIPA Act, and the GIPA Regulation (see Part 2).

Part 2: Disclosure requirements under the GIPA Act and the public interest test

Mandatory disclosure requirements

2.1 Section 6 of the GIPA Act requires agencies to make certain information publicly available. This information is known as open access information. Section 18 contains a list of the open access information that all agencies must make publicly available. Schedule 1 to the GIPA Regulation lists additional open access information relevant only to local councils. This includes the returns of the interests of councillors and designated persons (see clause 1(2)(a) of Schedule 1).

2.2 The GIPA Act requires under section 6 that open access material must be made publicly available unless there is an overriding public interest against disclosure. Section 6(2) provides that the information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.

2.3 Section 6(4) requires agencies to facilitate public access to open access information by deleting matter (content) if it is practicable to do so. This facilitates the release of open access information by enabling any matter subject to an overriding public interest against disclosure to be deleted so that the remainder of the information can be released. In circumstances where council determines that there is an overriding public interest against disclosure of open access information, section 6(4) may operate to require public release of the remaining open access information which is not subject to the overriding public interest against disclosure. Where information is deleted in accordance with section 6(4), the agency is required to keep a record indicating, in general terms, the nature of the information that has been redacted (see section 6(5)).

2.4 Part 2 of the GIPA Regulation also provides that local councils must provide a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.

2.5 The combined effect of these provisions is that information in the returns of the interests of councillors and designated persons needs to be made available on a council's website, unless there is an overriding public interest against such disclosure, or if placing it on the web would impose unreasonable costs on a council.

The public interest test

2.6 The GIPA Act provides that there is a presumption in favour of disclosure of government information unless there is an overriding public interest against disclosure (section 5). In order to determine if there is an overriding public interest against disclosing information in the returns of the interests of councillors and designated persons, councils need to apply the public interest test under Part 2 of the GIPA Act.

2.7 The fact that a return of interests is open access information is an important factor in favour of disclosure which must be balanced against any applicable considerations against disclosure. In balancing the public interest decision makers should have regard to the intent of the legislature and apply the Act consistent with the objects of section 3(2) of the GIPA Act.

2.8 The public interest test is described in section 13 of the GIPA Act as "[t]here is an overriding public interest against disclosure of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure".

2.9 In applying the public interest test factors such as privacy may be considered. While the note to section 12 provides a non-exhaustive list of examples of factors that may be considered in favour of disclosing information, only those considerations listed in the Table in section 14 may be taken into account in deciding that information should not be disclosed. The considerations against disclosure must be such that they outweigh those in favour, overturning the general presumption in the GIPA Act in favour of disclosure (see section 5).

2.10 The Information Commissioner has published the following resources to assist agencies to apply the public interest test:

- Guideline 4: Personal information as a public interest consideration under the GIPA Act
- What is the public interest test?

Part 3: How the information on returns should be disclosed

Public interest considerations in favour of disclosure

3.1 The note in section 12 of the GIPA Act contains a number of factors that favour disclosure of information, including the following:

(a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.

(b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.

(c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.

(d) The information is personal information of the person to whom it is to be disclosed.

(e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.

3.2 Disclosure of the returns of the interests of councillors and designated persons promotes some of these public interest considerations in favour of disclosure (see (a), (b), (c) and (e)). It furthers openness, transparency and accountability in local government. Disclosing the returns also protects the integrity of councils' decision-making processes by allowing scrutiny of potential conflicts of interests that would arise where councillors or staff participate in decision making from which they or their close associates may derive, or be perceived to derive, personal or financial benefit.

3.3 To assist members of the public to have confidence that potential conflicts of interest are avoided, they should have sufficient information about the areas of conflict. In this respect, disclosure of the information contained in the returns is an important element in promoting public accountability.

Public interest considerations against disclosure

3.4 Councillors and designated persons may be required to disclose personal information in the returns. In addition to their names and addresses, the returns include details about each of their property and share holdings, debts and family business interests, as well as their signatures.

3.5 Clause 3 in the Table in section 14 of the GIPA Act lists as a consideration against disclosure the fact that information may reveal someone's personal information, or would contravene an information privacy principle under the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act). An individual has a right to protect the privacy of their personal information. Given the amount of personal information that may be contained in the returns, special care should be taken to protect this right.

3.6 The balancing of public interest considerations may necessitate consideration of privacy protection principles and the interaction between the GIPA Act and the PPIP Act is well established within both statutes. While a return may reveal personal information, which is a public interest consideration against disclosure, this is not a conclusive presumption against disclosure. It is just one of the relevant factors that need to be weighed against other factors for and against disclosure. In this regard the considerations must be weighed in conducting the public interest test and this balancing should be informed by section 5 and section 20(5) of the PPIP Act which provide that the GIPA Act is not limited by the PPIP Act.

3.7 A further consideration against disclosure listed in clause 3 of the Table in section 14 is where release of the information may expose a person to a risk of harm or of serious harassment or serious intimidation. It is foreseeable that disclosing the type and combination of information contained in the returns on a council's website could expose a person to harassment and intimidation, and potentially serious harm or identity theft.

3.8 In *Pallier v NSW State Emergency Service* [2016] NSWCATAD 293, the NSW Civil and Administrative Tribunal indicated that the intimidation or harassment needs to be heavy, weighty or grave and not trifling or transient.[5] The risk needs to be considered objectively. Any evidence of the risk should be as it currently stands, rather than evidence of past actions.[6]

[5] *Pallier v NSW State Emergency Service* [2016] NSWCATAD 293, paragraph 81

[6] Ibid, paragraph 85.

Application of section 6(4) of the GIPA Act

3.9 In circumstances where council determines that there is an overriding public interest against disclosure of a return of interest, council may still be required to release an edited copy of the return.

3.10 Section 6(4) of the GIPA Act requires agencies 'must facilitate public access to open access information contained in a record by deleting matter from a copy of the record if disclosure of the matter would otherwise be prevented due to an overriding public interest against disclosure, and it is practicable to delete the matter'.

3.11 The type of matter which might be deleted from a return in these circumstances will vary depending on the public interest considerations applied. However, examples might include the signatures or residential address of the individual making the return.

3.12 Where information is deleted from a return, council should keep a record indicating, in general terms, the nature of the information redacted in accordance with section 6(5) of the GIPA Act

Conclusion

3.13 Disclosure of information contained in the returns of the interests of councillors and designated persons is an important public accountability measure. Open access information should be treated as a special class of information when determining information access. Accordingly, the threshold to displace Parliament's intent that it is open access is set at a high level.

3.14 The requirement in clause 1(2)(a) of Schedule 1 of the GIPA Regulation that returns of councillors and designated persons be released as part of local councils' open access information should be interpreted as follows:

- The returns should be made publicly available on the council's website unless there is an overriding public interest against release or to do so would impose unreasonable additional costs on council.
- The fact that a return of interests is open access information is a factor in favour of disclosure in balancing the public interest.
- In the circumstances where council decides that there is an overriding public interest against disclosure, consideration should then be given to whether it is practicable to release an edited copy of the record (for example redacting the individual's signature or residential address) in accordance with section 6(4) of the GIPA Act.
- If it is practicable to do so, then the information should be deleted from a copy of the record and the remainder of the return made available on the council's website.
- Where information is deleted from a return, council should keep a record indicating, in general terms, the nature of the information redacted.
- Copies of publicly available information about returns may be made in accordance with clause 5(1)(b) of the GIPA Regulation.

3.15 Releasing the information contained in the returns of councillors and designated persons in this manner facilitates the legitimate public interest in having access to the information, while respecting other considerations against disclosure including privacy.

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Model Code of Conduct

for Local Councils in NSW

2020

NSW GOVERNMENT

MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW
2020

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Produced by the Department of Planning, Industry and Environment

Contents

Part 1:
Introduction

This *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct") is made under section 440 of the *Local Government Act 1993* ("LGA") and the *Local Government (General) Regulation 2005* ("the Regulation").

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in local government.

Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council's or joint organisation's adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not "council officials" for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council's or joint organisation's adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council's or joint organisation's adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council's adopted code of conduct applies to, must comply with the applicable provisions of their council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the LGA. The LGA provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office. A councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with a council's code of conduct may give rise to disciplinary action.

Note: References in the Model Code of Conduct to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code of Conduct, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

Note: In adopting the Model Code of Conduct, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".

Part 2:
Definitions

In this code the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of "council committee"
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
conduct	includes acts and omissions
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 400O of the LGA
LGA	*Local Government Act 1993*
local planning panel	a local planning panel constituted under the *Environmental Planning and Assessment Act 1979*
mayor	includes the chairperson of a county council or a joint organisation

members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* prescribed under the Regulation
the Regulation	the *Local Government (General) Regulation 2005*
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to

Part 3:
General Conduct Obligations

General conduct

3.1 You must not conduct yourself in a manner that:

a) is likely to bring the council or other council officials into disrepute

b) is contrary to statutory requirements or the council's administrative requirements or policies

c) is improper or unethical

d) is an abuse of power

e) causes, comprises or involves intimidation or verbal abuse

f) involves the misuse of your position to obtain a private benefit

g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.

3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (*section 439*).

Fairness and equity

3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.

3.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

Harassment and discrimination

3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.

3.7 For the purposes of this code, "harassment" is any form of behaviour towards a person that:

a) is not wanted by the person

b) offends, humiliates or intimidates the person, and

c) creates a hostile environment.

Bullying

3.8 You must not engage in bullying behaviour towards others.

3.9 For the purposes of this code, "bullying behaviour" is any behaviour in which:

a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and

b) the behaviour creates a risk to health and safety.

3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:

a) aggressive, threatening or intimidating conduct

b) belittling or humiliating comments

c) spreading malicious rumours

d) teasing, practical jokes or 'initiation ceremonies'

e) exclusion from work-related events

f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level

g) displaying offensive material

h) pressure to behave in an inappropriate manner.

3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:

a) performance management processes

b) disciplinary action for misconduct

c) informing a worker about unsatisfactory work performance or inappropriate work behaviour

d) directing a worker to perform duties in keeping with their job

e) maintaining reasonable workplace goals and standards

f) legitimately exercising a regulatory function

g) legitimately implementing a council policy or administrative processes.

Work health and safety

3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WHS Act). You must comply with your duties under the WHS Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:

a) take reasonable care for your own health and safety

b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons

c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WHS Act and any policies or procedures adopted by the council to ensure workplace health and safety

d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff

e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations

f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WHS Act in relation to the same matter.

Land use planning, development assessment and other regulatory functions

3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.

3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

Binding caucus votes

3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.

3.16 For the purposes of clause 3.15, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.

3.17 Clause 3.15 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

3.18 Clause 3.15 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

Obligations in relation to meetings

3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.

3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).

3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:

a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or

b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or

c) deliberately seek to impede the consideration of business at a meeting.

Part 4:
Pecuniary Interests

What is a pecuniary interest?

4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.

4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.

4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:

(a) your interest, or

(b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or

(c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.

4.4 For the purposes of clause 4.3:

(a) Your "relative" is any of the following:

i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).

(b) "de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):

(a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or

(b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or

(c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

What interests do not have to be disclosed?

4.6 You do not have to disclose the following interests for the purposes of this Part:

(a) your interest as an elector

(b) your interest as a ratepayer or person liable to pay a charge

(c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code

(d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code

(e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)

(f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee

(g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company

(h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership

(i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:

i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation

ii) security for damage to footpaths or roads

iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract

(j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)

(k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,

(l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor

(m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person

(n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member

(o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

4.7 For the purposes of clause 4.6, "relative" has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

What disclosures must be made by a designated person?

4.8 Designated persons include:

(a) the general manager

(b) other senior staff of the council for the purposes of section 332 of the LGA

(c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest

(d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

(a) must prepare and submit written returns of interests in accordance with clauses 4.21, and

(b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council staff other than designated persons?

4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.

4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council advisers?

4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.

4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.

4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

What disclosures must be made by a councillor?

4.20 A councillor:

(a) must prepare and submit written returns of interests in accordance with clause 4.21, and

(b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

Disclosure of interests in written returns

4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:

(a) becoming a councillor or designated person, and

(b) 30 June of each year, and

(c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:

(a) they made and lodged a return under that clause in the preceding 3 months, or

(b) they have ceased to be a councillor or designated person in the preceding 3 months.

4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.

4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.

4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.

4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.

4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009,* the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:

(a) at any time during which the matter is being considered or discussed by the council or committee, or

(b) at any time during which the council or committee is voting on any question in relation to the matter.

4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.

4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:

(a) a member of, or in the employment of, a specified company or other body, or

(b) a partner of, or in the employment of, a specified person.

Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.

4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.

4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:

(a) the matter is a proposal relating to:

(i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or

(ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and

(b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and

(c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.

4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:

(a) be in the form set out in schedule 3 of this code and contain the information required by that form, and

(b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.

4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

(a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

(b) that it is in the interests of the electors for the area to do so.

