

A guide to preparing local environmental plans



Planning &
Infrastructure



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It should be noted that the guidelines may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the guidelines and the statutory requirements applying to plan making under the *Environmental Planning and Assessment Act 1979*.

A guide for preparing local environmental plans

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Introduction

This guideline provides guidance and information on the process for making local environmental plans (LEPs) under Part 3 of the *Environmental Planning & Assessment Act, 1979 (the Act)*.

The process as set out in the Act enables the preparation and assessment of proposed LEPs to be tailored to their complexity and likely impact. Early consideration of assessment requirements through the issuing of a Gateway determination and the incremental preparation of supporting documents ensures effort is invested at appropriate stages of the process and community consultation is informed and meaningful.

Further advice and assistance regarding the preparation of LEPs is available from the regional offices of the Department of Planning and Infrastructure (the department). Any person proposing an amendment to an existing LEP should initially discuss the matter with the relevant council. Councils are able to provide advice on the matters that should be included in a planning proposal and any other specific procedural matters that must be completed by a proponent when preparing a planning proposal to support an amendment to an LEP. If further advice is required, the initial point of contact with the department should be via its regional offices.

This guideline also details the procedures for pre and post-Gateway reviews. A proponent can request a pre-Gateway review when a council fails to make a decision on whether to support the preparation of a planning proposal within 90 days, or when a council resolves not to support a planning proposal. A

proponent must be able to demonstrate that there is strategic merit in the matter proceeding. A review of a Gateway determination can be requested by either a proponent or a council. The request to review the Gateway determination may be based on the conditions imposed by the Gateway, the decision (ie whether or not to proceed) or the requirement to resubmit the planning proposal to the Gateway for further consideration.

To streamline the plan making process, plan making powers have been delegated to councils for routine matters (eg reclassifications, minor map amendments and strategy consistent rezonings) and other matters that the Gateway determines are of local planning significance. Councils will be issued with an Authorisation to finalise and make the plan at the time a Gateway determination is issued. Procedures and general guidance on how to progress a delegated plan are also included in this guide.

This guide should also be read in conjunction with the '*A Guide to preparing planning proposals*'. That guide provides more detailed advice about preparing a planning proposal, which is a pre-cursor to an LEP. It also sets out specific requirements the Director-General has issued in accordance with s 55(3) of the Act concerning the matters that must be addressed when preparing planning proposals.



What is a local environmental plan?

An LEP is a legal instrument that zones land, imposes standards to control development, or implements a state or local policy outcome. An LEP may also be used to reserve land for open space, as well as protecting trees and vegetation and items and areas of cultural heritage significance. The purpose of an LEP is to achieve the objects of the Act. It is a means to implement strategies, giving legal effect to where and under what circumstances places should be developed or particular environmental controls imposed. An LEP generally comprises a written document and accompanying maps.

An LEP applies to a particular area, generally the whole or part of a local government area (LGA). An LEP applying to the whole of an LGA is referred to as the **principal LEP**. The process for making a principal LEP and for amending a principal LEP is the same. That is, in order to amend a principal LEP it is necessary to make another LEP. For convenience, an LEP being made to amend a principal LEP is referred to as an **amending LEP**.

Most LEPs remain in force until they are amended or repealed by an amending LEP. This is important to provide certainty in the planning system. Where appropriate it is possible to specify that an LEP will have effect only for a specified period or in specified circumstances. The occasions when this is appropriate, however, will be limited. [EP&A Act s. 26(3A)]

All principal LEPs must be made in a standard form prescribed in the Standard Instrument (Local Environmental Plans) Order 2006. LEP maps must also conform to the '*Standard technical requirements for LEP maps*'. The Standard Instrument and standard technical requirements for LEP maps provide consistency in the appearance of LEPs and assist users interpreting planning controls across different LGAs. Complying with the standard technical requirements will also assist in the creation of an e-mapping platform and will enable all LEP maps to be made available online after the plan is made.



Who can initiate and make an LEP?

Only the Minister for Planning and Infrastructure (or delegate) can make an LEP following a process set out in the Act and described in section 5 of this guideline [EP&A Act s. 53].

In some limited circumstances, however, the process can be dispensed with. These circumstances relate only to amending LEPs and are described later in section 5.5.9 of these guidelines [EP&A Act s. 73A].

An LEP can be initiated by either the council for the local government area to which the LEP is to apply or by an authority appointed by the Minister [EP&A Act ss. 54-55].

Whether it is a council that has initiated an LEP or an authority appointed by the Minister, the body responsible for carrying out the process is known as the relevant planning authority (RPA). For council initiated LEPs the RPA will generally be the council. Where the Minister has initiated the process, the Minister will appoint the Director-General or some other person or body prescribed by the regulations, including a Joint Regional Planning Panel (regional panel), to be the RPA.

Circumstances when Minister can initiate an LEP

The Minister may direct that the Director-General (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases [Act s. 54(2)]:

- the proposed instrument relates to a matter that, in the opinion of the Minister, is of state or regional environmental planning significance
- the proposed instrument makes provision that, in the opinion of the Minister, is consequential on:
 - » the approval of the concept plan for a project under Part 3A
 - » the making of another environmental planning or other instrument
 - » changes made to a standard instrument under section 33A
- the Planning Assessment Commission or a regional panel has recommended to the Minister that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made
- the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner
- the proposed instrument is to apply to an area that is not within a local government area.

Further information and guidance regarding the matters the Minister will consider when deciding how to deal with a request to initiate an LEP, and how to make such requests, is described in LEP Practice Note PN 09-004 available on the department's website at www.planning.nsw.gov.au.

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What is the process for preparing an LEP?

The plan making process normally involves the following key components:

- the preparation of a planning proposal
- the issuing of a Gateway determination
- community and other consultation on the planning proposal (as required)
- finalising the planning proposal
- drafting of the LEP (legal instrument)
- making the plan
- notifying the LEP on the NSW Government Legislation website.

Two administrative review mechanisms exist within the plan making process – ‘pre-Gateway’ review and ‘post-Gateway’ review. These review mechanisms allow councils and proponents to seek a review of decisions in relation to proposed amendments to LEPs.

To increase the involvement of councils in the plan-making process and streamline the processing and making of draft LEPs, certain plan making powers are delegated to councils.

A flowchart detailing the LEP plan making process is provided at **Attachment 1**.

4.1 Delegation of plan making functions to local councils

Local plan making functions are now largely carried out by councils. Types of proposed instruments that are routinely delegated to councils to make include:

- mapping corrections
- LEPs which will result in a relaxation of a development standard on a site

to promote development including potential increases to FSR and height of building controls and, reduced minimum lot sizes

- Section 73A matters e.g. amending references to documents/agencies, minor errors and anomalies
- reclassification proposals where the Governor’s approval is not required in relation to the removal of covenants, trusts etc relating to the land
- heritage LEPs related to specific items (whether adding or removing an item from a Heritage Schedule) supported by an Office of Environment and Heritage endorsed local strategy or where the Office of Environment and Heritage provides preliminary support to the proposal
- spot rezonings consistent with a Regional Strategy or a local strategy endorsed by the Director-General
- spot rezonings that will result in an upzoning of land in existing areas zoned for residential, business, and industrial purposes, and
- any other matter that the Gateway determines is a matter of local planning significance.

Other types of LEPs not identified above may routinely be delegated to councils if the Gateway agrees that the matter is of local significance.

Delegation of proposed instruments that have been subject to a pre-Gateway review will be considered on a case by case basis.

Proposed instruments which would ‘down zone’ a parcel of land (ie reduce a site’s development potential) or which propose to introduce more restrictive development standards or controls will also be considered on a case-by-case basis.

A planning proposal which relates to a ‘suspension of covenants clause’ under section 28 of the Act or that discharges interests in public land under section 30 of the *Local Government Act 1993* will not be delegated to councils. These types of plans require the Minister to personally make a recommendation directly to the Governor who must approve the provisions before the plan can be made.

The following plan making functions of the Act will be delegated to councils:

- the decision whether to make or decide not to make a plan under section 59(2)
- deferring a matter from a plan under section 59(3)
- the ability to identify which matters must be considered and which stages of the plan making process must be carried out again prior to resubmission (section 59(4)) if the council determines not to proceed with a proposal or if a matter is deferred from the LEP.

Plan making delegation operates in respect of a draft LEP on receipt by council of a Written Authorisation to Exercise Delegation (the Authorisation). The Authorisation is issued to councils as part of the Gateway determination. When submitting a planning proposal, councils are required to identify whether they will be seeking an Authorisation to make the plan for each planning proposal.

Section 23 of the Act allows the Minister and the Director-General to delegate functions to a council and/or an officer or employee of a council. A council is to formally accept the delegation before the department will issue an Authorisation in respect of any individual draft LEP.

If a council chooses to accept the delegation, it may sub-delegate the function to an officer within council (usually the General Manager or planning director) who will exercise the delegation. If a council chooses to sub-delegate the function, the council should advise the department at the same time it accepts the delegation. When submitting a planning proposal to the gateway a council should advise the department whether the council or an officer will be exercising the delegated function.

Section 381 of the *Local Government Act 1993* requires that such functions cannot be delegated to:

- a. the general manager, except with the approval of the council
- b. an employee of the council, except with the approval of the council and the general manager

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The stages in the plan making process

5.1 Pre-Gateway reviews

The pre-Gateway review mechanism allows proponents to request an independent body review decisions in relation to proposed amendments to LEPs.

Pre-Gateway reviews:

- may be requested by a proponent before a planning proposal has been submitted to the department for the issuing of a Gateway determination, and
- are informed by advice from regional panels or the Planning Assessment Commission (PAC)

Attachment 2 sets out the steps in the pre-Gateway review process undertaken by regional panels and the PAC. Those steps are explained further below.

Proponents will not be able to rely on a submission made during the exhibition of a council's comprehensive LEP to form the basis of a request under the pre-Gateway review mechanism. A proponent must lodge a request to prepare a planning proposal with a council before a review request can be made. For more information, see the department's publication *A guide to preparing planning proposals*.

Step 1 – Proponent seeks review

If a proponent (eg. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument¹, it may ask for a pre-Gateway review if:

¹ A **proposed instrument** may be a rezoning proposal to change a land use zone, or a proposal to change the development standards, land use table, local provisions or additional permitted uses (ie. Schedule 1) in LEPs.

- a. the council has notified the proponent that the request to prepare a planning proposal is not supported; or
- b. the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information²

Councils currently process requests to prepare planning proposals in a number of different ways. In general terms, the 90 day assessment period may commence in a number of ways including:

- when council formally acknowledges the proponent has lodged sufficient information to support their request; or
- when council accepts a fee for the assessment of the initial request to prepare a planning proposal; or
- when council accepts a fee (staged or lump sum) to progress the planning proposal; or
- when a request has been lodged in accordance with an existing council policy.

