

The logo for the Independent Commission Against Corruption (ICAC) features the letters 'I·C·A·C' in a serif font, with dots separating the letters. It is positioned in the upper right corner of the page.

I·C·A·C

INDEPENDENT COMMISSION  
AGAINST CORRUPTION



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**DEVELOPMENT  
ASSESSMENT  
INTERNAL AUDIT TOOL**

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**APRIL 2010**

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## Introduction

Recent ICAC investigations have identified development assessment processes as a significant corruption risk for councils.<sup>1</sup> While local councils in NSW vary in size and complexity of operations, the ICAC believes that this is a corruption risk area common to all councils. The ICAC has developed this tool to assist local councils in managing their exposure to corruption risks in development approval processes.

Failure to identify and manage corruption risks<sup>2</sup> leaves an organisation vulnerable to corruption. Corruption has both short and long-term negative consequences for an organisation, including:

- damage to reputation
- loss of public confidence
- direct financial loss
- wasted resources
- the financial and resource cost of an internal and/or external investigation
- adverse affects on other staff and the morale of the agency generally.

Internal audit is a key component of all councils' corporate governance<sup>3</sup>, and risk identification is a key element in the internal audit function.

This tool identifies corruption risks inherent in the development assessment process and how these may be detected and managed through the internal audit process.

## How to use the development assessment internal audit tool

This tool is designed to assist in the audit of a council's development assessment and determination processes. The tool is not intended to provide a comprehensive analysis of organisational risks involved in this operational area. Instead, it canvasses some of the corruption risks identified in the ICAC's recent investigations. It also incorporates compliance with some key legislative provisions. The tool focuses on procedural controls and does not incorporate broader issues, including those related to organisational culture.

Councils should also consider adopting additional strategies to help inform their audit methodology. For example, interviews can be conducted with key staff involved in development assessment and determination to obtain additional details about:

- a council's control framework
- the effectiveness of the control framework in ensuring the appropriate discharge of duties
- other risks and controls.

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<sup>1</sup> See for example: *Report on an investigation into corruption allegations affecting Wollongong City Council – part three*, Independent Commission Against Corruption, Sydney, October 2008.

<sup>2</sup> For more information on corruption risks see *Corruption Risk Management*, Independent Commission Against Corruption, Sydney, February 2008.

<sup>3</sup> In October 2008, the then NSW Department of Local Government released its Internal Audit Guidelines (which were Director General's Guidelines for the purposes of the *Local Government Act 1993*). The guidelines aim to assist councils with putting effective internal audit practices in place. They describe internal audit and risk management systems for local councils and include appropriate structures, functions, charter, and membership of audit and risk management committees.

The tool is divided into the specific categories involved in development assessment and determination. It also includes information related to the determination and provision of direct and indirect contributions, and planning agreements. The categories used in the tool are:

- pre-lodgement advice
- lodgement
- assessment
- determination
- determination and provision of direct and indirect contributions
- planning agreements.

The audit process for each category is divided into two parts.

**Part A** focuses on the general control framework that the council has in place for that category. It involves the reviewer rating a council's compliance with key internal and external controls.

**Part B** focuses on the application of the control framework to specific development approvals. This involves the reviewer rating the degree to which a selected development approval complies with these controls and other procedural requirements.

The ICAC recommends that compliance with the statements contained in both Parts A and B is assessed using the following matrix:

RATINGS			
No issues with compliance (1)	Minor issues with compliance (2)	Insufficient compliance (3)	Significant lack of compliance (4)

High ratings are indicative of areas where a council should review its control framework and/or compliance with it.

Councils are welcome to adapt all or part of the tool for their own purposes and to supplement the tool with their own additional controls. The tool is current at the time of publication. Updated copies of the tool can be downloaded from the ICAC website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

The ICAC acknowledges the assistance provided by:

- Local Government Managers Australia (NSW)
- the Local Government Internal Auditors Network
- Wyong Shire Council
- Sutherland Shire Council
- Bankstown City Council
- Fairfield City Council
- The Hills Shire Council
- the Division of Local Government, Department of Premier and Cabinet
- the NSW Department of Planning.