4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.

Part 5:
Non-Pecuniary Conflicts of Interest

What is a non-pecuniary conflict of interest?

5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.

5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.

5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.

5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.

5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.

5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.

5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.

5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:

a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household

b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.

c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.

d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter

e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1

f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.

5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:

a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or

b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.

5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.

5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.

5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.

5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

Political donations

5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.

5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:

a) made by a major political donor in the previous four years, and

b) the major political donor has a matter before council,

you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.

5.17 For the purposes of this Part:

a) a "reportable political donation" has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*

b) "major political donor" has the same meaning as it has in the *Electoral Funding Act 2018*.

5.18 Councillors should note that political donations that are not a "reportable political donation", or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

5.20 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interest in the matter is permitted to participate in consideration of the matter if:

a) the matter is a proposal relating to:

i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or

ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and

b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and

c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business or employment

5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.

5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.

5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.

5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.

5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:

a) conflict with their official duties

b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted

c) require them to work while on council duty

d) discredit or disadvantage the council

e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with council

5.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

Part 6:
Personal Benefit

6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.

6.2 A reference to a gift or benefit in this Part does not include:

a) items with a value of $10 or less

b) a political donation for the purposes of the *Electoral Funding Act 2018*

c) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them

d) a benefit or facility provided by the council to an employee or councillor

e) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or

f) free or subsidised meals, beverages or refreshments provided to council officials in conjunction with the performance of their official duties such as, but not limited to:

i) the discussion of official business

ii) work-related events such as council-sponsored or community events, training, education sessions or workshops

iii) conferences

iv) council functions or events

v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.

6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

How are offers of gifts and benefits to be dealt with?

6.5 You must not:

a) seek or accept a bribe or other improper inducement

b) seek gifts or benefits of any kind

c) accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty

d) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9

e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount

f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer–supplier relationship with the competition organiser

g) personally benefit from reward points programs when purchasing on behalf of the council.

6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:

a) the nature of the gift or benefit

b) the estimated monetary value of the gift or benefit

c) the name of the person who provided the gift or benefit, and

d) the date on which the gift or benefit was received.

6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

Gifts and benefits of token value

6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of $100. They include, but are not limited to:

a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed $100

b) gifts of alcohol that do not exceed a value of $100

c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like

d) prizes or awards that do not exceed $100 in value.

Gifts and benefits of more than token value

6.9 Gifts or benefits that exceed $100 in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.

6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds $100, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.

6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person associated with that person or organisation, during the same 12-month period would exceed $100 in value.

6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.

"Cash-like gifts"

6.13 For the purposes of clause 6.5(e), "cash-like gifts" include, but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

Improper and undue influence

6.14 You must not use your position to influence other council officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the proper exercise of their role as prescribed under the LGA.

6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

Part 7:
Relationships Between Council Officials

Obligations of councillors and administrators

7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.

7.2 Councillors or administrators must not:

a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA

b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate

c) contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager

d) contact or issue instructions to any of the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.

7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

Obligations of staff

7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.

7.5 Members of staff of council must:

a) give their attention to the business of the council while on duty

b) ensure that their work is carried out ethically, efficiently, economically and effectively

c) carry out reasonable and lawful directions given by any person having authority to give such directions

d) give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them

e) ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

Inappropriate interactions

7.6 You must not engage in any of the following inappropriate interactions:

a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters

b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters

c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor

d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council

e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor or administrator has a right to be heard by the panel at the meeting

f) councillors and administrators being overbearing or threatening to council staff

g) council staff being overbearing or threatening to councillors or administrators

h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media

i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make

j) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community

k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals

l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

Part 8:
Access to Information and Council Resources

Councillor and administrator access to information

8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).

8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.

8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.

8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.

8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.

8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Refusal of access to information

8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

8.9 In regard to information obtained in your capacity as a council official, you must:

a) subject to clause 8.14, only access council information needed for council business

b) not use that council information for private purposes

c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council

d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.

8.11 In addition to your general obligations relating to the use of council information, you must:

a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions

b) protect confidential information

c) only release confidential information if you have authority to do so

d) only use confidential information for the purpose for which it is intended to be used

e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person

f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body

g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

8.12 When dealing with personal information you must comply with:

a) the *Privacy and Personal Information Protection Act 1998*

b) the *Health Records and Information Privacy Act 2002*

c) the Information Protection Principles and Health Privacy Principles

d) the council's privacy management plan

e) the Privacy Code of Practice for Local Government

Use of council resources

8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.

8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:

a) the representation of members with respect to disciplinary matters

b) the representation of employees with respect to grievances and disputes

c) functions associated with the role of the local consultative committee.

8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.

8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.

8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:

a) for the purpose of assisting your election campaign or the election campaign of others, or

b) for other non-official purposes.

8.19 You must not convert any property of the council to your own use unless properly authorised.

Internet access

8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.

Council record keeping

8.21 You must comply with the requirements of the *State Records Act 1998* and the council's records management policy.

8.22 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and the council's approved records management policies and practices.

8.23 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.

8.24 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the *State Records Act 1998*.

Councillor access to council buildings

8.25 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.

8.26 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.

8.27 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

Part 9:
Maintaining the Integrity of this Code

Complaints made for an improper purpose

9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.

9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

a) to bully, intimidate or harass another council official

b) to damage another council official's reputation

c) to obtain a political advantage

d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions

e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions

f) to avoid disciplinary action under the Procedures

g) to take reprisal action against a person for making a complaint alleging a breach of this code

h) to take reprisal action against a person for exercising a function prescribed under the Procedures

i) to prevent or disrupt the effective administration of this code under the Procedures.

Detrimental action

9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.

9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.

9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:

a) injury, damage or loss

b) intimidation or harassment

c) discrimination, disadvantage or adverse treatment in relation to employment

d) dismissal from, or prejudice in, employment

e) disciplinary proceedings.

Compliance with requirements under the Procedures

9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.

9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.

9.8 You must comply with a practice ruling made by the Office under the Procedures.

Disclosure of information about the consideration of a matter under the Procedures

9.9 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.

9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.

9.11 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.

9.12 You must not disclose information about a complaint you have made alleging a breach of this code or any other matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.

9.13 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act 1994*.

Complaints alleging a breach of this Part

9.14 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.

9.15 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.

Schedule 1:
Disclosures of Interest and Other Matters in Written Returns Submitted Under Clause 4.21

Part 1: Preliminary

Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

address means:

a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or

b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or

c) in relation to any real property, the street address of the property.

de facto partner has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

a) the allotment of shares in a company

b) the creation of a trust in respect of property

c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property

d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property

e) the exercise by a person of a general power of appointment over property in favour of another person

f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

interest means:

a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or

b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

return date means:

a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person

b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made

c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

relative includes any of the following:

a) a person's spouse or de facto partner

b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

d) the spouse or de factor partner of a person referred to in paragraphs (b) and (c).

travel includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales*: A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.

3. *References to interests in real property*: A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

4. *Gifts, loans etc. from related corporations*: For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

Part 2: Pecuniary interests to be disclosed in returns

Real property

5. A person making a return under clause 4.21 of this code must disclose:

   a) the street address of each parcel of real property in which they had an interest on the return date, and

   b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and

   c) the nature of the interest.

6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:

   a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or

   b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.

7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.

8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

Gifts

9. A person making a return under clause 4.21 of this code must disclose:

   a) a description of each gift received in the period since 30 June of the previous financial year, and

   b) the name and address of the donor of each of the gifts.

10. A gift need not be included in a return if:

   a) it did not exceed $500, unless it was among gifts totalling more than $500 made by the same person during a period of 12 months or less, or

   b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or

   c) the donor was a relative of the donee, or

   d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.

11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:

   a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and

b) the dates on which the travel was undertaken, and

c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.

13. A financial or other contribution to any travel need not be disclosed under this clause if it:

a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or

b) was made by a relative of the traveller, or

c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or

d) did not exceed $250, unless it was among gifts totalling more than $250 made by the same person during a 12-month period or less, or

e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or

f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or

g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.

14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:

a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and

b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and

c) the nature of the interest, or the position held, in each of the corporations, and

d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and

b) required to apply its profits or other income in promoting its objects, and

c) prohibited from paying any dividend to its members.

17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.

20. For the purposes of clause 19 of this schedule:

    close associate, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.

    property developer has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:

    a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and

    b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and

    c) a description of the position held in each of the unions and associations.

22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.

24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

Sources of income

26. A person making a return under clause 4.21 of this code must disclose:

    a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and

    b) each source of income received by the person in the period since 30 June of the previous financial year.

27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:

    a) in relation to income from an occupation of the person:

        (i) a description of the occupation, and

        (ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and

        (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or

    b) in relation to income from a trust, the name and address of the settlor and the trustee, or

    c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed $500, or is not reasonably expected to exceed $500, as the case may be.

29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.

30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:

    a) on the return date, and

    b) at any time in the period since 30 June of the previous financial year.

32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.

33. A liability to pay a debt need not be disclosed by a person in a return if:

    a) the amount to be paid did not exceed $500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:

(i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and

(ii) the amounts to be paid exceeded, in the aggregate, $500, or

b) the person was liable to pay the debt to a relative, or

c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or

d) in the case of a debt arising from the supply of goods or services:

(i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or

(ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or

e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

Schedule 2:
Form of Written Return of Interests Submitted Under Clause 4.21

'Disclosures by councillors and designated persons' return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

5. This form must be completed using block letters or typed.

6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by [*full name of councillor or designated person*]

as at [*return date*]

in respect of the period from [*date*] to [*date*]

[*councillor's or designated person's signature*]

[*date*]

A. Real Property	
Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest

B. Sources of income		
1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June		
Sources of income I received from an occupation at any time since 30 June		
Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June		
Sources of income I received from a trust since 30 June		
Name and address of settlor	Name and address of trustee	
3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June		
Sources of other income I received at any time since 30 June		
[*Include description sufficient to identify the person from whom, or the circumstances in which, that income was received*]		

C. Gifts	
Description of each gift I received at any time since 30 June	Name and address of donor

D. Contributions to travel		
Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

E. Interests and positions in corporations			
Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)

F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

G. Positions in trade unions and professional or business associations	
Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position

H. Debts

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

I. Dispositions of property

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. Discretionary disclosures

Schedule 3:
Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37

1. This form must be completed using block letters or typed.

2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

Special disclosure of pecuniary interests by *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the
[name of council or council committee (as the case requires)]

to be held on the day of 20 .

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to councillor *[Tick or cross one box.]*	☐ The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). ☐ An associated person of the councillor has an interest in the land. ☐ An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest[1]	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land)[2] *[Tick or cross one box]*	☐ The identified land. ☐ Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control *[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]*	

1 Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

2 A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

Proposed change of zone/planning control

[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]

Effect of proposed change of zone/planning control on councillor or associated person

[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]

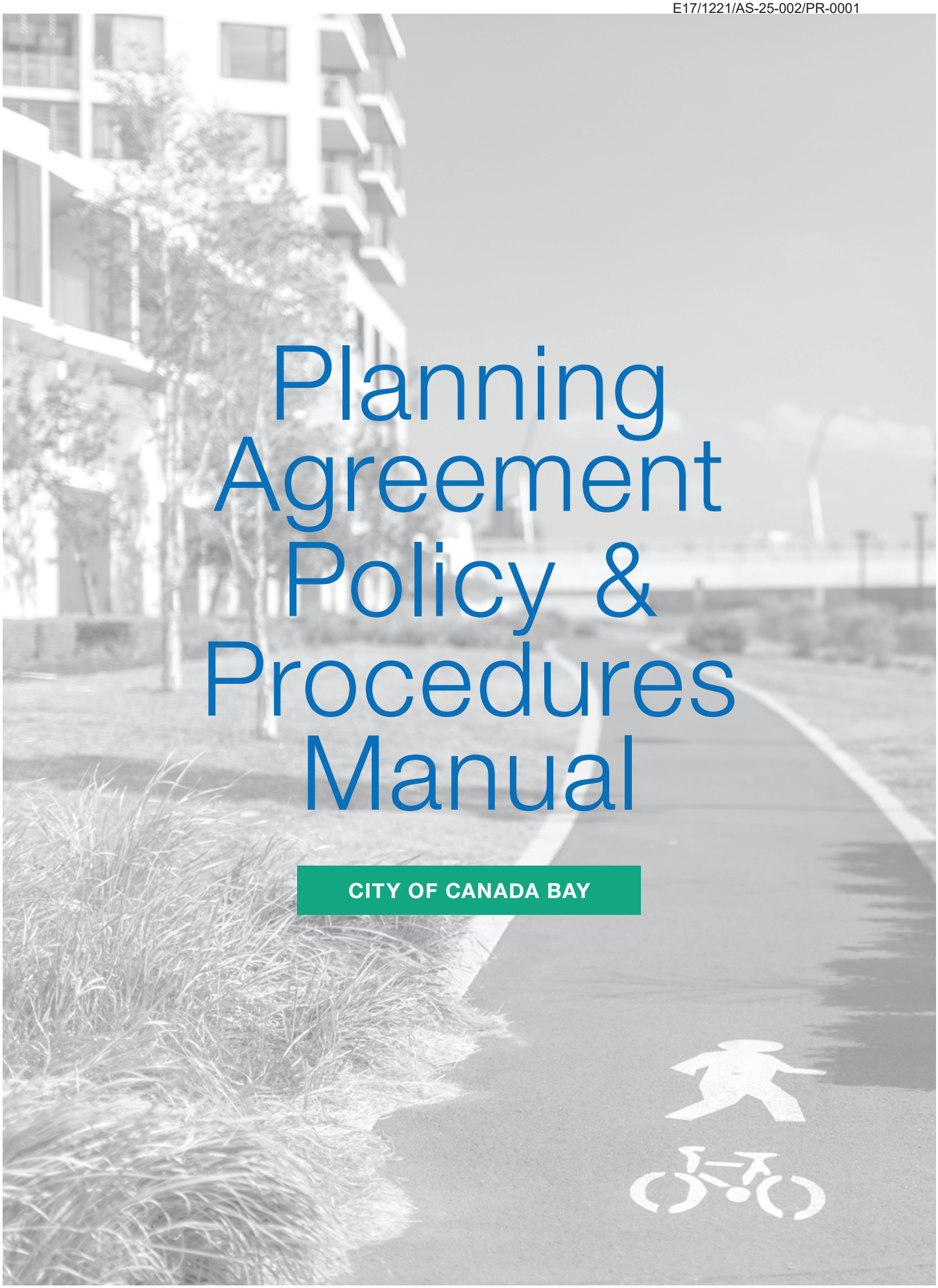
[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]