The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires councils to notify a proponent when the council decides not to prepare a planning proposal. The proponent of the proposed instrument then has 40 days³ from notification to request a review of the council's decision.

² The '**A guide to preparing planning proposals**' sets out what information a proponent may provide when requesting that council prepare a planning proposal. Information requirements will depend on the complexity of the planning proposal. Section 55 of the Act sets out what information a planning proposal is to include when submitted for a Gateway determination.

³ Periods will be extended over the Christmas and the New Year period.

A proponent may request a review by writing to the department and providing the following:

- a completed application form
- a copy of the proponent's request for the council to prepare and submit a planning proposal for Gateway determination, along with any additional information (including site plan, zoning map or location plan) provided to council
- all correspondence from the council in relation to the proposed instrument, including (if relevant) a copy of the council's advice detailing why the council did not proceed with preparing a planning proposal
- all correspondence from other Government agencies, if available, about the proposed instrument
- proponent's justification for why a review is warranted
- any supporting information to address the assessment criteria
- disclosure of reportable political donations under section 147 of the Act, if relevant and
- \$5000 initial fee for the department's administration and eligibility assessment.

On receipt of a proponent's request for pre-Gateway review, the department will check whether the request is eligible for review and accompanied by all the required information and fees. The department will contact the proponent to obtain further details if required.

The request should be accompanied by up-to-date supporting information to allow for appropriate consideration of the strategic and site-specific merits. Requests accompanied by out-of-date studies and other information will generally not be

considered eligible for review (depending on the currency, status and necessity of the information).

The department will notify the relevant council of a proponent's request if it is confirmed to be eligible and complete. The council will have 21 days to provide a response in relation to why the original request to council was not progressed.

Please note, for pre-Gateway reviews:

- a proponent who has made a request in writing for council to prepare a planning proposal prior to November 2012 may seek a review if the supporting information accompanying the request is still less than two years old, and
- a review request accompanied by information that is more than two years old will not normally be considered.



Step 2 – Department Assessment

The department will undertake an assessment to determine whether the proposal:

- a. has strategic merit as it:
 - is consistent with a relevant local strategy endorsed by the Director-General or
 - is consistent with the relevant regional strategy or Metropolitan Plan or
 - can otherwise demonstrate strategic merit, giving consideration to the relevant section 117 Directions applying to the site and other strategic considerations (eg proximity to existing urban areas, public transport and infrastructure accessibility, providing jobs closer to home etc)

b. has site-specific merit and is compatible with the surrounding land uses, having regard to the following:

- the natural environment (including known significant environmental values, resources or hazards)
- the existing uses, approved uses and likely future uses of land in the vicinity of the proposal
- the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Proposals that do not reasonably meet the assessment criteria above will generally not proceed to review by the regional panel or the PAC.

The department will prepare a report outlining the following:

- a summary of the proposed instrument
- the outcomes of the assessment
- other considerations relevant to the merits of the proposal (case-by-case matters)
- the advice provided by council
- a recommendation about whether or not the proposed instrument should proceed to Gateway

If the Director-General determines that the proposed instrument does not qualify for review, the department will notify the proponent and council. The decision of the Director-General that a proposed instrument does not qualify for review is final and the assessment fee is not refundable.

For pre-Gateway review requests which progress, the proponent will be contacted

and a further \$15,000 fee for detailed assessment and regional panel or PAC costs will be payable prior to the proposal being forwarded to the regional panel/PAC.

Once the review fee is paid, the proposed instrument will be referred to the regional panel/PAC and the council will be notified that advice is being sought.

Step 3 – Regional panel or PAC review

The regional panel/PAC may meet with the department, council and proponent to clarify any issues before completing its review.

In reviewing the proposed instrument and preparing its advice, the regional panel/PAC will consider the department's recommendation and report and advice provided by council and the proponent.

The regional panel/PAC's advice will be framed around the merits of the proposal and whether the regional panel/PAC would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Act (Gateway determination).

Step 4 – Ministerial determination

The Minister (or delegate) will make the final decision with respect to the proposed instrument. The final outcome may include:

- the regional panel/PAC considers that the proposed instrument should not proceed to Gateway, or
- the regional panel/PAC has recommended that the proposal has merit and that the proposed instrument be submitted for Gateway determination. The council may be requested to submit a planning proposal to the Gateway within 40 days, or

- the Minister may consult with the General Manager of the relevant council to discuss the possibility of changing the RPA to the Director-General of the department (or other body), or
- the Minister may retain his discretion to, or not to, proceed with the matter, notwithstanding the advice of the regional panel/PAC.

The department will contact the proponent and the council in respect of the outcome of the review.

In instances where the Director-General is appointed the RPA, the department will process the planning proposal and the proponent will need to pay a fee (\$25,000, plus additional charges to recover the department's costs on a proposal-specific basis).

The department will monitor progress of the pre-Gateway review requests and ensure that documents (review requests, department and regional panel/PAC reports, Minister/Director-General decisions) are published on the web within five days of the completion of each step.

5.2 The planning proposal

A planning proposal is to be prepared for consideration by the RPA and the department regardless of whether the matter has been subject to a pre-Gateway review. A planning proposal is a document that explains the intended effect of the proposed LEP and provides the justification for making it [EP&A Act s. 55(1)]. *A guide to preparing planning proposals* provides detailed advice on the preparation of a planning proposal.

When preparing and considering a planning proposal councils should consider whether they will be seeking

an Authorisation to make the plan under delegation.

Section 55 (2) of the Act outlines that a planning proposal must include the following components:

Part 1 – A statement of the objectives and intended outcomes of the proposed instrument

Part 2 – An explanation of the provisions that are to be included in the proposed instrument

Part 3 – The justification for those objectives, outcomes and the process for their implementation

Part 4 – Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies

Part 5 – Details of the community consultation that is to be undertaken on the planning proposal.

Section 55(3) of the Act allows the Director-General to issue requirements with respect to the preparation of a planning proposal. The Director-General's requirements include:

- specific matters that must be addressed in the justification (Part 3) of the planning proposal
- a project timeline to detail the anticipated timeframe for the plan making process for each planning proposal.

The project timeline forms **Part 6** of a planning proposal.

Parts 1 and 2 – Objectives and intended outcomes and explanation of provisions

It is important that the first two parts of the planning proposal, the 'objectives and outcomes', and the 'explanation of

provisions' are expressed clearly. They will ultimately provide the basis for the drafting of the legal instrument (the LEP) and must accurately convey the intended effect of the planning proposal for the purpose of community consultation.

Part 3 – Justification

For the purpose of preparing the justification (the third part of the planning proposal), the Director-General has issued requirements about the specific matters that must be addressed in planning proposals (other than those which solely intend to classify or reclassify public land – see section 5.5.4).

When preparing the justification:

- it is important that the level of justification for each planning proposal is proportionate to the impact the planning proposal will have. This is particularly the case for planning proposals that may be inconsistent with the local and/or regional strategic planning framework
- a response to each of the Director-General's criteria will not always be necessary depending on the nature and the scale of the planning proposal. If a matter is not considered relevant, the reasons why should be briefly explained
- it is appropriate in the early stages of preparing a planning proposal to identify issues that will require more detailed investigation if the planning proposal is to proceed. These more detailed investigations, studies, or material will be prepared by the proponent or the RPA following the initial Gateway determination. The Gateway determination will confirm the expected level of information required to form part of the exhibition material.

Part 4 – Mapping

If the proposed LEP is to include maps (such as maps for proposed land use zones, heritage areas, flood prone land and the like), they must also be included with the planning proposal. For planning proposals that amend a Standard Instrument LEP, all mapping should be prepared in accordance with the presentation requirements of '*Standard technical requirements for preparing LEP maps*'. The maps need to contain sufficient information to explain the substantive effect of the proposed LEP. This means that the maps must clearly and accurately identify the land affected by the planning proposal and the relationship of that land to neighbouring properties [EP&A Act s. 55(2)(d)]. Where appropriate, planning proposals should also include aerial photographs, figures, and graphic information to identify the subject site and explain the intended outcome of the planning proposal.

Part 5 – Community consultation

A planning proposal must also outline the proposed community consultation that will be undertaken in relation to the proposal. Consultation includes public exhibition (typically 14 or 28 days) as well as details relating to any agencies that will be consulted. In the case of a large or complex planning proposal it may also be appropriate to include details of a community consultation strategy in the planning proposal. If any pre-lodgement consultation has been undertaken with agencies, an overview of the outcomes of this consultation including any agreements that may have been reached (e.g. scope of a technical study, agreement that an offset agreement is needed) should also be provided.

Part 6 – Project timeline

The Director-General has determined that a planning proposal must include a project timeline. The timeline is to clearly articulate the principal steps associated with finalising the plan together with anticipated start and completion dates. The timeline will be used by the department and others to manage workloads associated with finalising the plan, especially where the plan is to be delegated to council to complete. The project timeline must clearly identify:

- anticipated commencement date (date of Gateway determination)
- anticipated timeframe for the completion of required studies
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)
- commencement and completion dates for public exhibition period
- dates for public hearing (if required)
- timeframe for consideration of submissions
- timeframe for the consideration of a proposal post exhibition
- anticipated date RPA will make the plan (if delegated), and
- anticipated date RPA will forward to the department for notification (if delegated).

A primary goal of the plan making process is to facilitate the technical process to produce LEPs once the strategic decision of the issue of a Gateway determination has been taken. To meet this goal the Minister may consider taking action to finalise the LEP if the timeframes approved for the completion of the planning proposal are significantly or unreasonably delayed.

The planning proposal can be prepared by the RPA, or by a proponent for the proposed LEP. In either case, the RPA is responsible for the planning proposal and must be satisfied that it addresses the requirements of the Act and that enough information is provided to support the proposed amendment prior to forwarding it to the Minister to issue a Gateway determination.

5.3 The Gateway determination

A Gateway determination is issued by the Minister (or delegate). It specifies whether a planning proposal is to proceed and, if so, in what circumstances [EP&A Act s.56]. The Gateway determination will also include an Authorisation for the delegation of plan making functions to council where it has been requested or where the matters are determined to be of local planning significance by the Gateway.

The purpose of the Gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal. The Gateway determination is a checkpoint for planning proposals before resources are committed to carrying out investigative research, preparatory work and consultation with agencies and the community. It enables planning proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed.

Once a planning proposal is forwarded to the Minister (or delegate) by the RPA for a Gateway determination, it is entered into the department's online register of planning proposals where the progress of the proposed LEP is monitored, based on the submitted project timeline. It is then assessed initially by the department's

regional team. Both the planning proposal and the recommendation of the department are forwarded to the LEP Review Panel. The LEP Review Panel considers the planning proposal and the recommendation of the department's regional office before providing its own recommendation to the Minister (or delegate).