## Category: Pre-lodgement advice

<b>Part A: General control framework</b>	<b>Rating (1-4)</b>	<b>Evidence/ comments</b>
Council has a policy setting out the nature of and limitations on the pre-lodgement advice that it provides.		
Council has in place procedures for managing and recording the pre-lodgement advice that it provides.		
Council has a standard process in place to record the payment of pre-lodgement fees.		
Council can demonstrate a consistent approach to communicating to the community the information required for pre-lodgement discussions.		
Council communicates to the community the types of requests for pre-lodgement advice that it considers appropriate.		
Council communicates to the community the limitations on the pre-lodgement advice that it provides.		

<b>Part B: Sample development approval</b>	<b>Rating (1-4)</b>	<b>Evidence/comments</b>
Council fee associated with pre-lodgement advice paid.		
Request for pre-lodgement advice retained as a council record.		
Appropriate records kept of pre-lodgement meeting(s) that record the advice provided to potential applicants or their representatives.		
Written record of pre-lodgement advice provided to potential applicant.		
Documents including pre-lodgement meeting minutes and written advice kept on appropriate file relating to the proposed development.		
Pre-lodgement advice does not contain assurances on compliance with LEP, DCP etc or on merit assessment outcomes.		

## Category: Lodgement

<b>Part A: General control framework</b>	<b>Rating (1-4)</b>	<b>Evidence/ comments</b>
Council has a schedule or equivalent of all applicable fees for different categories of development applications (e.g. lodgement fees, bonds, development application advertising fees).		
Council has in place procedures for verifying an applicant's cost estimates for building and associated works. <sup>4</sup>		
Council has developed a standard internal checklist to ensure all relevant information is lodged with a development application and fees are paid.		

<b>Part B: Sample development approval</b>	<b>Rating (1-4)</b>	<b>Evidence/comments</b>
Evidence on relevant property file that all required development fees paid in full.		
Council has obtained adequate verification of applicant's cost estimates for building and associated works (verification methodology will depend upon council's internal processes in this regard.)		
Standard checklist completed in relation to submitted application form and any required additional documentation provided.		

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<sup>4</sup> Examples include requesting copies of all quotations from the applicant, requesting an independent report from a quantity surveyor verifying the applicant's cost estimates and checking against published estimates. It is appropriate for more scrutiny to be applied to developments that have a significant cost compared to smaller developments.

## Category: Assessment

Part A: General control framework	Rating (1-4)	Evidence/ comments
Council has developed a policy (or equivalent) detailing the statutory and Council policy requirements regarding the advertising of specific categories of development. <sup>5</sup>		
Council has developed a policy (or equivalent) detailing the statutory and Council policy requirements regarding the notification of specific categories of development.		
When advertising or notifying development applications, Council discloses whether the application is accompanied by a SEPP 1 (or equivalent) objection.		
Council provides information on development assessment processes with notification letters.		
Council has developed a policy or equivalent detailing the circumstances (including legislative) in which external referrals will be required for specific categories of development.		
Council has developed a policy or equivalent detailing the circumstances in which internal referrals for specific categories of development will be required.		
Council has business rules in place to ensure that all development applications that are lodged are allocated for assessment.		
Internal business rules are established regarding the allocation of development applications to council officers for assessment without reference to the wishes of the applicant.		
The above internal business rules ensure that conflicts of interest are considered during the application process.		
Council has a policy or equivalent setting out the situations in which on-site meetings are required.		
Council has a standard format for completing development assessment reports for determinations by Council and determinations under delegated authority.		
Council has clear criteria for determining which matters are referred to its IHAP, relevant subcommittee or community consultation body (if applicable).		
Council communicates to the community the statutory requirements in relation to submitting amended development applications prior to determination. <sup>6</sup>		
Council has procedures in place for the internal review of development assessment reports and recommendations in specified circumstances, including developments relying on significant SEPP 1 objections or equivalent.		

<sup>5</sup> Please note that some LEPs contain notification/advertising requirements for development.

<sup>6</sup> See clause 55 of the EP&A Regulation 2000.