NSW
GOVERNMENT



Planning Agreement Policy & Procedures Manual

CITY OF CANADA BAY

City of Canada Bay

Contents

Planning Agreements – Policy

1. Introduction

1.1 OVERVIEW

Planning Agreements are voluntary agreements that allow development contributions such as the dedication of land to Council, monetary contributions, public infrastructure, community facilities, affordable housing, any other material public benefit or any combination of these to be delivered in connection with planning proposals and development applications.

Planning Agreements are separate from, though complement Council's section 7.11 and 7.12 contribution plans levied in accordance with the *Environmental Planning & Assessment Act 1979* (the Act).

Planning Agreements provide greater flexibility to target the range of public facilities and services that can be provided for the public's benefit in order to manage the impacts of development. Planning Agreements also provide an efficient means of incrementally developing community infrastructure in conjunction with redevelopment in urban renewal areas.

1.2 NAME OF THIS POLICY

This Policy is known as the Canada Bay Planning Agreements Policy & Procedures Manual (the Policy). It sets out Canada Bay Council's policy and procedures relating to the preparation of Planning Agreements under the Act.

Council will apply this Policy to ensure Planning Agreements comply with Part 7 of the Act and provide infrastructure and other public benefits that support Council's strategic direction and provide good value to the community.

1.3 COMMENCEMENT AND APPLICATION OF THE POLICY

The Policy was adopted by resolution of Council on 17 November 2020. This Policy is effective from 17 November 2020.

The Policy applies to development applications lodged pursuant to the *Environmental Planning and Assessment Act 1979* and planning proposals seeking to change the Canada Bay Local Environmental Plan for land and development within the Canada Bay Local Government Area.

1.4 OBJECTIVES

The objectives of this Policy are to:

a. establish a fair, transparent and accountable policy governing the use of Planning Agreements by Council;

b. to enable innovative approaches to the delivery of infrastructure and services that are consistent with the Council's corporate strategic planning documents and land use planning outcomes;

c. to enhance the range and extent of development contributions made to Council by developers for and towards public services and facilities in the Council's area;

d. ensure participants in the negotiation of Planning Agreements understand their roles and responsibilities to maintain the highest standards of probity,

e. set out Council's specific policy position and procedures relating to the use of Planning Agreements,

f. promote public participation through the public exhibition and seeking submissions on draft Planning Agreements, and

g. where applicable, achieve benefits for the community in line with adopted strategies and plans (particularly relating to land use improvement and foreshore access).

1.5 WHAT INFORMATION DOES THIS POLICY PROVIDE?

The Policy sets out the Council's approach to the preparation of Planning Agreements. In particular, this Policy sets out:

a. the circumstances in which Council may consider entering into a Planning Agreement;

b. the matters ordinarily covered by a Planning Agreement,

c. the form of development contributions which may be sought under a Planning Agreement;

d. examples of the kinds of public benefits which may be sought;

e. the method for determining the value of public benefits;

f. timing considerations in respect to Planning Agreements and procedures for negotiating and entering into Planning Agreements;

g. whether the money paid under different Planning Agreements is to be pooled and applied towards public benefits from various Planning Agreements;

h. how the benefits provided under Planning Agreements are valued;

i. probity measures, and

j. the Council's policy on other matters relating to Planning Agreements, such as their review and modification, the discharging of developer obligations, dispute resolution, enforcement mechanisms and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

1.6 INTERPRETATION

Defined terms used in this Policy:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

affordable housing condition means a condition that may be imposed on development consent, under section 7.32 of the Act, requiring the dedication of land or a monetary contribution for the purpose of providing affordable housing.

affordable housing contribution scheme means a scheme referred to in section 7.32(3)(b) of the Act set out in or adopted in a local environmental plan.

consent authority has the same meaning as in the Act.

Contributions plan means a contributions plan within the meaning of the Act.

contributions plan credit means the $ amount by which value of public benefits provided for in a Planning Agreement exceed the value of contributions that could be required in respect of development under the applicable contributions plan

Council means the City of Canada Bay Council.

developer, in relation to a Planning Agreement, has the same meaning as in s7.4 of the Act.

development application has the same meaning as in the Act.

development consent has the same meaning as in the Act.

modification application means an application to modify a development consent made under s4.55 of the Act.

Part 6 certificate means a construction certificate, occupation certificate or subdivision certificate within the meaning of the Act.

Parramatta Road Corridor Precinct means an individual Precinct within the Parramatta Road Corridor Urban Transformation Strategy that has been earmarked for renewal because of the access to jobs, transport, infrastructure and services, and their ability to accommodate new development.

Planned Precinct means an area identified by the NSW Government identified for potential increased density due to the proximity to jobs, public transport, shops and services.

Planning Agreement means a voluntary Planning Agreement referred to in s7.4 of the Act.

planning authority, in relation to a Planning Agreement, means the Council

planning proposal means a planning proposal within the meaning of Part 3 of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Section 7.11 contribution means a contribution under s7.11 (1) of the Act.

Section 7.12 levy means a levy under s7.12 of the Act.

Secretary means the Secretary of the Department of Planning, Industry and Environment.

value capture refers to a sharing/ capture of Value Uplift as a development contribution to be appropriated to public benefit.

value uplift refers to the increased value of an asset following amendment/s to the planning framework

2. Regulatory & Policy framework

2.1 LEGISLATIVE FRAMEWORK

2.1.1 Division 7.1 of the Act and Part 4 of the Regulation establish a statutory scheme for contributions by developers to local councils in connection with development. The scheme has compulsory and voluntary elements.

2.1.2 The scheme provides for the Council to grant consent to development subject to a condition requiring development contributions to be made to the Council under:

a. section 7.11 of the Act by means of the payment of money or the dedication of land free of cost, or

b. section 7.12 of the Act by means of the payment of a levy to the Council of a fixed percentage of the proposed cost of carrying out the development,

c. section 7.32 of the Act by means of the payment of money or the dedication of land free of cost for the purpose of providing affordable housing.

2.1.3 The scheme also provides for Planning Agreements. A Planning Agreement is defined in s7.4 of the act to be a voluntary agreement or other arrangement between a 'planning authority' and a 'developer' (being a person who has sought a change to an environmental planning instrument, or who has made or proposes to make a development application or an application for a complying development certificate, or an associated person) under which the developer is required to make a monetary contribution, dedicate land free of cost, or provide any other material public benefit, or any combination of them, towards a public purpose.

2.1.4 For the purpose of this policy, a public purpose includes (without limitation) is:

a. the provision of (or the recoupment of the cost of providing) public amenities or public services, the provision of (or the recoupment of the cost of providing) affordable housing,

b. the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,

c. the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,

d. the monitoring of the planning impacts of development,

e. the conservation or enhancement of the natural environment.

2.1.5 A Planning Agreement can apply to:

a. a planning proposal, and

b. a development application or an application for a complying development certificate, and

c. a modification to a development consent.

2.1.6 A Planning Agreement must describe the land, the planning proposal (if applicable), and the development to which it applies.

2.1.7 A Planning Agreement must also provide for the following:

a. details of the nature, extent, manner and timing of the provision to be made by the developer under the agreement,

b. whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12, or 7.24 of the Act to the development,

c. if the application of section 7.11 is not excluded, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11,

d. a dispute resolution mechanism,

e. a suitable means of enforcing the agreement in the event of a breach of the agreement by the developer

2.1.8 A Planning Agreement does not require a nexus. There is no need for any connection between developments to which a Planning Agreement applies and the object of expenditure of any money paid under the agreement.

2.1.9 Council has prepared a template agreement that will form the basis for a Planning Agreement to be entered into with the Council. This template is to be used by developers as the basis for any Planning Agreement.

2.1.10 Public Notice - A proposed Planning Agreement must be the subject of public notice and public inspection (public exhibition). Where practicable, this should occur as part of and contemporaneously with and in in the same manner as the public exhibition of the related planning proposal, development application, or application to modify a development consent.

2.1.11 A number of important provisions in the Act protect the probity of the negotiation process relating to Planning Agreements and the planning process in which Planning Agreements operate, including the following:

a. development consent cannot be refused because a Planning Agreement has not been entered into or the developer has not offered to enter into a Planning Agreement,

b. development consent conditions can only require a Planning Agreement to be entered into in accordance with an offer made by the developers,

c. a Planning Agreement cannot require planning controls to be changed or a development consent to be granted,

d. a Planning Agreement is void to the extent that it allows or requires a breach of the Act, planning controls, or a development consent.

2.2 DEPARTMENTAL GUIDELINES

2005 Practice Note

2.2.1 Clause 25B of the Regulation provides that the Secretary may from time to time issue practice notes to assist parties in the preparation of Planning Agreements.

2.2.2 The NSW Department of Infrastructure Planning Natural Resources (as it then was) published a Practice Note on Planning Agreements in 2005 shortly after the Act was amended to include provision for Planning Agreements.

2.2.3 The practice note states that it is intended to provide best practice guidance on the use of Planning Agreements, and expressly recognises that it may advocate greater restrictions on their use than is provided for in the statutory scheme.

2.2.4 Recognising the role of Planning Agreements as a regulatory planning tool, the practice note identifies that the paramount need of the planning system is to secure the fair imposition of planning controls for the benefit of the community and as between different developers.

2.2.5 In some cases the public interest served by Planning Agreements may be development impact mitigation, and in others it may be securing benefits for the wider community.

2.2.6 It advocates the need for principles, policies, and procedures relating to Planning Agreements to safeguard the public interest and the bargaining process.

2.2.7 The practice note discusses the need for an awareness of the ways in which Planning Agreements can be misused by planning authorities.

2.2.8 The practice note states that the primary fundamental principle governing the use of Planning Agreements is that planning decisions may not be bought or sold through Planning Agreements.

2.2.9 It recommends that planning authorities apply an ‘acceptability test’ when assessing proposals for Planning Agreements. (Acceptability Test provided under Section 3.2 of this policy)

2.2.10 Some key elements of the framework directed towards planning authorities include:

a. identifying the objectives of the use of Planning Agreements,

b. using Planning Agreements to overcome past deficiencies in infrastructure provision,

c. limiting the use of Planning Agreements for value capture,

d. limiting the funding of maintenance and other recurrent costs through Planning Agreements,

e. using standard charging where possible,

f. involving independent third parties in Planning Agreement negotiations in appropriate cases,

g. publishing Planning Agreements policies and procedures,

h. standardising Planning Agreements documents and procedures,

i. Implementing efficient negotiation systems.

2.2.11 This Council policy on Planning Agreements seeks to comply with the Department's Practice Note on Planning Agreement's.

2020 Draft Practice Note and Draft Ministerial Direction

2.2.12 The Secretary issued a Draft Practice Note – Planning Agreements in April 2020 and associated Draft Ministerial Direction.

2.2.13 If the 2020 Draft Practice Note and associated Draft Ministerial Direction are made, the Council will be required to have regard to them when negotiating or preparing Planning Agreements.