The Minister (or delegate) will consider the recommendation of the LEP Review Panel and decide whether to give a Gateway determination to allow the proposal to proceed. The Gateway determination will indicate the following [EP&A Act s.56(2)]:

- whether the planning proposal should proceed (with or without variation)
- whether any studies are required and if necessary the scope of these additional studies
- whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal)
- the community consultation required before consideration is given to the making of the proposed instrument (the community consultation requirements)
- any consultation required with state or Commonwealth authorities
- whether a public hearing is to be held into the matter by the PAC or other specified person or body
- the times within which the various stages of the process for making of the proposed LEP are to be completed, and
- whether the function of making the LEP is to be exercised by the Minister or delegated to the RPA.

5.4 Review of Gateway determination

A council or proponent may request the Minister (or delegate) alter a Gateway determination in certain circumstances.

Attachment 3 sets out the steps in the Gateway review process.

[**Note:** Separate to the formal Gateway review process outlined below, a council may at any time request that the Gateway determination be reconsidered and re-issued. Councils should contact the department's regional team to discuss any concerns about the Gateway determination before deciding to request a formal review. For some routine matters, a Gateway determination may be altered without the need for a formal review.]



Step 1 – Proponent or council seeks review

A council or proponent may request the Minister (or delegate) alter a Gateway determination when a Gateway determination is made that:

- a. the planning proposal should not proceed
- b. the planning proposal should be resubmitted to the Gateway, or
- c. imposes requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

These post-Gateway reviews apply only if the original Gateway determination was made by a delegate of the Minister.

If the Gateway determination is either to not proceed or to resubmit the planning proposal, the council or proponent has 40 days from being notified by the department to request a review.

If the Gateway determination is to proceed with the planning proposal but imposes conditions that the council or proponent considers inappropriate, the council or proponent has 14 days from being notified by the department to indicate their intent to request a review. The council or proponent then has 40 days to formally apply for a Gateway review. The initial 14 day period is intended to prevent any unnecessary delay in proceeding to community consultation on the planning proposal.

The department will notify the council and the proponent (if relevant) of the original Gateway determination and the periods in which they can request a review of the determination.

The council or proponent requesting a Gateway review must provide the department with the following within the 40 days:

- a completed application form
- a copy of the planning proposal and supporting information as submitted to the Gateway
- justification for why an alteration of the Gateway determination is warranted, including, where relevant, responses to issues raised by the original Gateway decision maker, and
- if relevant, disclosure of reportable political donations under section 147 of the Act



Step 2 – Department prepares preliminary report

The department will check whether the request is eligible for review and is accompanied by all the required information. The department will contact the council or proponent to obtain further details if required. If the Gateway review is proponent-initiated, the department will notify the relevant council of the proponent's request and the council will have 21 days to provide a response.

The department will prepare a report outlining the planning proposal, the reason(s) why the review request has been made, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated).



Step 3 – Regional panel/PAC advice

The department's report and accompanying information will be forwarded to the regional panel/PAC for its advice.

The regional panel/PAC will review the planning proposal, giving consideration to the council or proponent's submission and the reasons given for the original determination in the department's report.

The regional panel/PAC will then provide advice on whether or not the original Gateway determination should be altered and whether the planning proposal should proceed to public consultation.

Step 4 – Ministerial determination

The Minister (or delegate) will make the final decision with respect to the proposal giving consideration to:

- Gateway delegate's reasons for its original Gateway determination
- submissions from the council or proponent including why the Gateway determination should be altered
- views of the council (when the review has been initiated by the proponent)
- the PAC's advice in relation to the planning proposal, and
- other matters not considered by the original decision maker including strategic planning considerations (eg emerging state or regional policies relevant to the planning proposal).

The Minister (or delegate) may alter the Gateway determination and decide the planning proposal should proceed (in accordance with any revised conditions) at which point the council and proponent (if relevant) will be notified by the department of the altered determination and post-Gateway consultation on the planning proposal can commence.

Alternatively, if the Minister (or delegate) considers that the planning proposal should not proceed past the Gateway, the council and proponent (if relevant) will be notified by the department.

Following a Gateway review where the Minister or Director-General alters the determination, the standard process post-Gateway determination commences, including community consultation on the planning proposal.

The department will monitor progress of the Gateway review requests and ensure that documents (review requests, department and PAC reports, Minister/ Director-General decisions) are published on the web within five days of the completion of each step.

5.5 Finalising the planning proposal

The statutory process for making a plan following the issuing of a Gateway determination is the same regardless of whether the matter is delegated to council to finalise or whether the plan will be made by the Minister. The principal difference between the two processes is who has responsibility for undertaking the various statutory steps in the plan making process.

Table 5.1 provides an overview of the steps involved with the plan making process for delegated and non delegated matters. If, at Gateway, the plan making power of the Act is delegated to the RPA, then the RPA takes responsibility for all remaining steps in the plan making process. This includes both:

- requesting that the legal instrument (the LEP) is drafted by PCO, and
- the actual making of the LEP once an Opinion has been issued by Parliamentary Counsel's Office (PCO) that the plan can be legally made.

Further advice about key aspects of the plan making process is provided in the sections below.

When a planning proposal is delegated to an RPA to finalise and make, the department's primary function will be administrative in nature. The department will continue to provide support and advice to an RPA throughout the course of the process if requested to do so.

Table 5.1 – Comparative plan making process

Pre-Gateway and planning proposals	
Non Delegated Matters	<ul style="list-style-type: none">• A planning proposal can be initiated by council or proponent.• A planning proposal to be prepared in accordance with the department's <i>A guide to preparing planning proposals</i>.
Delegated Matters	<ul style="list-style-type: none">• A planning proposal can be initiated by council or proponent.• A planning proposal to be prepared in accordance with the department's <i>A guide to preparing planning proposals</i>.• Council to identify whether it is going to request an Authorisation to exercise delegation and provide responses to relevant matters in 'Evaluation criteria for the issuing of Authorisation' (see Attachment 4).• Council to identify whether the plan will be made by council or by sub-delegation to relevant officer (usually General Manager or planning director).
Assessment of planning proposal	
Non Delegated Matters	<ul style="list-style-type: none">• Department's regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.
Delegated Matters	<ul style="list-style-type: none">• Department's regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.• Assessment report includes review of responses provided by council in 'Evaluation criteria for the issuing of Authorisation' and a recommendation as to whether council's request for an Authorisation should be supported.

LEP Review Panel	
Non Delegated Matters	<ul style="list-style-type: none"> • Planning proposal considered by department's independent LEP Review Panel. • Recommendation made to Gateway including conditions for the finalisation of the planning proposal.
Delegated Matters	<ul style="list-style-type: none"> • Planning proposal considered by department's independent LEP Review Panel. • Recommendation made to Gateway including conditions for the finalisation of the planning proposal.
Gateway Determination	
Non Delegated Matters	<ul style="list-style-type: none"> • Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal. • Gateway determination notice issued with conditions related to: <ul style="list-style-type: none"> » requirements for community and agency consultation » whether additional supporting information is to be provided » the timeframe for the completion of the draft LEP » any other relevant matters. • Once Gateway determination has been given the planning proposal is returned to council.
Delegated Matters	<ul style="list-style-type: none"> • Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal. • Gateway determination notice issued with conditions related to: <ul style="list-style-type: none"> » requirements for community and agency consultation » whether additional supporting information is to be provided » the timeframe for the completion of the draft LEP, and » any other relevant matters. • If Gateway agrees with request from council to delegate plan making functions an Authorisation to exercise delegation is issued concurrently with the Gateway determination notice. • Once Gateway determination has been given the planning proposal is returned to council. • Delegation means the department will generally no longer be involved in the plan making process unless: <ul style="list-style-type: none"> » the council fails to meet its obligations in progressing the proposal in accordance with the conditions of the Gateway » the council decides not to process the draft LEP and requests that the Minister determine the matter no longer proceed.

Consultation	
Non Delegated Matters	<ul style="list-style-type: none">• Council is to undertake consultation in accordance with the conditions of the Gateway determination including:<ul style="list-style-type: none">» consultation required under section 34A of the EP&A Act where the RPA is of the opinion that critical habitat or threatened species populations, ecological communities or their habitats will or may be adversely affected by the planning proposal» consultation required in accordance with Ministerial Direction under section 117 of the Act» consultation that is required because in the opinion of the Minister (or delegate), a state or Commonwealth authority will or may be adversely affected by the proposed LEP.• Public exhibition in accordance with the minimum timeframe established in the Gateway determination.
Delegated Matters	<ul style="list-style-type: none">• Council is to undertake consultation in accordance with the conditions of the Gateway determination including:<ul style="list-style-type: none">» consultation required under section 34A of the EP&A Act where the RPA is of the opinion that critical habitat or threatened species populations, ecological communities or their habitats will or may be adversely affected by the planning proposal» consultation required in accordance with a Ministerial Direction under section 117 of the Act» consultation that is required because in the opinion of the Minister (or delegate), a state or Commonwealth authority will or may be adversely affected by the proposed LEP.• Public exhibition in accordance with the minimum timeframe established in the Gateway determination.

Post exhibition review

Non Delegated Matters

- Council is to review the planning proposal following exhibition.
- Council may, at any time, vary its proposal under section 58(1) of the Act as a consequence of its consideration of any submission or report during consultation, or for any other reason.
- If a planning proposal is revised council is to forward a copy of the revised proposal to the department under section 58(2) of the Act.
- The Minister will consider the revised proposal and determine whether further consultation is required and whether a revised Gateway determination should be issued.

Delegated Matters

- Council is to review the planning proposal following exhibition.
- Council may, at any time, vary its proposal under section 58(1) of the Act as a consequence of its consideration of any submission or report during consultation, or for any other reason.
- If a planning proposal is revised council is to forward a copy of the revised proposal to the department under section 58(2) of the Act.
- Changes to the planning proposal after exhibition may be so substantial that the planning proposal may no longer be authorised by the Gateway determination. In these circumstances a new Gateway determination will be required before the LEP is made.
- Consequently councils are encouraged to contact the relevant regional office of the department where there have been major changes to a planning proposal after exhibition whether as a result of community or agency comments. Councils should seek advice in this instance before finalising the LEP under delegation.

Legal Drafting of the LEP

Non Delegated Matters

- Council forwards a copy of the planning proposal and relevant supporting information to the department requesting that a draft LEP is prepared.
- The Director-General makes arrangements for the drafting of the instrument PCO under section 59(1) of the Act.
- Once a draft of the instrument has been prepared the Director-General consults with the RPA on the content of the LEP.
- Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.

Delegated Matters

- Council requests that a draft instrument be prepared under section 59(1) of the Act by emailing PCO directly at parliamentary.counsel@pco.nsw.gov.au.
- Council will upload the maps and GIS data directly to the department's FTP site (ftp://lepup:lep_upload@203.3.194.247/).
- Council will then provide a link only to this site in their email to PCO and copied to the department.
- No maps or mapping/GIS data is to be sent directly to PCO.
- A copy of the request to draft the instrument is sent to the department concurrently with the request to PCO for administrative purposes only.
- The department will undertake a technical review only of any maps required to implement the LEP to ensure they comply with the LEP mapping technical guidelines and liaise with PCO to finalise maps.
- Council and PCO liaise directly about the content of the draft LEP.
- Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.