<b>Part B: Sample development approval</b>	<b>Rating (1-4)</b>	<b>Evidence/comments</b>
Copy of advertisement placed on the relevant property file.		
Advertisement incorporates all required statutory and Council policy information.		
Sample notification letter and a record of all addressees placed on relevant file.		
Notification letter incorporates all statutory and Council policy requirements.		
External expert advice has been requested in accordance with Council policy		
Development assessment report addresses external expert advice.		
All external expert advice received placed on the property file.		
Internal expert advice requested in accordance with Council policy.		
Development assessment report addresses internal expert advice.		
All internal expert advice received placed on the relevant file.		
Development allocated for assessment in accordance with internal business rules (including consideration of conflicts of interest).		
On-site review conducted (if required).		
Outcomes of on-site meeting recorded and placed on relevant file.		
Development assessment report completed in standard format and placed on relevant property file.		
Development assessment report addresses relevant submissions.		
All submissions received placed on the relevant file.		
Application determined after closing date for submissions.		
Development assessment report considers: <ul style="list-style-type: none"> <li>• statutory compliance</li> <li>• merit considerations under section 79C of the EP&amp;A Act</li> <li>• consideration under any other relevant Acts or legislation.</li> </ul>		
Outcomes of all substantive meetings including applicant meetings/mediation meetings are documented and placed on the relevant file.		
Development referred to IHAP, relevant subcommittee and/or community consultation body (if applicable) in accordance with pre-established criteria.		

Outcome of IHAP proceedings, subcommittee and/or community consultation body meetings are recorded on relevant file.		
Development assessment report addresses outcome of IHAP proceedings, subcommittee and/or community consultation body meetings.		
Amended development application has annexed to it written particulars sufficient to indicate the nature of the changed development (if applicable).		
Amended development application was assessed to determine whether additional advertising, notifications and referrals were required (if applicable).		
Further advertising, notification and referrals undertaken in accordance with council policy and statutory requirements (if required).		
Amended development application was assessed to determine whether a new development application was required (if applicable).		
Development assessment report reviewed by manager in accordance with Council's procedures.		



## Category: Determination

Part A: General control framework	Rating (1-4)	Evidence/ comments
Council has a delegations policy clearly setting out delegations.		
Delegations are reviewed and confirmed by management after a specified time period <sup>7</sup> .		
Council's delegations policy clearly requires all development applications where there has been a variation greater than 10% in standards under SEPP 1 (or equivalent) to be determined by full Council <sup>8</sup> .		
Council has a policy that clearly sets out the circumstances in which developments can be 'called up' to Council.		
Council has a public register that can be accessed from its website of development applications determined with variations in standards under SEPP 1 (or equivalent).		
Council's SEPP 1 (or equivalent) register includes: <ul style="list-style-type: none"> <li>the reasons for the proposed variation</li> <li>the extent of the variation (e.g. expressed as a percentage variation)</li> <li>reasons for Council's determination</li> <li>information as to whether Department of Planning concurrence was required.</li> </ul>		
Council completes quarterly returns on variations to development standards using SEPP 1 (or equivalent).		
Council submits the quarterly returns to the Department of Planning within four weeks of the end of a calendar quarter.		
Council keeps a register containing the names of councillors who supported the decision and those that opposed the decision for each planning decision made at a Council or committee meeting.		
Council has a register of development applications and consents.		
Council planning staff provide a report to Council on the development applications determined where there had been a variation in standards under SEPP 1 (or equivalent).		

<sup>7</sup> See also section 380 of the *Local Government Act 1993*.

<sup>8</sup> Please note that the Director-General of the NSW Department of Planning has granted a number of councils an interim variation on the requirement that all DAs where there has been a variation greater than 10% in standards under SEPP 1 be determined by full council.

<b>Part B: Sample development approval</b>	<b>Rating (1-4)</b>	<b>Evidence/comments</b>
Determination made in accordance with Council's delegations policy.		
Determination made by full Council where there has been a variation greater than 10% in standards under SEPP 1 (or equivalent) <sup>9</sup> .		
Determination made in accordance with Council's 'call up' provisions.		
Development entered onto Council's SEPP 1 register (if relevant).		
Councillors' voting pattern in relation to the development is recorded on a register (if relevant).		
Notice of determination placed on property file.		
Council register of planning determinations updated.		

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<sup>9</sup> Please note that the Director-General of the NSW Department of Planning has granted a number of councils an interim variation on the requirement that all DAs where there has been a variation greater than 10% in standards under SEPP 1 be determined by full council.