2.2.14 Whilst the content of the 2020 Draft Practice Note is similar to the 2005 practice note, the following significant matters covered by the 2020 Draft Practice Note are noted:

a. it contains an amended list of 'fundamental principles' for Planning Agreements,

b. it makes specific reference to and provides guidance on the use of Planning Agreements for value capture in connection with the making of planning decisions,

c. it introduces a threshold test for when re-notification of a proposed Planning Agreement should occur if amendments to the proposed Planning Agreement are made after public notification,

d. it contains guidance on the relationship between Planning Agreements and variations sought to development standards,

e. it describes the relationship between Planning Agreements and other contributions mechanisms,

f. it introduces a greater nexus between Planning Agreements and strategic infrastructure planning,

g. it provides guidance on the content of offers to enter into Planning Agreements,

h. it provides guidance on the registration of Planning Agreements,

i. it provides detailed guidance on the security for the enforcement of developers' obligations under Planning Agreements

2.2.15 This Council policy on Planning Agreements seeks to comply with the 2020 Draft Practice Note.

2.3 EXPLANATORY NOTE

2.3.1 Clause 25E(1) of the Regulation requires that an explanatory note must accompany a planning agreement, or an agreement that revokes or amends a planning agreement that:

a. Summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and

b. Contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

Clause 25E(3) of the Regulation requires the parties to jointly prepare the explanatory note. Council's explanatory note template is included under Part 9, Planning Agreement Templates and must be used by developers as the basis for the preparation of explanatory notes.

2.4 CORPORATE STRATEGIC PLANNING CONTEXT

2.4.1 An important strategic role for Planning Agreements is achieving specific land use planning outcomes with strategic and/or site specific merit.

2.4.2 A Planning Agreement should facilitate the provision of public facilities and amenity outcomes that advance the delivery of Council's corporate and strategic planning objectives and deliver valuable community benefits where appropriate.

2.4.3 The Council's long-term strategies including Canada Bay's Local Strategic Planning Statement and Community Strategic Plan - Your Future 2030 and delivery program are based on the outcomes of engagement with the community. The implementation of key aspects of some of these goals, the broader strategic directions and the delivery of key infrastructure areas can be directly or indirectly achieved through Planning Agreements.

2.4.4 The vision and goals established within Council's long-term strategic plans such as the Community Strategic Plan - Your Future 2030 and Local Strategic Planning Statement flow through to supporting plans that guide Council's medium and short-term priorities:

- Resourcing Strategy:
- Long Term Financial Plan (10 years)
- Asset Management Strategy (10 Years)
- Workforce Strategy (3 years)
- Delivery Program (4 years)
- Operational Plan (Annual)

2.4.5 Council's Local Strategic Planning Statement considers planning for growth in Canada Bay, including relevant supporting strategies which seek to identify the communities needs for infrastructure such as community facilitates, transport, open space, public domain and recreation infrastructure, capital works and infrastructure captured through plans of management.

2.5 RELATIONSHIP TO PAYMENT OF SECTION 7.11 & SECTION 7.12 CONTRIBUTIONS

2.5.1 The Council has two broad-based contributions plans:

a. section 7.11 Development Contributions Plan, and

b. section 7.12 Fixed Levy Contributions Plan.

2.5.2 Council uses its contributions plans as the primary mechanisms to deliver public infrastructure within its area.

2.5.3 Planning Agreements are one means of implementing the development contributions strategies and targets and is part of the Council's overall development contributions planning system.

2.5.4 Planning Agreements are intended to complement the Council's contributions plans. In appropriate cases, Planning Agreements can be used to deliver specific infrastructure outcomes provided for in the contributions plans or to provide additional or different public benefits or benefits not able to be provided through the contributions plans, such as affordable housing.

2.5.5 Acceptance of any contributions not identified in Council's existing development contributions plan and / or other corporate planning documents will be at the sole discretion of Council.

2.5.6 Entering into a Planning Agreement does not ordinarily exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the development. Noting a Planning Agreement cannot exclude s7.24 of the Act unless the approval of the Minister, or a development corporation designated by the Minister to give such approval, is obtained.

3. Probity & Public Accountability

3.1 FUNDAMENTAL PRINCIPLES

The 2005 Practice Note identifies fundamental principles governing the use of Planning Agreements. These are:

a. Planning Agreements must be governed by the fundamental principle that planning decisions may not be bought or sold,

b. planning authorities should never allow Planning Agreements to improperly fetter the exercise of statutory functions with which they are charged,

c. planning authorities should not use Planning Agreements as a means to overcome revenue raising or spending limitations to which they are subject or for other improper purposes,

d. planning authorities should not be party to Planning Agreements in order to seek public benefits that are unrelated to particular development,

e. planning authorities should not, when considering applications to change environmental planning instruments or development applications, take into consideration Planning Agreements that are wholly unrelated to the subject-matter of the application, nor should they attribute disproportionate weight to a Planning Agreement,

f. planning authorities should not allow the interests of individuals or interest group to outweigh the public interest when considering Planning Agreements,

g. planning authorities should not improperly rely on their peculiar statutory position in order to extract unreasonable public benefits from developers under Planning Agreements,

h. planning authorities should ensure that their bargaining power is not compromised, or their decision-making freedom is not fettered through a Planning Agreement,

i. Planning authorities should avoid, wherever possible, being party to Planning Agreements where they also have a stake in the development the subject of the agreements,

The 2020 Draft Practice Note identifies the following similar fundamental principles:

a. planning authorities should always consider a proposal on its merits, not on the basis of a Planning Agreement,

b. Planning Agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand,

c. strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population,

d. the progression of a planning proposal or the approval of a development application should never be contingent on entering into a Planning Agreement,

e. Planning Agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls,

f. Planning Agreements must not include public benefits wholly unrelated to the particular development,

g. value capture should not be the primary purpose of a Planning Agreement.

The Council will use all reasonable endeavours to ensure that this policy is applied and decisions are made about Planning Agreements in individual cases openly, honestly, freely, and fairly and that the policy is applied and those decisions are made consistently across the board.

3.2 ACCEPTABILITY TEST TO BE APPLIED TO ALL PLANNING AGREEMENTS

The 2005 Practice Note and the 2020 Draft Practice Note sets out best practice guidelines and safeguards in the use of Planning Agreements. These include determining the Planning Agreement's acceptability and reasonableness.

Planning Agreements and letters of offer will be tested for acceptability against the following tests (which incorporates the acceptability tests in the 2005 Practice Note and 2020 Draft Practice Note) and answer "Yes" to each question.

Consistency with legislation and departmental guidelines

a. Is the proposed Planning Agreement consistent with the Fundamental Principles governing the use of Planning Agreements?

Strategic Merit

a. Is the proposed development deemed to have site and strategic planning merit in accordance with relevant statutory and non- statutory planning policies?

b. Is the proposed Planning Agreement directed towards a legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning strategies and policies applying to the development?

General

a. Is the proposed Planning Agreement consistent with the Fundamental Principles governing the use of Planning Agreements?

b. Does the proposed Planning Agreement provide for the delivery of infrastructure or public benefits not wholly unrelated to the development?

c. Does the proposed Planning Agreement address an unmet community need and is there a material public benefit to the wider community that results from the items?

d. Do the items provide a public benefit (as opposed to principally contributing to the marketability of the development)?

e. Does the proposed Planning Agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest?

f. Does the proposed Planning Agreement provide for a reasonable means of achieving the desired outcomes and securing the benefits?

g. Does the proposed Planning Agreement protect the community against adverse planning decisions?

Land Dedication

In addition to the above, the Council will consider the following matters when deciding whether to enter into a Planning Agreement with respect to land dedication to ensure the land is suitable to the needs of Council and the purpose sought:

a. Has an independent valuation of the monetary value of the land been undertaken? If not, will suitable arrangements be in place to ensure a valuation will be undertaken prior to the finalisation of the Planning Agreement.

b. Are the dimensions, location and topography of the land suitable for the needs of Council and the purpose to which the land is sought?

c. Are the current use and improvements on the land suitable for Council's purpose and has consideration been given as to how this affects the value of the land?

d. Would the land be more appropriately classified as "value to the community" rather than "value to the development"?

e. Does the site's soil condition, accessibility, solar access and the relationship with existing public facilities support the dedication of the land for a public purpose?

Material Public Works

In addition to above, the Council will consider the following matters when deciding whether to enter into Planning Agreement with respect to material public works:

a. Does the agreement ensure that there are no significant financial implications for Council, particularly with respect to ongoing maintenance.

b. Will the works be delivered within a reasonable timeframe?

Affordable housing, where identified as a public benefit to be delivered through the Planning Agreement.

In addition to above, the Council will consider the following matters when deciding whether to enter into a Planning Agreement with respect to affordable housing:

a. Council's compliance with the *Environmental Planning and Assessment (Planning Agreements) Direction 2019*,

b. Does the proposal meet the requirements of Council's Local Strategic Planning Statement and the Eastern City District Plan with respect to the requirement for 5% to 10% of all new residential floor space to be delivered as affordable housing (subject to feasibility)?

c. Are there no other mechanisms available to deliver affordable housing? (for example, does the development application itself provide for affordable housing, or can council impose a condition of consent requiring an affordable housing contribution).

d. Is the proposed Planning Agreement consistent with council's adopted policies and strategies with respect to affordable housing?

e. Will the proposed affordable housing be dedicated to Council in perpetuity, provide a mix dwelling sizes, deliver equivalent quality of amenity to the balance of the development and consider universal accessibility?

Value of Planning Agreement

a. Where a Planning Agreement is entered into in connection with planning proposal, or development proposal which exceeds the existing development standards or planning

controls, and such planning proposal or development proposal has planning merit and will result in value uplift, does the proposed Planning Agreement reflect Council's methodology for calculating value uplift under Section 4.4 of the Policy?

3.3 NEGOTIATION OF PLANNING AGREEMENTS

3.3.1 There will be a separation of roles and responsibilities during the process of negotiating Planning Agreements. Section 7 Planning Agreements Responsibilities Matrix provides the allocation of responsibilities between roles within Council.

3.3.2 A division of Council will be responsible for negotiating Planning Agreements and representing Council's commercial interests while a separate division will be responsible for assessing Planning Proposals and Development Applications.

3.3.3 If the Council has a commercial interest in the subject matter of a Planning Agreement as a landowner, developer or financier, the Council will ensure that the person who assesses the application to which a Planning Agreement relates is not the same person or a subordinate of the person who negotiated the terms of the Planning Agreement on behalf of the Council in its capacity as landowner, developer or financier.

3.3.4 The Acceptability Test will be undertaken on all applications prior to the commencement of negotiations for any Planning Agreement.

3.3.5 Council may appoint a probity advisor in respect of the negotiation, preparation and entering into of a Planning Agreement in circumstances that Council considers appropriate.

3.3.6 Councillors will not be involved in the preparation or negotiation of a Planning Agreement.

3.4 PUBLIC NOTIFICATION AND EXHIBITION OF A PLANNING AGREEMENT AND EXPLANATORY NOTE

3.4.1 The Council is required to give public notice before a Planning Agreement is entered into, amended or revoked and make a copy of the proposed agreement, amendment or revocation available for inspection by the public for a period of not less than 28 days.

3.4.2 As far as practicable, public notice of a proposed Planning Agreement or a proposed amendment or revocation of a Planning Agreement in connection with a planning proposal or development application or modification application will be given contemporaneously with and in the same manner as the proposal or application.

3.4.3 Clause 25E(1) of the Regulation requires that an explanatory note must accompany a Planning Agreement, or an agreement that revokes or amends a Planning Agreement that:

a. Summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and

b. Contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

3.4.4 Clause 25E(3) of the Regulations requires the parties to jointly prepare the explanatory note. Council's explanatory note template should be used by developers as the basis for any explanatory note.

3.4.5 The Council will endeavour to prepare explanatory notes in plain English and with a view to providing sufficient information about the proposed Planning Agreement or amendment or revocation to facilitate effective public involvement.

3.4.6 An explanatory note will be publicly exhibited with every Planning Agreement. The explanatory note is intended to help the community to simply and clearly understand what the Planning Agreement is proposing, how it delivers public benefits, and why it is considered by the Council to be acceptable and in the public interest.

3.4.7 The Council will consider any public submission duly made in response to the public exhibition of a proposed Planning Agreement or a proposed amendment or revocation.

3.4.8 Any material changes that are proposed to be made to a Planning Agreement after public notice has been given should be subject to re-notification if the changes would materially affect:

a. how any of the matters specified in section 7.4 of the EP&A Act are dealt with by the Planning Agreement,

b. other key terms and conditions of the Planning Agreement,

c. the planning authority's interests or the public interest under the Planning Agreement,

d. whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

4. Preparing Planning Agreements

4.1 WHEN MAY COUNCIL ENTER INTO A PLANNING AGREEMENT

4.1.1 The Act allows Planning Agreements to be entered into in connection with:

a. planning proposals,

b. development applications and applications for complying development certificates,

c. modification applications.