Making of the draft LEP

Non Delegated Matters

- Council resolves to adopt the draft LEP and forwards a request to the department to request that the Minister make the plan together with all relevant supporting information.
- The Minister may, under sections 59(2) and (3) of the Act:
 - » Make the plan with or without variation
 - » Decide to not make the plan
 - » Decide to defer a matter from the plan.
- If the Minister decides not to make a plan or defers a matter under section 59(4) of the Act he may specify whether or not he is prepared to reconsider the plan or deferred matter and if so, which plan making procedures must be complied with before he will do so.

Delegated Matters

- Council resolves to adopt and make the draft LEP.
- Council may, under sections 59(2) and (3) of the Act:
 - » Decide to **make** the plan with or without any variation. In most instances this will be the expected outcome of the plan making process. If council resolves to make the plan it should forward a copy of all relevant documentation, including a copy of council's assessment report (ie details of community consultation, responses to submissions, maps, a copy of the Opinion from PCO, any other relevant material, and the completed delegation reporting template) to the department together with the plan. The department will then arrange for the plan to be notified on the NSW Government legislation website
 - » Decide to **not make** the plan in accordance with section 59(2)(b) of the Act. If council proposes to not make the plan, assistance from the relevant regional planning team should be sought prior to council's resolution to not make the plan. If council resolves to not make the plan its assessment report is to clearly identify the reasons behind this decision including whether the decision to not proceed was based on submissions received during public exhibition, an agency submission, or some other matter that was raised during the plan making process
 - » **Defer a matter** from the plan in accordance with section 59(3) of the Act. If the draft LEP relates to a number of items or sites, or if it addresses a number of housekeeping amendments for example, and one or more of these matters cannot be resolved satisfactorily, council may decided to defer that matter from the final plan prior to the plan being made. If council chooses to defer a matter, it should liaise with the relevant regional team of the department for assistance especially if the decision is the result of an agency submission. There are technical and legal requirements that are to be met when deferring a matter and the department will assist council to ensure the matter is properly addressed.
- If council decides not to make a plan or defers a matter under section 59(4) of the Act it may specify whether or not it is prepared to reconsider the plan or deferred matter and if so, which plan making procedures must be complied with before it will do so.
- Council must also notify PCO if the plan is not proceeding or if it will not be made.
- A council must not use its delegation under section 59 of the Act where there is an unresolved agency objection to the draft LEP. In this instance, council is to contact the relevant regional office of the department to seek assistance in resolving the matter so that the LEP may proceed under delegation. Where it is not possible to resolve the objection, the delegation may be withdrawn, and the department may proceed with finalising the plan, or the Minister (or delegate) may determine that the planning proposal no longer proceeds.

Notification of the LEP	
Non Delegated Matters	<ul style="list-style-type: none">Once the plan is made the department requests PCO that the plan be notified on the NSW Legislation website.The plan comes into force on the day the LEP is published on the legislation website.
Delegated Matters	<ul style="list-style-type: none">Council advises the department that the plan has been made.The council requests the department to notify the plan. The following documents must be provided for notification with the request by council:<ul style="list-style-type: none">signed front page of the LEP – complete with full name of the LEP and PCO’s file reference;complete signed map cover sheet (in the case of changes to maps of instruments containing the standard map clause);the maps that relate to the signed map cover sheet; andthe name/position of the delegate who signed the LEP.It is anticipated that the LEP will generally be notified on a Friday. However, urgent or delayed notification can be arranged.For normal notification on a Friday the request along with all required information should be sent to the department by 5.00pm on the Tuesday of that week.Requests for notification should be sent to planmaking.monitoring@planning.nsw.gov.au.The department requests PCO that the plan be notified on the NSW Legislation website.The plan comes into force on the day the LEP is published on the legislation website.

5.5.1 Director-General's approval before community consultation

If required, the Director-General (or delegate) must approve the form of planning proposals, as revised, to comply with the Gateway determination, before community consultation is undertaken [EP&A Act s. 57(2)].

Wherever possible this approval will be granted at the same time as issuing the Gateway determination. In instances where it is likely the planning proposal will need to be revised as a consequence of the Gateway determination, or subsequent consultation with public authorities, the Director-General's approval may be withheld. If the Director-General's approval is withheld, the RPA must obtain approval

before any community consultation takes place.

A planning proposal should be a **concise** document supported, if necessary, by technical studies and investigations. If there are circumstances in which it is appropriate to summarise the detailed provisions of a planning proposal for the purpose of community consultation, the Act provides that the Director-General (or delegate) can approve such a summary if satisfied that it provides sufficient details for community consultation. The RPA should indicate in section 5 of the planning proposal (details of the community consultation that is to be undertaken) that it intends seeking the Director-General's approval to issue a summary

of the planning proposal for the purpose of community consultation. A copy of the summary must be submitted for the approval of the Director-General prior to commencing community consultation. Even in circumstances where a summary is issued for community consultation, the complete planning proposal and supporting studies should also be available for interested members of the public to inspect [EP&A Act s. 57(2)].

5.5.2 Community consultation

The gateway determination will specify the community consultation that must be undertaken on the planning proposal. The consultation will be tailored to specific proposals.

Planning proposal type	exhibition period
Low impact proposals*	14 days
All other planning proposals (including any proposal to reclassify land)	28 days
<p>* A 'low' impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination is:</p> <ul style="list-style-type: none">• consistent with the pattern of surrounding land use zones and/or land uses• consistent with the strategic planning framework• presents no issues with regard to infrastructure servicing• not a principal LEP• does not reclassify public land.	

Public exhibition of the planning proposal is generally undertaken in the following manner:

- notification in a newspaper that circulates in the area affected by the planning proposal
- notification on the website of the RPA

- notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them.

The RPA can undertake additional consultation if this is deemed appropriate or necessary. This may include, but is not limited to broad consultation by letter, open days or public forum.

The written notice must:

- give a brief description of the objectives or intended outcomes of the planning proposal
- indicate the land affected by the planning proposal
- state where and when the planning proposal can be inspected
- give the name and address of the RPA for the receipt of submissions
- indicate the last date for submissions
- confirm whether the Minister has chosen to delegate the making of the LEP to the RPA.

During the exhibition period, the following material must be made available for inspection:

- the planning proposal, in the form approved for community consultation by the Gateway determination
- the Gateway determination
- any information or technical information relied upon by the planning proposal.

The community consultation is complete only when the RPA has considered any submissions made concerning the proposed LEP and the report of any public hearing into the proposed LEP [EP&A Act s. 57(8)].

Many RPAs have adopted policies for the exhibition of planning proposals and broader community consultation activities. If an RPA is recommending that consultation in addition to that recommended in this guideline is undertaken, an overview of that additional consultation should be provided in the planning proposal for consideration by the Gateway.

The plan making process does not require community consultation to be undertaken prior to a proponent lodging a request with an RPA to prepare a planning proposal. Depending on the nature of the proposal, an RPA may consider that it is appropriate to seek the general views of the community to assist in further defining the intent of the planning proposal prior to submitting it to Gateway. Alternatively, a proponent may consider it best practice to undertake pre-lodgement consultation if the proposal relates to a significant or large site. If this approach is adopted, it is recommended that consultation relate primarily to the underlying proposed amendment to the LEP and that issues associated with the potential future development of the site be given secondary consideration.

As noted in *A guide to preparing planning proposals*, a planning proposal relates to a change in an LEP control. While a variation to a control may be pursued to secure a particular development outcome for a site, that outcome will itself be subject to a separate assessment via the Development Application process. The principal focus of any pre-lodgement consultation should therefore be to seek the community's views on whether the proposed alternate zone or development standard is an appropriate outcome for that particular site. Matters associated with the design of a potential building, a subdivision layout, or other

detailed matters are more appropriately addressed via the development assessment process and the public exhibition of any subsequent Development Application.

5.5.3 Public hearings

The RPA can decide to conduct a public hearing into any issue associated with a planning proposal [EP&A Act s. 57(6)]. Where the planning proposal is to reclassify community land, the RPA is obligated by the *Local Government Act 1993* to hold a public hearing.

A person making a submission during the public exhibition of a planning proposal can also request that the RPA conducts a public hearing into the issues raised in their submission. If the RPA considers that the issues raised in the submission are of such significance they should be the subject of a hearing, the RPA must arrange a public hearing [EP&A Act s. 57(5)].

Where an RPA decides to conduct a public hearing or is required to conduct a public hearing in the case of LEPs that propose to reclassify public land from 'community' to 'operational' under the *Local Government Act 1993*, it must:

- give notice of the arrangements for the public hearing in a local newspaper, and
- give notice in a letter to each of the persons who requested a public hearing when making a submission, at least 21 days before the date of the hearing.

Notice of the public hearing must not be given before the conclusion of the public exhibition of the planning proposal to ensure each person making a submission and requesting a public hearing is given the requisite 21 days notice.

5.5.4 Classification and reclassification of public land

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Director-General has issued the following requirements as to the specific matters that must be addressed in the justification for the planning proposal [EP&A Act s. 55(3)]:

Director-General's requirements regarding matters that must be addressed in the justification of all planning proposals to reclassify public land

- a. Is the planning proposal the result of a strategic study or report?
- b. Is the planning proposal consistent with the local council's community plan, or other local strategic plan?
- c. If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided.
- d. The concurrence of the landowner, where the land is not owned by the relevant planning authority.

5.5.5 Legal drafting of the LEP

The LEP is the legal instrument which gives effect to the planning proposal. The drafting of the LEP is undertaken by PCO upon receipt of instructions from the department or from an RPA if the plan making process has been delegated to the RPA at Gateway determination stage.

Where the department is still responsible for drafting the LEP instrument it will consult the RPA on the terms of the LEP to ensure it is consistent with the objectives and outcomes and the explanation of provisions set out in parts 1 and 2 of the planning proposal.