## Category: Determination and provision of direct and indirect contributions<sup>10</sup>

Part A: General control framework	Rating (1-4)	Evidence/ comments
Council has a direct contributions plan (or plans) authorising contributions and specifying contribution rates.		
Council's direct contributions plan (or plans) is based on specific methodologies for calculating contributions.		
Council has a plan (or plans) for indirect (fixed development consent levies) authorising of contributions and levies.		
Council's contributions plans comply with relevant section 94E directions issued by the Minister for Planning.		
Council's contributions plans comply with any individual determinations issued by the Minister for Planning to Council.		
Council's contributions plans have regard to the key considerations for development contributions listed under section 116D of the EP&A Act.		
Council's contributions plans provide that contributions for community infrastructure relate to: <ul style="list-style-type: none"> <li>• "key community infrastructure" (being community infrastructure prescribed by the Environmental Planning and Assessment Regulation 2000), or</li> <li>• "additional community infrastructure" that has been approved by the Minister for Planning.</li> </ul>		
Council's contributions plans are supported by a schedule of works that contain an estimate of the cost and staging of identified community infrastructure.		
Council's contributions plans and supporting documentation are freely accessible to the public in a format that can easily be understood.		
Council has a standard procedure and criteria that it uses to assess proposals for works in kind or the dedication of land in lieu of payment of direct financial contributions.		
Council has a requirement that the value of proposals for works in kind or the dedication of land in lieu of direct financial contributions are assessed independently of the applicant.		

<sup>10</sup> Please note: some of the questions in this section incorporate parts of Schedule 3 of the *Environmental Planning and Assessment Amendment Act 2008* which had not commenced at the time of publication.

Council has a requirement that all works in kind provided under a direct contributions scheme are subject to a legal agreement between Council and the applicant.		
<p>Council has a requirement that all legal agreements pertaining to works in kind include:</p> <ul style="list-style-type: none"> <li>• works to be undertaken</li> <li>• the timing of the works</li> <li>• the quality of the works</li> <li>• the costs of the works</li> <li>• the applicant's rights and responsibilities</li> <li>• Council's rights and responsibilities.</li> </ul>		
Council does not issue credits to applicants for works in kind which are provided in excess of the approved condition outside of a standard procedure involving approval by Council.		
Council's contributions plans specify when contributions are due.		
Council's contributions plans only permit the uniform deferral, waiver or discounting of contributions when certain conditions are met and do not allow this on a case-by-case basis.		
Council's contributions plans do not allow the deferral, waiver or discounting of contributions on a case-by-case basis.		
Council has procedures in place for assessing and processing requests for the deferral, waiver or discounting of a contribution prior to the issuing of a consent.		
Council policy only permits the deferral, waiver or discounting of contributions with the explicit approval of a senior manager or Council via a standard agreement.		
Contributions amended by section 96 of the EP&A Act are only dealt with via the delegation of a senior manager or Council.		
<p>Council has a contributions register(s) that records:</p> <ul style="list-style-type: none"> <li>• development consents for which contribution conditions of consent have been imposed</li> <li>• the nature and extend of all contributions received</li> <li>• the contribution plan under which each contribution condition was imposed</li> <li>• the dates on which contributions were received.</li> </ul>		

Council has processes in place to ensure contributions are paid at the time specified in conditions of consent.		
Council has processes in place to follow up unpaid contributions.		
Council has indexing provisions for contributions.		
Council has developed a checklist of conditions that should be met prior to the release of linen (subdivision) plans that includes the payment of contributions.		

<b>Part B: Sample development approval</b>	<b>Rating (1-4)</b>	<b>Evidence/comments</b>
Contributions authorised by a contributions plan.		
Financial contributions have been paid as per the consent condition.		
Financial contributions were paid at the time specified in the conditions of consent.		
Contributions-owing information updated as appropriate. <sup>11</sup>		
Contributions determined in accordance with Council's contribution plan and relevant section 94E directions executed by the Minister for Planning.		
Contributions register has been updated.		
Any works in kind or dedication of land in lieu of payment of direct contributions were assessed in accordance with Council's standard procedure and criteria.		
Works in kind or dedication of land in lieu of payment of direct contributions were assessed independently of the applicant.		
Any works in kind negotiated in lieu of financial contributions were subject to a legal agreement covering: <ul style="list-style-type: none"> <li>• works to be undertaken</li> <li>• the timing of works</li> <li>• the quality of the works</li> <li>• the costs of the works</li> <li>• the applicant's rights and responsibilities</li> <li>• Council's rights and responsibilities.</li> </ul>		
Any deferral, waiver or discount of contributions was in compliance with Council policies and procedures.		