4.1.2 This Policy does not limit the broad circumstances in which the Council may enter into Planning Agreements.

4.1.3 Where a development application involves an objection to a development standard under clause 4.6 of the LEP, Council will generally not support entering into a Planning Agreement. Where a Planning Agreement contribution addresses a planning impact of the additional density and is proportionate to the impact, Council will consider the circumstance on a merits basis. Variations to development standards under clause 4.6 of the LEP must be justified on planning grounds.

4.1.4 Planning agreements should not be utilised where infrastructure delivery can be achieved via a condition of development consent in accordance with Section 4.17 of the Act. No value will be attributed under a planning agreement to works or land dedication that would otherwise be required by a condition of development consent.

4.2 TYPE OF CONTRIBUTIONS

4.2.1 The Act allows development contributions made under Planning Agreements to be in the form of cash payments, the dedication of land free of cost, material public benefits (such as but not limited to works), the provision of Affordable Housing or any combination.

4.2.2 This Policy generally does not limit the form of contributions under Planning Agreements entered into by Council.

4.3 TYPES OF BENEFITS

4.3.1 Public benefits received through Planning Agreements contribute to Council's ability to deliver:

a. infrastructure identified within existing development contributions plans (s7.11 or s7.12 contributions plans),

b. infrastructure identified within Council's Strategic plans,

c. infrastructure required directly as a result of density increases experienced or expected from the redevelopment of a site. e.g. due to changes in development controls arising from a Planning Proposal, and

d. Land identified in a planning instrument, development control plan or contributions plan for a public purpose, dedication or acquisition.

Infrastructure items and land identified within the plans specified above are appropriate for delivery through a negotiated Planning Agreement.

4.4 VALUE OF A PLANNING AGREEMENT IF DEVELOPMENT PROPOSAL RESULTS IN VALUE UPLIFT

4.4.1 The Council recognises it has a key role in providing services, amenities, infrastructure and other benefits to the public in its local government area, and that the demand for those public benefits will change over time.

4.4.2 This is particularly the case where development proposed is above and beyond the existing planning controls and may generate unanticipated demands for public benefits.

4.4.3 The Council considers that Planning Agreements can be used to complement the Council's other infrastructure funding methods to enable the Council to provide identified and anticipated services, amenities, infrastructure and other benefits to the public which benefit the local government area as a whole, and/or areas in which particular development may be proposed.

4.4.4 To assist the Council in delivering benefits to the public through Planning Agreements in a way that is transparent and fair, Council considers it appropriate to use a value uplift

methodology to guide the negotiations in relation to the development contributions to be provided under a Planning Agreement where the proposed development will result in value uplift to the land through a change to planning controls, or through a development consent to a development which exceeds development standards.

4.4.5 In such cases, Council considers that development contributions to the extent of 50% of the value uplift will generally be appropriate.

4.4.6 The development contributions would still be subject to the Acceptability Test.

4.4.7 The relevant application would need to be assessed and determined on its planning merits.

4.4.8 The percentage of value uplift may be negotiated between the Council and the developer. However, the developer would need to provide supporting documentation to the satisfaction of the Council if it sought to provide development contributions to a value other than 50% of the value uplift.

4.4.9 The extent of development contributions to be provided under a Planning Agreement using the value uplift methodology will be calculated by the following formula:

C = [RLV – MV] x 50%

Where:

C = dollar value of contributions to be made under a Planning Agreement which represents the total value of contributions

RLV = Assessed residual land value of the subject site following either an instrument change, plus associated or consequential changes to Development Control Plan(s) applying to the site, or the consent to development on the site allowing intensified development, change in use and/or permissibility of additional uses. RLV is to be expressed as $/m2 of gross floor area (GFA) for transparency and public record.

MV = Market Value (MV) of subject site having regard to the highest and best use of site under the existing planning framework. The assessed market value should exclude any price premium that may have been paid for a speculated land rezoning.

4.4.10 The developer will be required to provide Council with sufficient details for an open book feasibility approach to assess market value under the existing statutory planning controls and the RLV from a change in development standards/planning controls. The uplift in land value shall be expressed as $/sqm of GFA of additional floor space achieved.

4.4.11 Such documentation provided to the Council is to be verified by a certified practising valuer and/or qualified and experienced land economist. The Council staff responsible for the planning agreement may engage an independent land economist/valuer and other specialists such as quantity surveyor, to review information provided by the developer. Costs incurred by the Council will be met by the developer/proponent.

4.4.12 This paragraph 4.4 does not restrict the Council and the developer from negotiating a Planning Agreement even if the development proposal does not result in an increase in the land value. In those circumstances the formula above in relation to the total value of the contributions will not apply and the extent of contribution items to be provided in the planning agreement will be negotiated between Council and the developer.

4.5 CONTRIBUTIONS PLAN CREDITS

4.5.1 Council will not normally recognise contributions plan credits for Planning Agreements.

4.5.2 If Council, in its absolute discretion, agrees to recognise a contributions plan credit for a work or land under a Planning Agreement, the value of the work or land pursuant to which the contributions plan credit is calculated ordinarily cannot exceed the value of the work or land specified in the contributions plan.

4.5.3 No contributions plan credit is available for works or land provided for in a Planning Agreement which are additional to the works or land provided for in the contributions plan.

4.5.4 The Council will not agree to the refund of a contributions plan credit.

4.5.5 Council will consider and negotiate on a case by case basis the timing of the application of any contributions plan credit.

4.6 VALUING WORKS AND MATERIAL PUBLIC BENEFITS

Works

Where the benefit under a Planning Agreement is the carrying out of works for a public purpose, the value of the benefit (including the estimated detailed design and construction costs), will be:

4.6.1 if the work is listed in a contributions plan, the value attributed to it in the contributions plan, and

4.6.2 in any other case, determined by an independent valuer/registered quantity surveyor who is experienced in valuing works in New South Wales (and who is acceptable to Council), on the basis of a scope of work which is prepared by Council. All costs of the independent valuer/registered quantity surveyor including carrying out such a valuation will be borne by the developer/proponent.

4.6.3 When considering the value of contributions in the form of works, offered under a planning agreement in lieu of payment of Section 7.11 and Section 7.12 contributions, Council will take into account all circumstances of the particular case including the impact on the Council's contributions plan.

4.6.4 Provision of works are only ascribed value where they provide a 'material public benefit' to the wider community, i.e. the item delivers a response to a broader community need and is not principally for the benefit of the development. In respect of a Planning Agreement where the extent of development contributions to be provided is calculated using the value uplift methodology, The ascribed value will be considered against the dollar value of the contributions to be made under the Planning Agreement.

4.6.5 Items that would ordinarily be required by conditions of development consent will not normally be included in a Planning Agreement, however, if they are, will be ascribed a nominal value for the purposes of a Planning Agreement.

Other material public benefits

4.6.6 Where the benefit under a Planning Agreement is the provision of any other material public benefit, Council and the developer/proponent will negotiate the manner which the benefit is to be valued for the purposes of the agreement.

4.7 LAND DEDICATION AND AFFORDABLE HOUSING

Land Dedication

Where land is identified to be required for community infrastructure/ public purpose that land could be secured via compulsory acquisition or through land dedication. If land is to be secured through compulsory acquisition, Council will be identified as the acquiring authority in the local planning instrument and the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 will apply to the determination of compensation.

If land dedication is identified as the preferred mechanism to secure the required land, a Planning Agreement is the expected instrument by which land is dedicated to Council. Where land is proposed to be dedicated, Council adopts the following policy approach:

4.7.1 Floorspace potential is to be calculated by applying a floorspace ratio to include land that is identified to be required for dedication for a public purpose (including roads, drainage and open space) as if it had not been dedicated. This is also referred to as the 'overall development capacity' of a site.

4.7.2 Where the overall development capacity of a site is not reduced, i.e. the floorspace potential associated with the land dedicated can be transferred and developed on the remaining site, a nominal value is ascribed to the land dedicated. This scenario only occurs where the remaining site has the environmental capacity to accommodate the transfer and development of floorspace potential associated with the land dedicated.

4.7.3 Provided the public purpose for which the land is required for dedication does not result in a negative impact to the value of the remaining site and there is no resultant loss of floorspace potential, the land dedicated will be attributed a nominal value of $1.

4.7.4 Where the floorspace potential from the land dedicated is not able to be transferred and developed on the remaining site, Council may consider if built form controls can be reviewed to accommodate the transferred floorspace. If the floorspace potential from the land dedicated is still not able to be transferred and developed on the remaining site, the value of the foregone floorspace potential should be assessed by a qualified valuer.

4.7.5 In respect of a Planning Agreement where the extent of development contributions to be provided is calculated using the value uplift methodology the value of the land dedicated will be considered against the dollar value of contributions to be made under the Planning Agreement.

4.7.6 Where land is required to be dedicated to address development need, for example, if proposed residential uses are to front a rear laneway and a footpath is required to be created for access, the land required for dedication is not considered to be for a public purpose. Accordingly, the requirement for land is expected to be part of the conditions of development consent.

4.7.7 Unless procurement of the land is specifically identified or funded in a s7.11 or s7.12 development contributions plan, land that is dedicated will not be eligible for any offset or reduction in s7.11 or s7.12 that is payable.

4.7.8 Ordinarily, any land which is required to be dedicated or transferred to the Council under a Planning Agreement must be dedicated or transferred free of encumbrances and remediated (if relevant).

4.7.9 Land on which work is required to be carried out under a Planning Agreement must be dedicated to the Council upon completion of the work to the Council's satisfaction unless otherwise specified in the Planning Agreement.

4.7.10 In respect of any dedication or transfer of land to the Council, or the creation of any interest in land in the Council's favour under a Planning Agreement, the developer will be responsible for preparing all documents and meeting all costs relating to the following:

a. removing an encumbrance on the title,

b. creating an interest in land in the Council's favour,

c. subdividing land,

d. preparing and lodging documents for registration,

e. obtaining the consent of any third party to registration,

f. dealing with any requisition from Land Registry Services relating to any dealing lodged for registration.

Affordable Housing

Council will seek to negotiate a Planning Agreement for the provision of affordable housing for any development seeking new residential floor space arising from a planning proposal or development application. Council will have regard to development feasibility when determining whether affordable housing should be delivered through a Planning Agreement. In such circumstances, Council will seek dedication of a minimum of 5% -10% of the new residential Gross Floor Area of new floorspace as affordable housing.

In respect of a Planning Agreement where the extent of development contributions to be provided is calculated using the value uplift methodology the value of affordable housing contributions to be provided will be considered against, and not be more than the Dollar Value of the contributions to be made under the Planning Agreement.

The above paragraph is the Council's policy on the circumstances in which the Council may seek to negotiate a Planning Agreement for the purposes of clause 5(3) of the *Environmental Planning and Assessment (Planning Agreements) Direction 2019*.

Where affordable housing is proposed to be dedicated, Council adopts the following policy approach:

4.7.11 Market value of the affordable housing contribution (minimum 5% -10% of new residential Gross Floor Area) will be assessed by an independent certified practising valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council). All costs of the independent valuer in carrying out such a valuation will be borne by the developer/proponent.

4.7.12 If provided in-kind, the affordable housing should be at 'no cost' to Council and be provided in perpetuity.

4.7.13 The total value of the affordable housing will be deducted from the dollar value of the contributions to be made in a Planning Agreement.

4.7.14 Council will accept monetary contributions towards affordable housing as part of a Planning Agreement where the dollar value of the contributions in the Planning Agreement is either less than the value of a single unit or less than the affordable housing contributions sought.

4.7.15 Affordable housing stock must be universally accessible.

4.7.16 The make-up of dwelling sizes dedicated to Council as affordable housing must reflect the mix of dwelling sizes present in the overall development, though ensuring a diversity of household sizes and types are provided.

Note: Where an alternative policy is in place for the delivery of affordable housing, that policy would apply.

4.8 RECURRENT CHARGES & MAINTENANCE COSTS

4.8.1 Where a Planning Agreement proposes works or dedication of land and/or building assets, Council may require the developer to provide supporting documentation outlining the lifecycle costs to Council, including operation or ongoing service delivery, as well as likely maintenance and replacement costs. This information will assist Council in determining whether to accept a Planning Agreement offer.

4.8.2 All Planning Agreements that involve the provision of public infrastructure through works to be carried out by the Developer should include a reasonable contribution toward ongoing maintenance and replacement costs of the infrastructure.

4.8.3 The developer may make monetary contributions towards ongoing maintenance and replacement costs or may offer to maintain infrastructure delivered for a certain period of time after handover.

4.8.4 Where the public infrastructure primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity.

4.8.5 Where the public infrastructure or public benefit is intended to serve the wider community, the planning agreement may, where appropriate, only require the developer to make contributions towards the recurrent costs of the facility for a set period which will be negotiated according to the impact of the development, or until a public revenue stream is established to support the on-going costs of the facility.

4.8.6 The amount of any monetary contribution acceptable to Council will depend on the type and value of the works being handed over to Council, whether repair and maintenance works are likely to be needed and the anticipated costs of maintenance and repair works.