For planning proposals that have been delegated, the council will be responsible for providing instructions to PCO to obtain the draft legal instrument. The request to draft the instrument will be provided to the PCO directly in an electronic format. Council must concurrently copy the instructions to the department for monitoring and reporting purposes. A central email address has been provided at the PCO for councils to forward their drafting instructions and requests to. That email address is:

parliamentary.counsel@pco.nsw.gov.au

Further information and details about the legal drafting process for delegated LEPs is provided at the website of the PCO (<http://www.pco.nsw.gov.au>)

Council must concurrently copy the instructions to the department for monitoring and reporting purposes. This information is to be forwarded to the following email address:
planmaking.monitoring@planning.nsw.gov.au

Council is to include the following details with the instructions to PCO:

- the planning proposal
- a copy of the Gateway determination and any subsequent determinations given with respect to the planning proposal
- draft maps (where relevant) consistent with the Standard Instrument Technical Mapping requirements should be provided to the department via a link to an FTP portal, at the same time as instructions are provided to PCO. The department will forward maps to PCO
- a copy of the GIS data relevant to any map amendment associated with the planning proposal*

* Note: All GIS and mapping data to be supplied in a single .ZIP or .RAR file for ease of data transfer. Any questions related to mapping and GIS data should be directed to the departments POC GIS team at pocgis@planning.nsw.gov.au

- details of exhibition (if applicable) and a report detailing how issues raised in any submissions made during exhibition have been addressed by council
- variations to the planning proposal after the Gateway determination was given and justification for these amendments
- details relating to the planning proposal's consistency with relevant Section 117 Directions, including where the Director-General has agreed that any inconsistencies are justified, or minor in nature
- any other relevant background or explanatory information that may assist the PCO with its drafting of the instrument eg council policy forming the basis of the amendment, council report(s) detailing the background and rationale for the draft LEP, any correspondence between the council and the department which provides background to the approach adopted in the draft LEP, and
- completed template detailing dates for key steps of the process.

Communications between PCO and the council may be subject to legal professional privilege and must be maintained in the strictest confidence. This privilege also extends to drafts of the instrument and drafting notes provided by PCO to the council. Councils should contact the department and PCO before publishing these preliminary drafts on their websites or otherwise making them available to third parties, in order to avoid this privilege being waived. Legal professional privilege is also relevant in considering whether to disclose government information under the *Government Information (Public Access) Act 2009*.

PCO will produce a draft instrument (the LEP) and following any discussions with the RPA about the content of the instrument PCO will issue an Opinion that the draft instrument can be legally made. An LEP cannot be signed unless such an opinion has been issued.

5.5.6 Varying a proposal

An early dialogue between the department and the RPA regarding the assessment requirements for a planning proposal is an important feature of the process of preparing a LEP. It is important, therefore, that planning proposals can be built upon, or evolve, as a consequence of more detailed studies and investigations in the period following the initial Gateway determination and leading up to community consultation.

The EP&A Act provides that if an RPA varies its proposal following the initial Gateway determination, it must inform the Minister, who may issue a revised Gateway determination, depending on the nature of the variations.

An RPA is taken to have varied its proposals when it changes the statement of the objectives or intended outcomes of the proposed LEP required by s. 55(2)(a) of the Act (part 1 of the planning proposal), or the explanation of the provisions that are to be included in the proposed LEP required by s. 55(2)(b) (part 2 of the planning proposal).

Changes to the justification for those objectives, outcomes and provisions and the process for their implementation required by s. 55(2)(c) of the EP&A Act are not regarded as variations to the proposals and therefore do not require the revised planning proposal to be forwarded to the Minister for Planning and Infrastructure.

It should be noted that resubmission of the planning proposal following the completion of studies may be included as a requirement in the Gateway determination.

5.5.7 Benchmark timeframes for preparing LEPs

LEPs take different forms and degrees of complexity. It is important, that the state planning system responds to changing circumstances and emerging opportunities and that planning proposals are given proper consideration within a reasonable timeframe.

Benchmark timeframes have been set for the following types of LEPs where they are consistent with the state's strategic planning framework:

- administrative changes and errors
3 months
- minor spot rezoning **6 months**
- major land release and urban renewal
12-18 months
- principal LEPs **24 months**.

Delegating plan making to local councils is intended to fast track the delivery of LEPs.

The progress of LEPs from the initial submission of a planning proposal through to the finalisation of an LEP can also be monitored on the department's LEP Tracking System which can be accessed via the department's website. The Tracking System provides details of all planning proposals that have been lodged with the department. The Tracking System (www.planning.nsw.gov.au/local-planning) can be searched by local government area and provides a status update for each LEP.

5.5.8 Tracking and reporting on the plan making process

The process for tracking the status of a planning proposal and draft LEP through the plan making stages continues to be the department's LEP Tracking System. The community will continue to be able to log onto the tracking system to check the status of a plan.

To ensure that information on the status of delegated LEPs is current, councils are required to advise the relevant regional office in writing when each stage of the plan making process (ie dates for exhibition, date reported to council etc) is completed. This will enable the department to update the data in the tracking system which will then be available for the public to review via the publicly available site.

Councils will be provided with a template at the same time as the Authorisation is issued. The template (see **Attachment 5**) lists the key dates that council will be required to report on in relation to each LEP. Councils must provide a copy of the completed template with its request that the plan be notified.

No additional reporting on the progress of LEPs will be required from councils.

If any issues related to the plan making process are identified at any stage and council is uncertain how to proceed, council should consult with the relevant regional team of the department.

The department will continue to monitor the progress of LEPs against the timeframes identified in the original Gateway determination notice. Council is still accountable to the timeframe requirements identified in the Gateway determination. Where council cannot demonstrate a commitment to completing the LEP within a satisfactory timeframe, consideration will be given to discontinuing the planning proposal in accordance with section 56(7) of the Act or appointing an alternative RPA under section 54(2) of the Act.

5.5.9 Circumstances in which it is not necessary to follow this process

In the following circumstances, the Minister (or delegate) may dispense with all or part of the plan-making process described within this section, including community consultation, in the making of an amending LEP but not the processes set out in section 5.5.5 of this guide:

- if the purpose of the proposed LEP is to implement the Standard Instrument (Local Environmental Plans) Order 2006 and the Minister is of the opinion that the proposed LEP does not make any substantial changes to the general effect of the existing instrument or instruments [EP&A Act s. 33A(8A)]
- if the purpose of the proposed LEP is to correct an obvious error in the principal LEP, or address other matters that are of a minor nature [EP&A Act s.73A(1)(a) and (b)], or
- if in the opinion of the Minister, the matters dealt with by the amending LEP will not have any significant adverse impact on the environment or adjoining land [EP&A Act s. 73A(1)(c)].

An RPA wishing to seek the Minister's dispensation of all or part of the process must, in the first instance, write to the Director-General setting out the reasons why in the context of the criteria described above (sections 33A(8A) or 73A as applicable). The Minister (or delegate) will advise which, if any, parts of the process can be dispensed with when the initial Gateway determination is issued.

5.5.10 Additional assistance

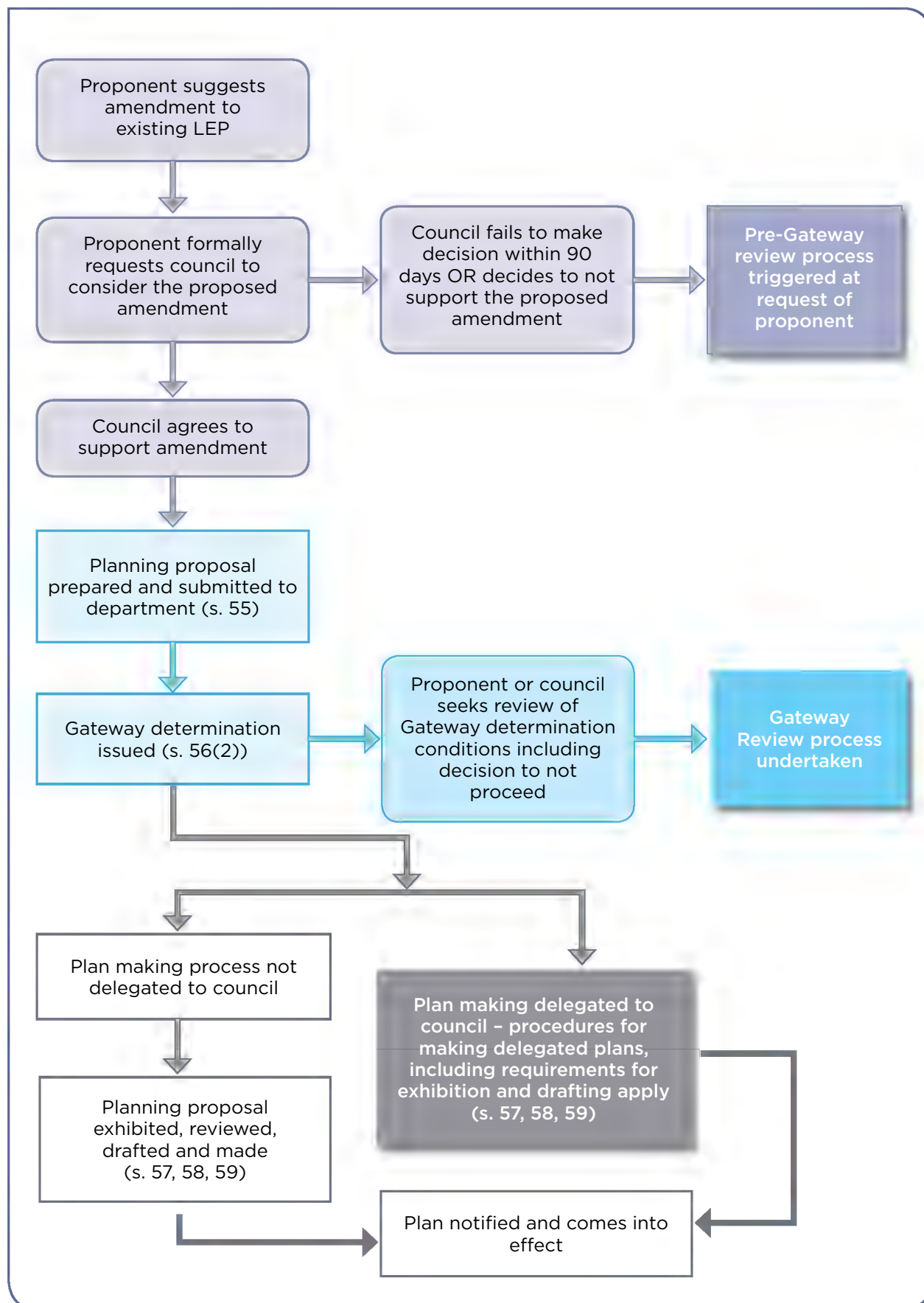
The department will continue to provide assistance to any council that requests it at any stage of the plan making process. This assistance may include:

- preparation of and assistance with supporting LEP maps
- liaison with agencies where an objection or issue is raised during exhibition or as a result of consultation required under the Gateway determination
- advice on appropriate matters for inclusion in draft LEP provisions, and
- discussions with PCO on drafting matters.