<sup>11</sup> This is intended to deal with contributions not immediately paid and due in a later time period – as may occur in staged development.

## Category: Planning agreements<sup>12</sup>

Part A: General control framework	Rating (1-4)	Evidence/ comments
Council has a planning agreements policy.		
Council's planning agreements policy sets out the processes it will follow in relation to negotiating and preparing planning agreements.		
Council's planning agreements policy stipulates the circumstances in which Council would ordinarily consider entering into a planning agreement.		
Council's planning agreements policy stipulates that planning agreements are to be negotiated independently of the development assessment and determination processes.		
Council's planning agreements policy provides for the assessment of the value of each public benefit provided against objective criteria.		
Council's planning agreements policy has regard to the key considerations for development contributions listed in section 116D of the EP&A Act.		
Council's planning agreements policy has regard to the specification that any infrastructure provided under an agreement is: <ul style="list-style-type: none"> <li>• "key community infrastructure" (being community infrastructure prescribed by the Environmental Planning and Assessment Regulation 2000), or</li> <li>• public infrastructure that has been approved by the Minister for Planning.</li> </ul>		
Council's planning agreements policy incorporates any relevant directions made by the Minister for Planning.		
Council's planning agreements policy covers the circumstances in which refunds may be given.		
Council's planning agreements policy covers procedures for the review and modification of planning agreements.		
Council's planning agreements policy is publicly available and easily accessible.		
Council reports on its use of planning agreements in its annual report.		
Council maintains a publicly available planning agreements register.		
The register includes a short description of any planning agreement that applies to the area of the Council (including the date the agreement was entered into, the names of the parties and the land to which it applies).		

<sup>12</sup> Please note that some of the questions in this section incorporate parts of Schedule 3 of the *Environmental Planning and Assessment Amendment Act 2008* which had not commenced at the time of publication.

<b>Part B: Sample development approval</b>	<b>Rating (1-4)</b>	<b>Evidence/ comments</b>
Council has prepared a written statement (known as an explanatory note) that summarises the objectives, nature and effect of the proposed planning agreement.		
The planning agreement was assessed against the key considerations for development contributions established by section 116D of the EP&A Act.		
The explanatory note contains an assessment of the merits of the proposed agreement.		
The explanatory note identifies how the agreement promotes the public interest and one or more of the objectives of the EP&A Act.		
The explanatory note identifies how the agreement promotes one or more of the elements of Council's charter.		
The planning agreement provides a description of the land to which the agreement applies.		
The planning agreement includes a description of: <ul style="list-style-type: none"> <li>the change to or the making or revocation of the environmental planning instrument, or</li> <li>the development to which the agreement applies.</li> </ul>		
The planning agreement specifies the nature and extent of the provision to be made by the developer under the agreement.		
The planning agreement specifies the time or times by which the provisions are to be made.		
The planning agreement specifies the manner by which the provision is to be made.		
The planning agreement provides for the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.		
The planning agreement does not impose an obligation on Council to grant a development consent.		
The planning agreement does not impose an obligation on Council to exercise any function under the EP&A Act in relation to a change to or the making or revocation of an environmental planning instrument.		
File notes were made of discussions between the developer and Council during the negotiation of the planning agreement and placed on the relevant file.		
Council has included in its annual report particulars of compliance with and the effect of the planning agreement whilst it remains in force.		

Council gave public notice of the proposed planning agreement. <sup>13</sup>		
Council made the explanatory note available for public inspection for a period of not less than 28 days.		
The public notice of the proposed planning agreement specified the arrangements relating to inspection by the public of the explanatory note for the proposed agreement.		
The planning agreement was endorsed by Council.		
Council provided a copy of the planning agreement to the Minister for Planning within 14 days of the agreement being entered into (in cases where the Minister is not a party to the agreement).		
Council provided a copy of any amendments to the planning agreement to the Minister for Planning within 14 days after the amendment was made (in cases where the Minister is not a party to the agreement).		

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<sup>13</sup> Clause 25D of the Environment Planning and Assessment Regulation 2000 deals with the public notification of planning agreements.





INDEPENDENT COMMISSION  
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Level 21, 133 Castlereagh Street  
Sydney, NSW, Australia 2000

Postal Address: GPO Box 500,  
Sydney, NSW, Australia 2001

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

**[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)**

Business Hours: 9 am - 5 pm Monday to Friday