4.8.7 If the developer proposes to maintain the works after completion, a bond or bank guarantee will be required by Council to cover the likely maintenance works in the event the developer defaults.

4.8.8 Planning Agreements may also require a developer to make contributions towards other recurrent costs of public facilities such as operational or service provision costs.

4.9 FEASIBILITY

4.9.1 The Council is committed to ensuring that obligations under Planning Agreements that exceed those which could have been imposed under a Contributions Plan do not unreasonably adversely affect development feasibility. This includes obligations relating to development contributions and the provision of security for the performance of obligations.

4.9.2 Where a Developer claims that such Planning Agreement obligations will adversely affect development feasibility, the onus is on the Developer, at its cost, to submit a development feasibility analysis acceptable to the Council. The Council may require the Developer, at the Developer's cost, to retain a suitably qualified independent person appointed by the Council to review the Developer's feasibility.

4.9.3 Generally, the basis of the feasibility analysis will be based on a residual land value analysis applying to the development site.

4.9.4 The Council may in its discretion agree to modify, reduce or postpone monetary contributions or security obligations under a Planning Agreement based on a submitted feasibility analysis.

4.9.5 The Council may require a submitted feasibility analysis to be reviewed periodically or in specified circumstances at the Developer's cost. It may also require a Developer to submit revised feasibility analysis at the Developer's cost.

4.9.6 If a revised or new feasibility analysis established that development feasibility has improved, the Council may 'clawback' development contributions or security obligations.

4.10 POOLING OF MONETARY CONTRIBUTIONS

4.10.1 Where the proposed Planning Agreement provides for a monetary contribution by the developer/proponent, the Council may seek to include a provision permitting money paid under the agreement to be pooled to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

4.11 REFUND OF MONETARY CONTRIBUTIONS

4.11.1 The Council is under no legal obligation to refund monetary contributions to a developer that were paid to the Council under a Planning Agreement which exceed the funds necessary for the public purpose for which they were paid. In such circumstances, the funds will be applied at Councils discretion towards another public purpose having regard to the public interest prevailing at the time.

4.12 INDEXATION OF CONTRIBUTION VALUES AND SECURITY

4.12.1 Monetary contributions, and the value of works (design and construction) and land, required to be provided under a Planning Agreement are subject to indexation to reflect increases in the consumer price index between the execution of the agreement and timing of payment/s or provision of the development contribution. Indexation shall be undertaken in accordance with the formula:

$$\text{\$insert contribution value} \times \frac{\text{The CPI at the time of provision of the development contribution}}{\text{The CPI at the date of the Planning Agreement}}$$

CPI is the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Securities (such as bank guarantees) required under a Planning Agreement will be subject to annual indexation requirements.

4.13 DEVELOPMENT CONTRIBUTIONS COMPRISING CARRYING OUT OF WORKS

Third party works contract

4.13.1 If the developer enters into a contract with a third party for the carrying out of building or construction works under a Planning Agreement, the developer will be required to submit the draft contract to the Council for approval before it is entered into.

Principal contractor warranties

4.13.2 Upon completion and delivery to the Council of works under a Planning Agreement, the developer will be required to assign to the Council the principal contractor's warranties under the relevant building or construction contract.

Design & specification of works

4.13.3 The developer will be required to obtain the Council's prior approval to the design and specification of works under a Planning Agreement in accordance with a process approved by the Council and specified in the Planning Agreement.

Access to land

4.13.4 If works under a Planning Agreement will be carried out on land not owned by the Council, the developer will be required to allow or procure the owner of the land to allow the Council to enter the land to inspect the works.

4.13.5 If works under a Planning Agreement will be carried out on land owned by the Council, the Council will give the developer access to the land to undertake to the works.

Control of development site

4.13.6 The developer will be required to have control of, and responsibility for, the site (whether owned by the developer, the Council or a third party) on which works are carried out under a Planning Agreement unless and until the works are completed and delivered to the Council

Commencement of works

4.13.7 The developer will be required to give the Council not less than 10 business days' written notice of its intention to commence works under a Planning Agreement.

Inspection of works

4.13.8 The developer will be required to allow the Council reasonable access to the site on which works are being carried out under a Planning Agreement upon reasonable notice being given by the Council to enable the Council to inspect the works.

Completion & delivery of works

4.13.9 The developer will be required to give the Council not less than 5 business days written notice of the date on which it will complete works under a Planning Agreement.

4.13.10 The Council will inspect the works within 10 business days of receiving the developer's written notice.

4.13.11 The works under a Planning Agreement will be completed when the Council gives a written notice to the developer to that effect.

4.13.12 Instead of giving a notice to the developer that works have been completed, the Council may give the developer a notice stating that the works have not been completed or have not been carried out to an acceptable standard and specifying further works required to enable the Council to give the developer a notice that the works have been completed.

4.13.13 The Council will assume responsibility for the works completed under a Planning Agreement on the later to occur of:

a. 10 business days after the Council gives the developer a written notice that the works have been completed, or

b. the ownership of the land on which the completed works have been carried out is transferred to the Council.

Rectification of defects

4.13.14 The developer will be required to agree to a defects liability period and defects rectification for works completed and delivered to the Council under a Planning Agreement. Ordinarily, the defects liability period will be 24 months. A security amount to the value of 5% of the value of the planning agreement will be held by Council over the 24 month period.

Works-as-executed plan

4.13.15 Not later than 5 business days after works are completed and delivered to the Council under a Planning Agreement, the developer will be required to submit to the Council a full works-as-executed-plan in respect of the works.

4.13.16 The developer will be required to assign or procure the assigning to the Council of the copyright in the plans and specifications of the works.

4.14 PROVISION OF SECURITY UNDER A PLANNING AGREEMENT

The Council will require a Planning Agreement to make provision for security to cover the developer's obligations under the agreement and may be provided as follows:

4.14.1 An unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's obligations under the Agreement and on terms otherwise acceptable to the Council. Where a bank guarantee to the full value of the developer's obligations is not suitable/ feasible, Council will require alternative mechanisms agreed to and acceptable to Council, to assure the guarantee of delivery of the developer's obligations under the planning agreement. Any consequential costs to such arrangements will be at the cost of the developer.

4.14.2 To complement the provision of financial security, the Council will generally require a developer's obligations under a Planning Agreement to be completed before the issue of subdivision works certificates, subdivision certificates, construction certificates and occupation certificates and restrict the issuing of such certificates unless and until the obligations have been performed.

4.14.3 In respect of planning agreement contributions in the form of land, a planning agreement will be required to include provisions allowing Council to compulsorily acquire any land to be dedicated for one Australian dollar if the developer defaults.

4.14.4 In appropriate cases, Council may also require the creation of a charge over land, and may require the landowner to agree not to object to Council lodging caveats on the title of all or any of the land the subject of the planning agreement. In particular, Council will generally require a

planning agreement to include provisions acknowledging Council has a caveatable interest over the whole of the land; and any land to be dedicated to Council, once the relevant portion of land has been created.

4.14.5 Any amount to be secured by a Bank Guarantee or bond will be adjusted on each anniversary date in accordance with increases in the consumer price. The formula for adjustment of security amounts will be consistent with the indexation of planning agreement contributions specified in the planning agreement.

Step-in rights

4.14.6 The developer will be required to allow the Council to step-in and remedy any breach of the developer in carrying out works under a Planning Agreement. Specifically, the developer will be required to agree to the following:

a. allow the Council to enter, occupy and use any land owned or controlled by the developer and any equipment on such land to remedy a breach,

b. allow the Council to recover its costs of remedying the breach by either a combination of calling-up and applying the security provided by the developer to the Council or as a debt due in a court of competent jurisdiction.

4.15 DEFERRAL OF OBLIGATIONS

4.15.1 The Council will ordinarily require the developer to provide a financial security or an additional financial security, such as a bond or bank guarantee to 100% of the value of the obligation, where the developer seeks to postpone obligations under a Planning Agreement to a time later than the time originally specified for performance in the Planning Agreement. An amendment to the Planning Agreement would ordinarily be required in such circumstances unless the Planning Agreement already makes provision for such an arrangement.

4.16 REGISTRATION

4.16.1 Section 7.6 of the Act allows for the registration of a Planning Agreement on the title to land, although this is not a mandatory requirement.

4.16.2 The Council will require Planning Agreements to be registered on the title. For this reason, the landowner, if different to the developer, will be required to be an additional party to a Planning Agreement.

4.16.3 Registration requires the agreement of all persons having a registered interest in the land. Such persons include mortgagees, charges, lessees and the like.

4.16.4 Registration will ordinarily be required to be undertaken by the developer immediately upon commencement of the Planning Agreement. This means that the Council will generally not execute a Planning Agreement unless and until the landowner has produced evidence to the Council's satisfaction of the agreement of all third parties to its registration and evidence of production of any relevant certificate of titles for the purposes of registering the Planning Agreement.

4.16.5 The landowner (or proponent), at its cost, will be required to submit to the Council in registrable form all documents necessary to enable the Council effect registration of the Planning Agreement, and to assist the Council to address any requisition from Land Registry Services relating to any dealing lodged for registration.

4.16.6 Provision should ordinarily be made in a registered Planning Agreement about when the notation of the Planning Agreement on the title to land can be removed. Where, for example, the development involves subdivision, the Council will ordinarily agree that registration can be removed on any part of the subject land in conjunction with the issuing of a subdivision certificate to create lots that are to be sold to end-purchasers or otherwise created for separate occupation, use and disposition provided that all Planning Agreement obligations required to be performed by the developer prior to the issuing of the subdivision certificate have been performed to the Council's satisfaction.

4.17 RESTRICTION ON DEALINGS

4.17.1 Unless and until all Planning Agreement obligations are completed by the developer to the satisfaction of the Council, restrictions will apply to transactions with third parties involving:

a. the sale or transfer the land to which the Planning Agreement applies,

b. the assignment of the developer's rights or obligations under the Planning Agreement, and

c. novation of the Planning Agreement.

4.17.2 Such a sale, transfer, assignment or novation may not occur unless and until:

a. the developer has, at no cost to the Council, first procured the execution by purchaser, transferee, assignee or novatee of a deed in favour of the Council on terms reasonably satisfactory to the Council,

b. the Council notifies the developer that it considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under the Planning Agreement, and

c. the developer is not in breach of the Planning Agreement.

4.17.3 The Council has a standard form of Deed of Assignment / Novation, which will be required to be used for any assignment or novation of a Planning Agreement.

4.18 INSURANCE

4.18.1 The developer will be required to take out and keep current to the satisfaction of the Council the following insurances in relation to work to be carried out under a Planning Agreement:

a. contract works insurance, noting the Council as an interested party, for the full replacement value of the works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees),

b. public liability insurance for at least $20,000,000.00 for a single occurrence, which covers the Council, the developer and any subcontractor of the developer, for liability to any third party,

c. workers compensation insurance as required by law, and

d. any other insurance required by law.

4.19 INDEMNITY

4.19.1 The developer will be required to indemnify the Council from and against all claims that may be sustained, suffered, recovered or made against the Council arising in connection with the carrying out of works under the Planning Agreement except if, and to the extent that, the claim arises because of the Council's negligence or default.

4.20 DISPUTE RESOLUTION

4.20.1 Planning Agreements will be required to make provision for mediation or expert determination depending on the nature of the dispute.

4.20.2 Expert determination would ordinarily be applicable in relation to disputes about technical or quantifiable matters such as costs and values, designs and specifications and the like, which lend themselves to resolution by an independent expert.

4.20.3 Either party may notify the other of a dispute. Once this occurs, neither party may exercise their legal rights under the Planning Agreement until the meditation or expert determination process runs its course.

4.20.4 The parties will be initially required to resolve the dispute by discussion or negotiation before a mediator or expert can be appointed to deal with the dispute.

4.20.5 Mediation will be required to be undertaken in accordance with the Mediation Rules of the Law Society of New South Wales

4.20.6 The parties will be required to request the President of the Law Society to select a mediator or expert to deal with a dispute.

4.20.7 The parties will be required to bear their costs of the dispute and jointly bear the costs of the President and the mediator or expert.

4.20.8 If mediation fails to resolve a dispute, the parties will be able to exercise their legal rights under the Planning Agreement.

4.20.9 The decision of an expert will be final and binding on the parties.

4.21 MONITORING AND REVIEW

4.21.1 Council will continuously monitor the performance of the Developer's obligation under a Planning Agreement. The Council will require a Planning Agreement to contain provisions requiring the Developer at its own cost to report periodically to the Council on its compliance with obligations under the Planning Agreement. The provisions will set out the process and procedures for the review.

4.22 AMENDMENT

4.22.1 Planning Agreements can be amended by agreement between the parties. Either party can initiate amendment.

4.22.2 The parties will be required to act co-operatively, reasonably and in good faith in considering any request to amend a Planning Agreement.