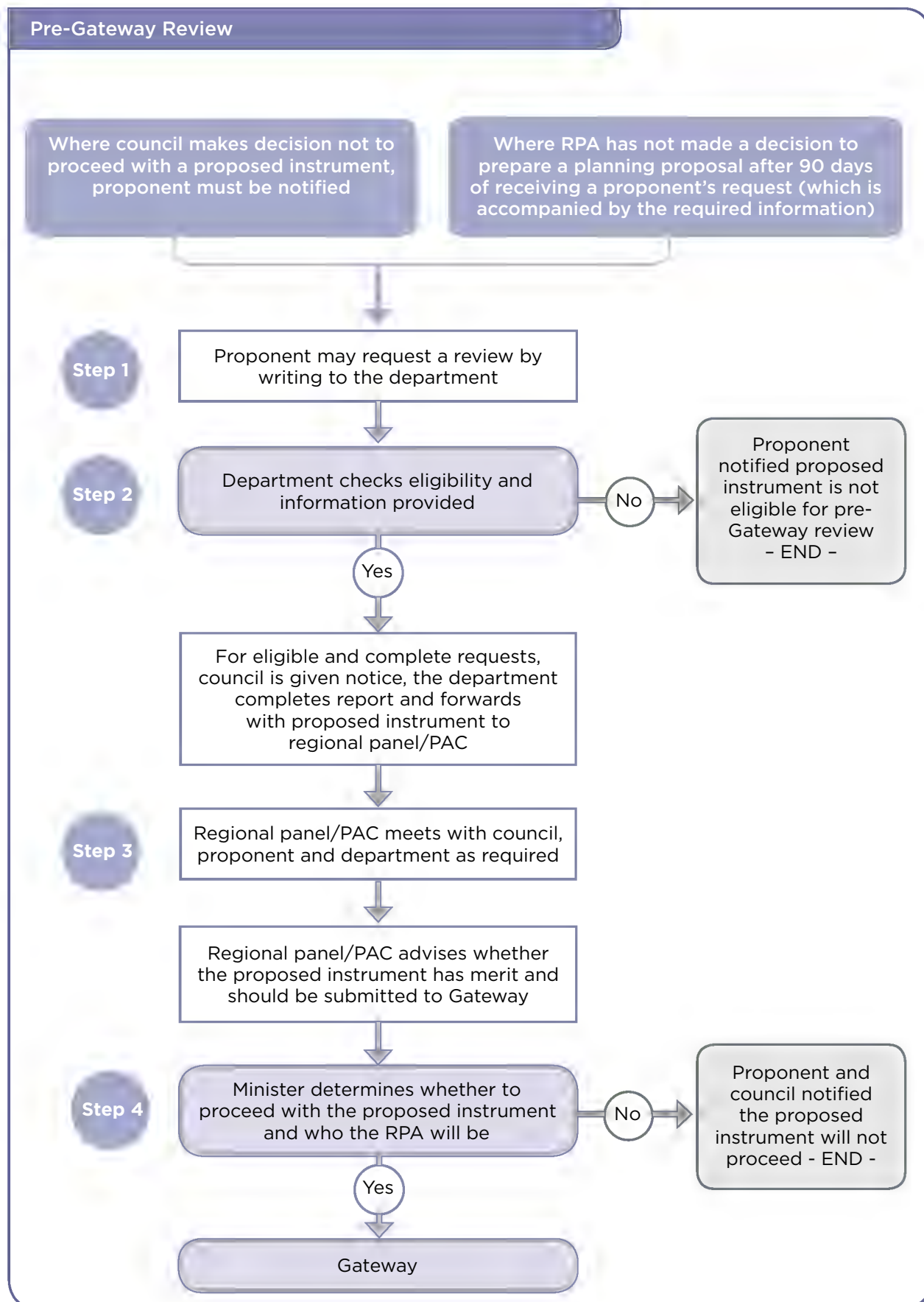
Councils should initially contact the relevant regional office for this assistance.



Attachment 1 – LEP plan making process

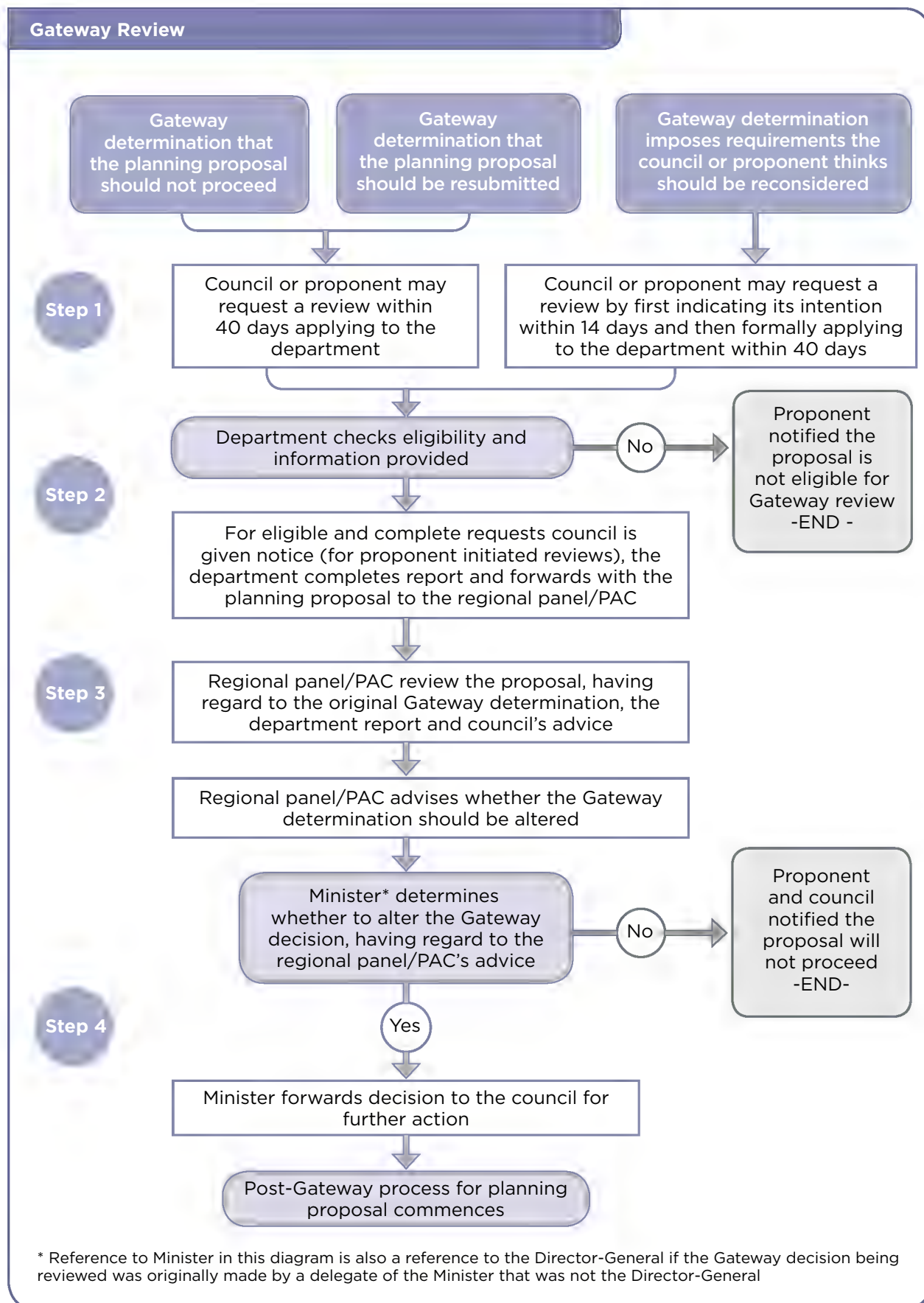


Attachment 2 – Pre-Gateway review process





Attachment 3 – Gateway determination review process



Attachment 4 – Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

Name of draft LEP:

Address of Land (if applicable):

Intent of draft LEP:

Additional Supporting Points/Information:



Evaluation criteria for the issuing of an Authorisation

(NOTE - where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?				
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?				
Are appropriate maps included to identify the location of the site and the intent of the amendment?				
Does the planning proposal contain details related to proposed consultation?				
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?				
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?				
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?				
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?				
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?				
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?				
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?				
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?				
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?				
Is the planning proposal proposed to rectify an anomaly in a classification?				
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?				
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?				

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?				
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?				
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?				
Spot Rezoning	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?				
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?				
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?				
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?				
Does the planning proposal create an exception to a mapped development standard?				
Section 73A matters				
Does the proposed instrument <ul style="list-style-type: none"> a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? <p>(NOTE - the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</p>				
NOTES <ul style="list-style-type: none"> Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance. Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department. 				



Attachment 5 – Delegated plan making reporting template

Reporting Template for Delegated LEP Amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	
Date Sent to department under s56	
Date considered at LEP Review Panel	
Gateway determination date	

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Date LEP made by GM (or other) under delegation		
Date sent to DP&I requesting notification		

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional Relevant Information:

[illegible]





Code of Conduct





Part 1 Code of Conduct

Part 2 Procedures for the Administration of the Code of Conduct



PART 1

CODE OF CONDUCT

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Code of Conduct - Policy 23-032
Adopted 22 August 2013
Council Minute No.296



FOREWORD – A STRONG ETHICAL CULTURE

The City of Canterbury is a great place to live and work and we want to see this continue in the future. We are a responsible and customer-focused council serving the people of Canterbury, and we provide quality service in all of our activities in order to achieve this future.

An important way in which we can continue to be a responsible council is through a strong ethical culture. Honesty and integrity in the way we do things as an organisation will give us strength, resilience and effectiveness.

This Code of Conduct is an important foundation for a strong ethical culture. It articulates the standards of behaviour expected of councillors and staff and gives us a basis for our decision making process.

This code has the full support of Councillors, the General Manager, senior management and staff.

Personal responsibility

Councillors, members of staff of council and delegates of the council must comply with the applicable provisions of this code of conduct. It is the personal responsibility of all council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the any provisions of council's code of conduct relevant to their activities.

Failure by a councillor to comply with an applicable requirement of council's code of conduct constitutes misbehaviour. Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

Legislative foundations

The Local Government Act 1993 requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW.

This Code of Conduct uses the Model Code of Conduct as a basis, and supplements it with specific provisions relevant to Canterbury City Council. For the purposes of section 440 of the Act, this Code comprises all parts of the Model Code.

This Code should be read in conjunction with the Act. However, nothing in this Code overrides or affects the Act or any other law.

Council has also adopted a policy, consistent with the Public Interest Disclosures Act 1994, for the protection of those making internal disclosures of corrupt conduct, maladministration, serious and substantial waste within the Council, government information contravention and pecuniary interest contravention. In some



circumstances the reporting of breaches of this Code of Conduct will require the use of this policy.

Values

This Code of Conduct reflects and supports our values. Values are beliefs we have that provides a basis for choices we make. They ultimately determine the quality of our lives.