4.22.3 Amendment will generally occur by means of a deed of variation to the Planning Agreement in a form acceptable to Council and will need to be publicly notified in accordance with the Act and Regulation.

4.22.4 The party proposing the amendment must bear the other party's costs of the amendment.

4.23 DISCHARGE OF PLANNING AGREEMENT

4.23.1 A developer may be discharged from its obligations under a Planning Agreement in certain circumstances. These include:

a. the developer's obligations have been fully carried out in accordance with the Planning Agreement,

b. the development consent to which the agreement relates has lapsed, or it has been modified to such an extent that the developer's obligations may no longer apply,

c. the performance of the Planning Agreement by the developer has been frustrated by an event or events beyond the reasonable control of the parties, such as a change in planning controls,

d. the developer has transferred the land to which the Planning Agreement relates or assigned its interest under the agreement or novated the Planning Agreement on terms agreed to by the Council,

e. other material changes affecting the operation of the Planning Agreement have occurred, and

f. the parties have entered into a new Planning Agreement or other suitable arrangement,

g. Council and the developer otherwise agree to the discharge of the Planning Agreement.

4.24 DEED POLL & UNILATERAL UNDERTAKINGS

4.24.1 Section 7.4 of the Act defines a Planning Agreement to involve an agreement or 'other arrangement' between a planning authority and a developer and associated person.

4.24.2 Such an arrangement could be a unilateral undertaking by a developer in favour of the Council to provide public benefits to the Council by 'Deed Poll'.

4.24.3 The Council will give consideration to a request by a developer to enter into a Deed Poll in favour of the Council to provide public benefits to the Council for the purposes of s7.4.

4.24.4 The Council will be under no obligation to agree to the arrangement and will consider it on merit having regard to the justification proposed by the developer, the circumstances of the Council and the public interest.

4.25 TEMPLATES RELATING TO PLANNING AGREEMENTS

4.25.1 The Council requires developers to use a Council approved template Planning Agreement provided separately to this Policy.

4.25.2 Should any variations be required to the template, these are required to be identified in the Letter of Offer provided to Council.

Planning Agreements – Procedures

5. Council Procedures

5.1 INTRODUCTION

5.1.1 Council's negotiation process for planning agreements aims to be efficient, predictable, transparent and accountable.

5.1.2 Council will seek to ensure that the final negotiation of planning agreements runs concurrently with applications for Planning Proposals or development applications so as not to unduly delay the approval.

5.2 WHEN IS THE PLANNING AGREEMENT REQUIRED TO BE ENTERED INTO?

5.2.1 It is also preferable that a planning agreement is negotiated before lodgement of the relevant application and that the draft planning agreement accompanies the application on lodgement.

5.3 FORM OF A PLANNING AGREEMENT OFFER

5.3.1 Any formal planning agreement offer must be made in writing by the developer and landowners (if the developer does not own the land) in the form of a Planning Agreement template (see Part 9 Planning Agreement Template) including in-principle agreement to the terms set out in the Planning Agreement template.

5.3.2 An offer can be in the form of :a proposed Planning Agreement prepared on the Council's Planning Agreement template (see Part 9 Planning Agreement Template) including the explanatory note and which is signed by all the parties to the Planning Agreement (other than the Council) accompanied by a letter covering the matters set out in Section 5.3.3 , or a detailed letter of offer covering the matters set out in Section 5.3.3.

5.3.3 All offers must:

- be in writing,
- be addressed to the Council,
- be signed by or on behalf of all parties to the proposed Planning Agreement (other than the Council) including all landowners,
- outline in sufficient detail the matters required to be included in a Planning Agreement as specified in s7.4(3) of the EP&A Act to allow proper consideration of the offer by the Council,
- address in sufficient detail the following matters to allow proper consideration by the Council:

  a. agreement to the terms of the Council's Planning Agreement template,

  b. potential variations to the template Planning Agreement accompanied by reasons for the proposed variation,

  c. how the proposed Planning Agreement address the Acceptability Test in Section 3.2 of this policy,

- outline in sufficient detail all other key terms and conditions proposed to be contained in the Planning Agreement to allow proper consideration by the Council,

5.4 ACCEPTABILITY TEST – PRELIMINARY ASSESSMENT OF PLANNING AGREEMENT

5.4.1 Upon receipt of the offer to enter into a Planning Agreement, Council staff will consider the merit of the offer against the matters identified under Section 3.2 Acceptability Test as well as any applicable Ministerial Direction and Practice Note and the guiding principles of this Policy.

5.5 CONSIDERATION OF PLANNING AGREEMENT PROPOSALS

Planning proposals

5.5.1 Any agreement by the Council to a planning proposal will generally be conditional on the execution of the Planning Agreement by the developer on terms satisfactory to the Council and delivery of the executed Planning Agreement to the Council before any amendment to the planning controls, the subject of the planning proposal takes effect.

5.5.2 The Council will refer any such planning proposal to the Department of Planning, Industry and Environment with a request that:

a. any gateway approval require the draft Planning Agreement be publicly notified and

entered into before any amendment to the planning controls the subject of the planning proposal, and

b. the Minister not agree to any amendment to the planning controls the subject of the planning proposal until the Planning Agreement is executed by the developer and delivered to the Council.

Development applications & modification applications

5.5.3 Where a Planning Agreement proposal is made in connection with a development application or modification, the Planning Agreement proposal should be the subject of pre-lodgement discussions with Council officers where a formal planning agreement offer is to be made in accordance with Section 5.3.2. The Council and the developer are to then negotiate the terms of the Planning Agreement.

5.5.4 Lodgement of the development application or modification should generally be accompanied by a draft of the Planning Agreement acceptable to the Council including the explanatory note and which is signed by the parties to the Planning Agreement (other than the Council)..A detailed written irrevocable offer acceptable to the Council for the purposes of s7.7 of the Act as described in Section 5.3.2 may be provided instead if the Council consider is appropriate in the circumstances of the case.

5.5.5 If the developer has submitted a detailed written irrevocable offer acceptable to the Council, any development consent granted by the Council to the development application will ordinarily be subject to a deferred commencement condition requiring the Planning Agreement to be entered into in accordance with the offer before the consent operates.

5.6 OFFER TO ENTER INTO PLANNING AGREEMENT

5.6.1 At the conclusion of negotiations for a proposed Planning Agreement, and before proceeding to publicly notify the Planning Agreement, the Council will require the developer to make a formal and irrevocable offer to the Council to enter into the proposed Planning Agreement.

5.6.2 An offer will be acceptable to the Council if made in one of the following ways:

a. if the developer and all other parties to the proposed Planning Agreement (other than the Council) executes the proposed Planning Agreement and delivers it to the Council,

b. if the developer and all other parties to the proposed Planning Agreement (other than the Council) executes a deed poll in favour of the Council irrevocably promising to enter into the proposed Planning Agreement on terms satisfactory to the Council and delivers it to the Council,

c. if the developer and all other parties to the proposed Planning Agreement (other than the Council) executes a binding heads of agreement in the form of a deed irrevocably promising to enter into the proposed Planning Agreement on terms satisfactory to the Council and delivers it to the Council,

d. if the developer delivers a letter of offer executed by the developer and all other parties to the proposed Planning Agreement (other than the Council) to the Council irrevocably promising to enter into the proposed Planning Agreement on terms satisfactory to the Council.

5.7 PREPARATION OF PLANNING AGREEMENT

5.7.1 The draft Planning Agreement and explanatory note, and any heads of agreement constituting or containing an offer to enter into a Planning Agreement, will be prepared by the Council's lawyer, to an agreed outcome by both parties, at the developer's cost.

5.7.2 Any deed poll or letter constituting or containing an offer to enter into a Planning Agreement will be reviewed by the Council's lawyer at the developer's cost to determine if it is satisfactory for legal purposes and properly protects the Council's interests. Any amendments required by the Council's lawyer will be made at the developer's cost.

5.8 SECURITY FOR COUNCIL'S LEGAL COSTS

5.8.1 Before the Council instructs its lawyer to prepare a draft Planning Agreement and explanatory note or a heads of agreement, or to review a deed poll or letter of offer,

the developer will be required to pay a Planning Agreement proposal fee to the Council as security for the payment of the Council's legal costs of preparing or reviewing and negotiating and finalising any such document.

5.8.2 The Planning Agreement proposal fee is the fee determined by the Council for each financial year in accordance with Part 10 of the Local Government Act 1993.

5.9 FLOWCHART OF THE PLANNING AGREEMENT PROCESS

5.9.1 A Flowchart of Planning Agreement Process is provided as Attachment 8, showing key steps followed for the preparation of a Planning Agreement, whether through the Planning Proposal or Development Application.

5.10 PLANNING AGREEMENT PROCESS – STAFF ROLES AND RESPONSIBILITIES

5.10.1 Council will publish on its website a flowchart showing staff roles and responsibilities for:

- Assessing Planning Agreements against matters outlined under Section 3.2 Acceptability Test;
- Negotiating Planning Agreements on behalf of the Council in accordance with Council's standard delegation procedures;
- Implementing and updating the Planning Agreement Policy;
- Reporting to the Council on the Planning Agreement proposals and draft Planning Agreements;
- Public exhibition of Planning Agreements, consideration of submissions arising from public exhibition and any re-exhibition requirements arising from amendments following public exhibition,
- Contract administration and ongoing monitoring of the performance of Planning Agreement obligations; and
- Enforcing the Planning Agreements.

Councillors will not be involved in the face to face negotiation of the planning agreement, but will, in their role as Councillors, ultimately endorse and approve the planning agreement by resolution to exhibit and execute the agreement or alternatively, resolve to reject an offer to enter into a planning agreement.

5.11 OVERVIEW OF KEY STEPS IN THE PLANNING AGREEMENT PREPARATION PROCESS

5.11.1 The negotiation of a planning agreement will generally involve the following key steps that are shown as a flowchart under Section 8 Flowchart of Planning Agreement Process, and outlined below:

1. Pre-lodgement

- Preliminary plans to be provided to Council, where Council will review the proposal against the Acceptability Test criteria and any applicable Ministerial Direction and Practice Note.
- Applicant meets with Council officers with preliminary plan and parties decide whether a planning agreement is appropriate in connection with any development application, modification application, complying development certificate application or planning proposal.
- Agreement is reached whether a Planning Agreement is an appropriate pathway.
- Where agreement is reached to enter into a Planning Agreement, negotiation process is commenced.

2. Negotiations between the Applicant and Council

- A formal planning agreement offer is required to be made in writing by the developer and landowners (if the developer does not own the land) as described in section 5.3.2.
- Council and the developer are to nominate the persons that will represent them in the negotiations. Council may at any time nominate a third party at is discretion.
- Parties decide whether to appoint an independent facilitator and agree on a timetable for negotiations
- Negotiations are guided by the requirements and template provisions

of the Planning Agreement Policy. The nominated officer from Council will consult with relevant stakeholders or third party experts as required.

- Officer will seek in principle support from Council's executive team prior to the completion of the commercial terms.
- If agreement is reached, the developer (and any other relevant party) will prepare the proposed planning agreement including the explanatory statement, prior to making the relevant application to the Council accompanied by the proposed agreement documentation
- Negotiations are completed when both parties are in agreement with the contents of the Planning Agreement and explanatory note and a draft Planning Agreement is signed by the parties to the proposed Planning Agreement (other than the Council) or a detailed written irrevocable offer acceptable to the Council is made (where Council considers a detailed letter of offer is more appropriate in the circumstances of the case).

3. Application lodged with Council

- Applicant will be advised to formally lodge an application and the application will generally be required to be accompanied by the draft Planning Agreement signed by the parties to the proposed Planning Agreement (other than the Council). A detailed written irrevocable offer acceptable to the Council for the purposes of s7.7 of the Act as described in Section 5.3.2 may accompany the application instead if the Council consider is appropriate in the circumstances of the case.

4. Report to Council (Endorsement for public exhibition)

- The outcomes of the negotiation and assessment of the formal written Planning Agreement offer are to be reported to Council seeking a resolution that a draft planning agreement be prepared for public exhibition purposes (if one hasn't already been prepared and executed).
- A draft Planning Agreement will need to be endorsed by Council for public exhibition purposes as follows:

  In the case of a Planning Proposal application, the report to Council will ordinarily occur concurrently with a report seeking that the planning proposal be submitted to the Department of Planning, Industry and Environment for Gateway Determination, with the intention of exhibiting the draft agreement with the planning proposal;

  In the case of a Development Application (or modification of a consent), or application for complying development certificate (CDC) before or concurrent with the Council's consideration of the development application, with the intention of exhibition the draft agreement as soon as practicable after lodgement of the development application (mod or CDC).
- The advertising costs relating to public exhibition of the Planning Agreement will be borne by the developer, in accordance with Council's adopted Fees and Charges Schedule.