We have expressed these as simple action statements. The pictorial format is inspired by the upgraded pavements in Beamish Street, Campsie. The lighter colour is our mission, which sets out our purpose in the things we do. The other statements describe the way we want to do these things.

we are responsible to council and our community	we respect and value people	we don't tolerate discrimination, bullying or harassment	we accept responsibility for our actions
through the City Strategic Plan	we welcome diversity	the way we want to do things here	we act with integrity
to achieve real improvements in quality of life	we encourage innovative contributions	we seek to learn and continually improve	we recognise and celebrate success
for people living and working in the City of Canterbury	we operate fairly and transparently	we make all decisions based on merit	we manage risk responsibly

**Key Principles**

The Code of Conduct is based on the following key principles:

Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Leadership

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council.

This means promoting public duty to others in the council and outside, by your own ethical behaviour.

Selflessness

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker.

Impartiality

You must make decisions solely on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits.

This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.

Accountability

You are accountable to the public for your decisions and actions and must consider issues on their merits, taking into account the views of others.

This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands.

This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.



Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest.

This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.

Respect

You must treat others with respect at all times.

This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

Guide to Ethical Decision-Making

If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Conflict of interests

If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these six points:

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interests?
- Do your personal interests conflict with your official role?
- What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?



Political donations and conflict of interests

Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of undue influence in relation to their vote or support.

Seeking advice

Remember – you have the right to question any instruction or direction given to you that you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This may include your supervisor or trusted senior officer, your union representatives, the Division of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

Contact Information

General Manager – Jim Montague	9789 9447
Public Interest Disclosures Coordinator and Complaints Co-ordinator– Brad McPherson	9789 9398
Independent Commission Against Corruption	8281 5999
NSW Ombudsman	9286 1000
NSW Division of Local Government	4428 4100



PART 1 INTRODUCTION

The new Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct) was released in March 2013. Section 440 of the Local Government Act 1993 requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct.

For the purposes of section 440 of the Act, this Code comprises all parts of the Model Code of Conduct supplemented by specific provisions relevant to the City of Canterbury.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances 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 Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

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

A better conduct guide has also been developed to assist councils to review and enhance their codes of conduct. This guide supports this code and provides further information on the provisions in this code. (Currently under development by DLG)

PART 2 PURPOSE OF THE CODE OF CONDUCT

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist council officials to:

- understand 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 of the Act)
- act in a way that enhances public confidence in the integrity of local government.



NOTE: You act "honestly" if you act in good faith, with no ulterior or improper purpose. A breach of the obligation to act honestly involves a consciousness that what is being done is not in the interests of Council, or the community, or both, and deliberate conduct in disregard of that knowledge. Honesty is more than the absence of dishonesty. Anything that is not a fact, or not in accordance with the facts, is dishonest.

**PART 3 GENERAL CONDUCT OBLIGATIONS**General conduct

3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:

- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
- h) is unreasonable, unjust, or oppressive;
- i) may cause any reasonable person unwarranted offence or embarrassment;
- j) may give rise to the reasonable suspicion or appearance of improper conduct or partial performance of your public or professional duties;
- k) is contrary to law

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

3.3 You must treat others with respect, courtesy, compassion and sensitivity at all times.

Fairness and equity

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

3.5 You must always act in the public interest.

3.6 You must not act for an ulterior purpose or on irrelevant grounds.

3.7 You must take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained.

3.8 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.

NOTE: The general law requires all decision-makers to act fairly, reasonably and otherwise lawfully. That means, among other things, that decision-makers must act strictly within the powers conferred or imposed, and strictly for the purpose for which those powers were conferred or imposed.

Harassment and discrimination

3.9 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

Development decisions

3.10 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

3.11 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

3.12 Councillors must not attend pre-determination development assessment meetings on Council premises involving staff below Manager/Director level unless both the applicant and other interested parties are present. Minutes must also be taken at these meetings by Council staff present. This does not prevent Councillors from meeting with applicants and objectors by mutual consent as they see fit.

Council Support

3.13 A council official who honestly and faithfully observes the requirements of this Code and any relevant law is entitled to expect the publicly expressed support of his or her Council and colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties.

Binding caucus votes

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



- 3.15 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.
- 3.16 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.
- 3.17 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.

Relations with the Media

- 3.18 You must at all times promote a positive image of Council and local government generally when dealing with the public.
- 3.19 You must refrain from making any public statement which insults or makes personal reflections on or imputes improper motives to any other council official.
- 3.20 Where a situation arises where a Councillor's comment is sought on an issue of community interest, the Councillor must clearly state that their expressed view is a personal view, and does not necessarily represent the views of Council on the particular issue.
- 3.21 When making public comment on issues or participating in political or industrial activities, staff should not indicate that their views are those of Council. Staff should not provide official comment on matters related to Council unless they are authorised to do so by the General Manager. Public comment includes:
- a) interviews with the media
 - b) public speaking engagements
 - c) expressing views in letters to the media or in notices, articles or any other medium

Tendering

- 3.22 You must not be involved in any presentation on behalf of any tenderer whether it involves a cost or not.
- 3.23 You must not discuss with a tenderer or prospective tenderer any aspect of a tender for a contract to be let by Council, except where a staff member or delegate has been authorised to respond to enquiries relating to the tender.
- 3.24 During all tendering processes staff must comply with Council's Procurement policy which is available on the policy register or from the Group Manager Governance.

Alcohol and other drugs

3.25 Council officials must not be intoxicated or drug affected when performing their official duties and must observe the relevant provisions of Council's adopted Drug and Alcohol Management policy, as in force from time-to-time.

We have adopted a drug and alcohol policy for Council staff. The purpose of the policy is to ensure the health, safety and welfare of all employees by effectively dealing with any problems in the work place associated with the misuse of drugs and alcohol. A copy of the policy is available on the intranet or from the Manager Human Resources.

Lobbying

3.26 The Code of Conduct and the Act both recognize that appropriate lobbying of councillors is a normal part of the democratic process. However, it is in the public interest that lobbying is done fairly and does not undermine public confidence in council decision making. The Independent Commission Against Corruption (ICAC) has produced a publication regarding the lobbying of Councillors. The ICAC publication is available on the ICAC website.

Health, Wellbeing and Safety

3.27 Councillors and Council staff should ensure that council's premises are adequate to ensure the health, safety and wellbeing of other council officials and members of the public in accordance with their obligations under the Work Health and Safety Act 2011.

Child Protection

3.28 Child Protection legislation provides substantial requirements for the reporting of suspected and actual child abuse as well as checks for criminal history of employees of Council.

Working with children checks are carried out for all staff positions within Council responsible for supervising or working with children

**PART 4 CONFLICT OF INTERESTS**

- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 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. (*section 442 of the Act*)
- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*section 443 of the Act*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449 of the Act*)
 - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451 of the Act*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459 of the Act*)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441 of the Act), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What are non-pecuniary interests?

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

4.11 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

4.13 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. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.

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

4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships 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, sporting body, club, corporation or association that is particularly strong.

4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why



you consider that the conflict does not require further action in the circumstances.

- 4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the general manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) where the major political donor has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.17(b).
- 4.22 For the purposes of this Part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.
- 4.23 Councillors should note that political donations below \$1,000, 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 interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.23, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.20 above).

Loss of quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
 - b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 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 interests 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 part 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 part of the council's area, and
 - b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

- 4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353 of the Act*)



4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:

- a) conflict with your official duties
- b) involve using confidential information or council resources obtained through your work with the council
- c) require you to work while on council duty
- d) discredit or disadvantage the council.

We have adopted the Other Business or Employment policy for Council staff. The purpose of the policy is to ensure council staff are aware of their requirements and seek approval from the General Manager for secondary employment before they undertake any such activity. All staff are expected to act in accordance with the provisions of the policy. A copy of the policy is available on the intranet or from the Manager Human Resources.

Personal dealings with council

4.32 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 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.

Bankruptcy

4.33 Senior staff must comply with Section 341 of the Act in relation to bankruptcy and similar provisions.

Political support and community participation

4.34 Staff must ensure that any participation in political activities does not conflict with their primary duty as an employee to serve the Council in a politically neutral manner.

If an employee becomes aware that a conflict of interest has arisen or might arise due to their participation in party political activities they should inform their Director or the General Manager immediately and take adequate steps to manage that conflict in accordance with the Code.

Case Study

A councillor is a member of a large metropolitan club. He is not, however, active in the club or involved with the management of the club. In this situation the councillor merely enjoys the facilities of the club as a privilege of membership.

Should a matter relating to the club arise at council, it is appropriate that the councillor inform the council of his membership. It is unlikely, however, that his interest as a club member would conflict with his role as a councillor representing the view of residents and ratepayers generally. He could therefore participate in the decision making process.

If the councillor was, however, an office holder in the club, the interest may constitute a pecuniary interest.

**PART 5 PERSONAL BENEFIT**

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Gifts and benefits

- 5.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 5.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Token gifts and benefits

- 5.3 Generally speaking, token gifts and benefits include:
- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i) the discussion of official business
 - ii) council work related events such as training, education sessions, workshops
 - iii) conferences
 - iv) council functions or events
 - v) social functions organised by groups, such as council committees and community organisations
 - b) invitations to and attendance at local social, cultural or sporting events
 - c) gifts of single bottles of reasonably priced alcohol (not exceeding a value of \$20) to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
 - d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers
 - e) prizes of token value.

Gifts and benefits of value

- 5.4 Notwithstanding clause 5.3, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

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

- 5.5 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) accept any gift or benefit of more than token value
 - e) accept an offer of cash or a cash-like gift, regardless of the amount.
- 5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.
- 5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.
 - 5.7.1 More than token value is defined as a gift or benefit with a value exceeding \$20 or such other amount as may be specified from time to time.
 - 5.7.2 Staff members who:
 - i) exercise a regulatory function of council
 - ii) are involved in procurement or tendering evaluation panelsare prohibited from accepting gifts or benefits of any kind or value.

Staff members who exercise regulatory functions include, but are not limited to, regulatory services staff and development assessment staff.

Gifts offered to, or left for, these staff members which cannot be reasonably refused or returned must immediately be relinquished to a supervisor, manager, the Director or the General Manager and will be donated to the Mayor’s Charity Fund.
 - 5.7.3 The procedure for registering gifts and benefits to the gifts register is provided in the Appendices.

Bribes

- 5.8 If a bribe or other improper inducement is offered to you, you must immediately report the matter to the General Manager, to enable the General Manager to fulfil his obligations pursuant to Section 11 of the Independent Commission Against Corruption Act 1998. Such a report must be in writing and be provided to the General Manager as soon as possible following the incident.


Improper and undue influence

- 5.9 You must not use your position to influence other council officials in the performance of their public or professional duties 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 appropriate exercise of their representative functions.
- 5.10 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

Case Study

Over a period of time, one local council employee was involved in a series of inspections to registered premises. During the period, the owner of the premises offered the employee a number of gifts including a present for the employee's new born child. The employee accepted the gifts as he felt they were offered as unconditional and genuine tokens of appreciation for his work. He did not interpret the gifts as attempts to gain his favour. In accepting the gifts he did not contravene the council's code of conduct.