5. Notification (Public Exhibition)

- Planning agreement is formally placed on public exhibition in accordance with the Act, for a period of not less than 28 days. The Planning Agreement will be exhibited concurrently with, or as close as practically possible, to the public exhibition timing of the application.

6. Report to Council (Endorsement, amendment etc. of Planning Agreement)

- The draft Planning Agreement, any related development assessment report and any submissions received following notifications are considered by Council staff prior to being reported to a formal Council meeting for consideration.
- Prior to finalisation and execution of a Planning Agreement or amendment to an existing Planning Agreement, a further report to Council is required to detail the outcomes of the public exhibition, if any submissions have been made, details of any submissions and any discussions undertaken with the developer to address matters raised, and where necessary recommending further changes to the draft planning agreements as a result of the exhibition and above considerations. The report will include recommendations about how to proceed with the Planning Agreement (i.e. seek execution of the agreement, amend the agreement or not proceed with the agreement).

- Any changes that are proposed to be made to a Planning Agreement after public notice has been given should be subject to re-notification if the changes would materially affect:
  - how any of the matters specified in section 7.4 of the EP&A Act are dealt with by the Planning Agreement,
  - other key terms and conditions of the Planning Agreement,
  - the Council's interests or the public interest under the Planning Agreement,
  - whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

7. Implementation (Execution of Planning Agreement)

- Should Council endorse a Planning Agreement for execution, the planning agreement must be fully executed before Council will finalise any instrument change associated with an accompanying planning proposal application. If the Planning Agreement is not executed at this time, Council will ask the Minister not to proceed with the relevant instrument change under section 3.35(4) of the Act.
- Where the Planning Agreement is made in conjunction with a development application (or modification application), the development consent will be subject to conditions requiring the planning agreement to be complied with. If the agreement is not executed prior to the development consent being granted or modified, a condition will be imposed requiring execution of the planning agreement in accordance with the offer made and subsequent registration of the agreement. Conditions requiring the execution and registration of a planning agreement may be deferred commencement conditions that must be satisfied before the consent becomes operational.

5.12 PLANNING AGREEMENT PROCESS – TEMPLATES

5.12.1 Council will publish on its website the following templates which are to be utilised for the preparation of any Planning Agreement. Any letter of offer provided to Council must state where/if it intends to deviate from the following Council's template/s:

- Generic Planning Agreement including:
- Provisions specific to Monetary Contributions
- Provisions specific to Affordable Housing
- Provisions specific to Works
- Provisions specific to the Dedication of Land
- Draft Explanatory Note

5.13 PLANNING AGREEMENT REGISTER

5.13.1 The Council will make the following available for public inspection (free of charge) during ordinary office hours:

a. The Planning Agreement register kept at Council;

b. Copies of all Planning Agreements (including amendments) that apply to the area of the Council; and

c. Copies of the explanatory notes relating to those agreements or amendments.

5.13.2 The Planning Agreement register is available to the public on its website.

5.14 DISCHARGING OF DEVELOPER'S OBLIGATIONS

5.14.1 Upon completion of all the developer's obligations in the Planning Agreement to the Council's satisfaction, Council will upon request provide a letter of discharge to the developer.

6. Acceptability Checklist

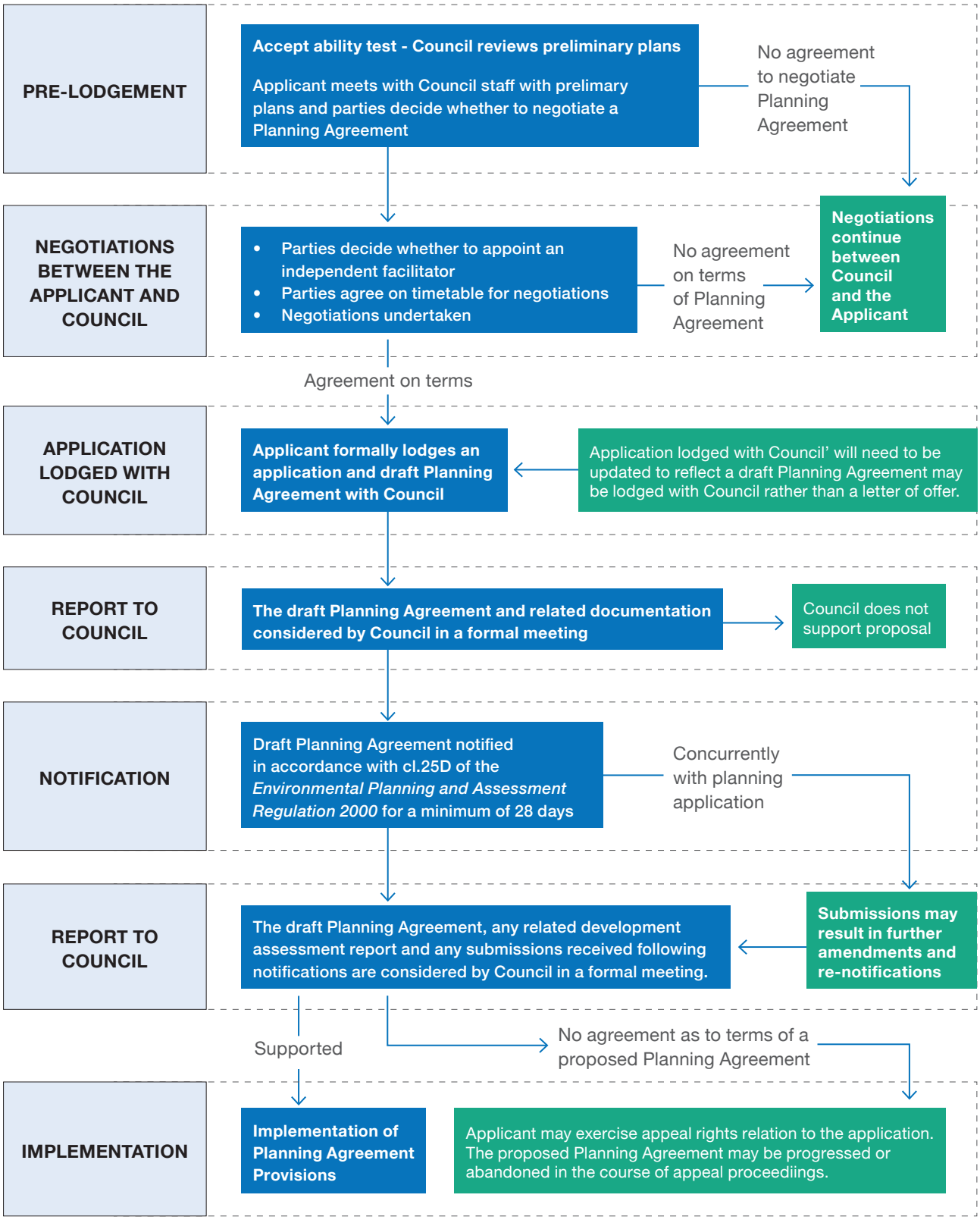
	CONSISTENCY WITH LEGISLATION AND DEPARTMENTAL GUIDELINES	GUIDE REF CL	YES / NO
A	**STRATEGIC MERIT**		
	a. Is the proposed development deemed to have site and strategic planning merit in accordance with relevant statutory and non-statutory planning policies?	**2.4**	
	b. Is the proposed Planning Agreement directed towards a legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning strategies and policies applying to the development?	**2.4**	
B	**GENERAL**		
	a. Is the proposed Planning Agreement consistent with the Fundamental Principles governing the use of Planning Agreements?	**3.1**	
	b. Does the proposed Planning Agreement provide for the delivery of infrastructure or public benefits not wholly unrelated to the development?	**2.4**	
	c. Does the proposed Planning Agreement address an unmet community need and is there a material public benefit to the wider community that results from the items?	**2.4**	
	d. Do the items provide a public benefit (as opposed to principally contributing to the marketability of the development)?	**4.6**	
	e. Does the proposed Planning Agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest?	**4.3**	
	f. Does the proposed Planning Agreement provide for a reasonable means of achieving the desired outcomes and securing the benefits?	**4.14**	
	g. Does the proposed Planning Agreement protect the community against adverse planning decisions?	**3.2**	
	LAND DEDICATION		
	a. Has an independent valuation of the monetary value of the land been undertaken? If not, will suitable arrangements be in place to ensure a valuation will be undertaken prior to the finalisation of the Planning Agreement.	**4.4**	
	b. Are the dimensions, location and topography of the land suitable for the needs of Council and the purpose to which the land is sought?	**4.7**	

	CONSISTENCY WITH LEGISLATION AND DEPARTMENTAL GUIDELINES	GUIDE REF CL	YES / NO
B	**LAND DEDICATION**		
	c. Are the current use and improvements on the land suitable for Council's purpose and has consideration been given as to how this affects the value of the land?	**4.7**	
	d. Would the land be more appropriately classified as "value to the community" rather than "value to the development"?	**4.7**	
	e. Does the site's soil condition, accessibility, solar access and the relationship with existing public facilities support the dedication of the land for a public purpose?	**2.4**	
	MATERIAL PUBLIC WORKS		
	a. Does the agreement ensure that there are no significant financial implications for Council, particularly with respect to ongoing maintenance.	**4.8**	
	b. Will the works be delivered within a reasonable timeframe?	**3.2**	
	AFFORDABLE HOUSING, WHERE IDENTIFIED AS A PUBLIC BENEFIT TO BE DELIVERED THROUGH THE PLANNING AGREEMENT.		
	a. Does the proposal meet the requirements of Council's Local Strategic Planning Statement and the Eastern City District Plan with respect to 5% to 10% of all new residential development to be delivered as affordable housing (subject to feasibility)?	**4.7**	
	b. Are there no other mechanisms available to deliver affordable housing? (i.e. an affordable housing contribution imposed on a development consent, pursuant to the Local Environmental Plan, in lieu of a planning agreement).	**3.2**	
	c. Is the proposal consistent with Council's expectation that affordable housing is provided in addition to local infrastructure contributions that may be imposed under section 7.11 or section 7.12 of the Act?	**3.2**	
	d. Will the proposed affordable housing be dedicated to Council in perpetuity, provide a mix dwelling sizes, deliver equivalent quality of amenity to the balance of the development and consider universal accessibility?	**4.7**	
	VALUE OF PLANNING AGREEMENT		
	e. Where a planning proposal, or development proposal which exceeds the existing development standards or planning controls, has planning merit and will result in value uplift, does the proposal reflect Council's methodology for calculating value uplift under Section 4.4 of the Policy?	**4.4**	

7. Planning Agreements Responsibilities Matrix

ROLE	General Manager	Manager of Property	Planning Agreements Administrator	Manager of Strategic Planning
Acceptability test (Consideration of the test, Parts A and B as shown)		B		A
Negotiation of Planning Agreement	✓	✓		
Assessment		✓		
Preparation of draft Planning Agreement and Explanatory note		✓		
Report to Council		✓		
Public Notification / Website preparation			✓	
Planning Agreement Executed	✓		✓	
Planning Agreement registered on title			✓	
Notification letter to the Department of Planning and Environment			✓	
Notification letter to the Proponent along with a copy of the Executed Planning Agreement			✓	
Upfront Obligations (security)			✓	
Ongoing obligations			✓	
Ongoing contract maintenance and reporting / update register			✓	

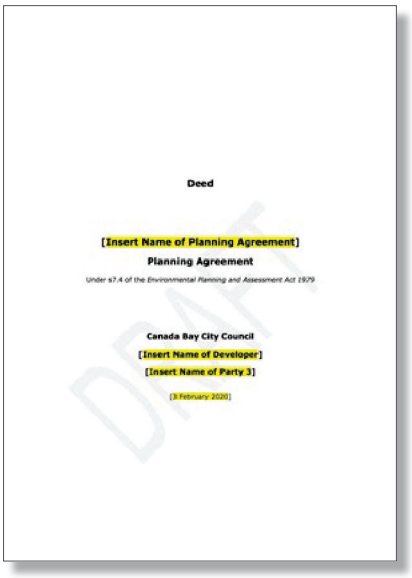
8. Flowchart of Planning Agreement Process



9. Planning Agreement Templates

The following standard templates are provided on Council's website:

1. Planning Agreement Templates
    a. Generic Planning Agreement Provisions
    b. Provisions specific to Monetary contributions
    c. Provisions specific to Affordable Housing
    d. Provisions specific to Works
    e. Provisions specific to the Dedication of Land
2. Explanatory Note


Deed

[Insert Name of Planning Agreement]

Planning Agreement

Under s7.4 of the Environmental Planning and Assessment Act 1979

Canada Bay City Council

[Insert Name of Developer]

[Insert Name of Party 3]

[3 February 2020]

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10. Supporting Adopted Council Policy

The following documents are available on Council's website from the Planning Agreements page:

1. City of Canada Bay - Statement of Business Ethics
2. Canada Bay Community Strategic Plan – Our Future 2030
3. Canada Bay Local Strategic Planning Statement

City of Canada Bay