Later the owner of the premises made an application for variation to the conditions of his licence. The employee, dutifully, was not compromised by the gifts, and made a recommendation that was not in the owner's interests. After the recommendation was made, the owner complained to the council about the employee accepting the gifts.

Although the employee accepted the gifts in good faith, he nevertheless placed himself in a vulnerable position. While each of these gifts was of modest value, when viewed in total, the value of the gifts seemed quite substantial. The owner also alleged the employee had accepted bribes.

The employee's acceptance of the gifts could also be used as circumstantial evidence of bribery. Furthermore, the employee could not rely on the fact that he made a decision he would have made, regardless of the gifts, as a defence to bribery.



PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

This Part should be read in conjunction with our Procedure: Interaction between Council officials which is included in the Appendices.

Obligations of councillors and administrators

6.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.

6.2 Councillors or administrators must not:

- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352 of the Act*)
- 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 member or delegate (*Schedule 6A of the Act*)
- 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 council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

Case Study

A councillor was driving down a local street in her ward and noticed that the nature strips in front of several houses were very unkempt. She immediately contacted a Team Leader whom she knew quite well by mobile phone and requested that Council personnel mow the strip as a matter of urgency as it was disturbing the general environmental amenity.

This contact was inappropriate as councillors must refrain from directing council staff. In this situation the Team Leader correctly and politely referred the councillor to the General Manager.

Obligations of staff

6.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.



6.4 Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out 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 conflict with the performance of their official duties.

6.5 When exercising a regulatory inspection or other function in relation to members of the public, a member of staff must notify the General Manager when dealing with relatives and close friends, and disqualify themselves from the dealing.

6.6 When making decisions or taking actions under delegated authority a member of staff must ensure that:

- a) the decision or action is within their delegated authority as specified by the relevant instrument of delegation;
- b) all decision making requirements and procedures required by the delegation are complied with;
- c) the decision or action is in accordance with the spirit and the letter of any relevant legislation; and
- d) any decisions and the evidence upon which they are based are properly documented.

Obligations during meetings

6.7 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.

6.8 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

6.9 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 broader workforce policy issues.
- b) Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
- c) Council staff refusing to give information that is available to other councillors to a particular councillor.



- d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
- e) Councillors and administrators being overbearing or threatening to council staff.
- f) Councillors and administrators making personal attacks on council staff in a public forum.
- g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
- h) 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.
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

**PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES**Councillor and administrator access to information

- 7.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009*.
- 7.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 7.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 7.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Councillors and administrators to properly examine and consider information

- 7.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

- 7.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 7.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

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

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

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

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body
- f) not disclose any information discussed during a confidential session of a council meeting.

NOTE: If you have access to confidential or sensitive information as part of a local government function, you are in a position of absolute trust, and have a 'fiduciary duty' to Council to keep confidential the information to which you have access. Refer to Section 664 of the Act for more information.

Personal information

7.11 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) council's privacy management plan
- e) the Privacy Code of Practice for Local Government

Use of council resources

7.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised in accordance with the Procedure: Use of Council Property (included in the Appendices), and proper payment is made where appropriate.

7.13 Union delegates and consultative committee members may have reasonable access to council resources 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.



- 7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 7.15 You must not make use of the council logo or similar intellectual property of the Council without first obtaining the written approval of the Council to such use. Refer to the Procedure: Use of Council Property (included in the Appendices) for instructions on how such approval may be sought.
- 7.16 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.
- 7.17 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaign 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.
- 7.18 The interests of a councillor in their re-election are considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate.
- 7.19 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 7.20 You must not convert any property of the council to your own use unless properly authorised.
- 7.21 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.
- 7.22 You must comply with the requirements of Council's Information Technology Usage policy when using our computer resources. A copy of the policy is available on our web page or by contacting our Group Manager Customer and Information Services.

Councillor access to council buildings

- 7.23 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.



- 7.24 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff
- 7.25 Councillors and administrators are not to use entry cards in a manner or for a purpose not otherwise authorised by this Code of Conduct or by Council, including the purpose of gaining access to any part of Council premises to which access is otherwise denied or excluded by this Code.
- 7.26 Councillors and administrators who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public.
- 7.27 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

Fraud and Corruption Prevention

- 7.28 We have established a policy on fraud and corruption prevention. All Council officials must abide by the policy. A copy of the policy is included in the Appendices.

**PART 8 MAINTAINING THE INTEGRITY OF THIS CODE**

8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

Complaints made for an improper purpose

8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.

8.3 For the purposes of clause 8.2, 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 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 this code
- g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
- h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
- i) to prevent or disrupt the effective administration of this code.

Detrimental action

8.4 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 under this code except as may be otherwise specifically permitted under this code.

8.5 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 this code except as may be otherwise specifically permitted under this code.

8.6 For the purposes of clauses 8.4 and 8.5 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 this code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 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 this code

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

- 8.14 Complaints alleging a breach of this Part (Part 8) by a councillor, the general manager or an administrator are to be made to the Division of Local Government.
- 8.15 Complaints alleging a breach of this Part by other council officials are to be made to the general manager.



PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act	the <i>Local Government Act 1993</i>
act of disorder	see the definition in clause 256 of the Local Government (General) Regulation 2005
administrator	an administrator of a council appointed under the Act other than an administrator appointed under section 66 of the Act
Chief Executive	Chief Executive of the Division of Local Government, Department of Premier and Cabinet
committee	a council committee
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
corrupt conduct	<p>a)</p> <p>any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or</p> <p>b)</p> <p>any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or</p> <p>c)</p> <p>any conduct of a public official or former public official that constitutes or involves a breach of public trust, or</p> <p>d)</p> <p>any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.</p>

Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or



any public authority and which could involve any of the following matters:

- a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- b) bribery,
- c) blackmail,
- d) obtaining or offering secret commissions,
- e) fraud,
- f) theft,
- g) perverting the course of justice,
- h) embezzlement,
- i) election bribery,
- j) election funding offences,
- k) election fraud,
- l) treating,
- m) tax evasion,
- n) revenue evasion,
- o) currency violations,
- p) illegal drug dealings,
- q) illegal gambling,
- r) obtaining financial benefit by vice engaged in by others,
- s) bankruptcy and company violations,
- t) harbouring criminals,
- u) forgery,
- v) treason or other offences against the Sovereign,
- w) homicide or violence,
- x) matters of the same or a similar nature to any listed above,
- y) any conspiracy or attempt in relation to any of the above.

HOWEVER, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a) a criminal offence, or
- b) a disciplinary offence, or
- c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament a substantial breach of an applicable code of conduct.



council committee	a committee established by resolution of council
“council committee member”	A person other than a councillor or member of staff of a council who is a member of a council committee
council official	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
councillor	a person elected or appointed to civic office and includes a Mayor
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	<p>Section 441 of the Local Government Act 1993 defines a designated person as:</p> <ul style="list-style-type: none"> • the General Manager • other senior staff • a person (other than a senior staff member) who is a member of staff, a delegate, or a committee member of the council and who is designated person because their position or membership of a committee involves the exercise of functions under this 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, delegate or committee member and the person’s private interest.
election campaign	includes council, State and Federal election campaigns
non pecuniary interest	means any private or personal interest that does not pertain to money (eg. kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity).
pecuniary interest	means 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 or another person with whom the person is associated, that is not too remote or insignificant.
personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion



public area	means, in relation to any premises or part or parts of premises, of Council, so much of those premises as are made generally or specially available to the public as of right, but does not include any such premises at any time when they are not so made available to the public (eg. access corridors to staff areas), and in any case does not include staff areas whether open office areas or private staff offices.
senior staff of Council	means the General Manager and the Directors
the Regulation	the Local Government (General) Regulation 2005

The term “you” used in the Model Code of Conduct refers to council officials. References to sections of the Act in this Code of Conduct are references to sections in the Local Government Act 1993.

The phrase “this code” used in the Model Code of Conduct refers also to the procedures for the administration of the Model Code of Conduct prescribed under the Local Government (General) Regulation 2005. (See Section 2 of this document)

Expressions used in this Code of Conduct that are defined in relevant legislation have the meanings set out in the legislation. A number of other expressions are defined here. Notes and case studies are provided to assist in understanding and applying this Code of Conduct. The notes and case studies do not, however, constitute part of the Code of Conduct.



PART 10 APPENDICES

PROCEDURE: INTERACTON BETWEEN COUNCIL OFFICIALS

PROCEDURE: GIFTS REGISTER

PROCEDURE; USE OF COUNCIL PROPERTY

POLICY: FRAUD AND CORRUPTION CONTROL

**Procedure: Interaction between Council Officials**

The following procedure applies to the interaction between Council Officials outside of meetings:

1. The General Manager is responsible to the Council for performance and direction of all staff and day to day management of Council. Therefore, all requests for information and approaches to staff outside the forum of a Council or Committee meeting, shall be directed to the General Manager, to a Director, or to a Manager.
2. Only Senior Staff or Managers may provide advice to councillors.
3. It is within the discretion of the General Manager, Director or Manager to require councillors to make an appointment, to put a request in writing, or to put it on notice to Council to obtain detailed or otherwise time-consuming information. The General Manager, Director or Manager must indicate in writing, the reasons for refusing a request.
4. For all but straightforward advice on administrative matters, councillors should put their requests for information or advice in writing to be answered by the General Manager, the appropriate Director or Manager.
5. A Director or Manager has the discretion to refer any request for information to the General Manager. The Director or Manager must indicate to the councillor that the councillor's request has been referred on.
6. If a councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the councillor is still dissatisfied they should request the information by way of a Question on Notice or Notice of Motion to the Council.
7. Councillors must not attempt to direct staff as to the performance of their work. Staff must report all such attempts immediately to their Director or the General Manager.
8. Councillors must not request staff to undertake work of a private nature for the councillor or any other person except where otherwise authorised or permitted by law.
9. Councillors must not enter staff-only areas of council buildings without either:
 - 9.1. The express authorisation of either the General Manager or Director; or
 - 9.2. By authority of a resolution of Council.



NOTE: A councillor is not, of course, prevented from bringing some matter to the attention of an appropriate staff member where the matter in question is of civic and public importance, and the purpose of bringing the matter to the notice of the staff member is to do no more than convey information (eg. as to the state or condition of a road or park), with no direction being given as to what action, if any, should be taken.

NOTE: A member of staff is not subject to direction by the council as to the content of any advice or recommendation made by the member, but the Council is not prevented from directing a member of staff to provide advice or a recommendation: see Section 352 of the Local Government Act 1993 (NSW).



Procedure: Gifts Register

1. Councillors and staff must declare, and have recorded in the **Gifts Register**, gifts and benefits of more than token value whether the gift or benefit is declined, accepted (and donated to the Mayor's Charity Fund) or returned. The Code of Conduct provides guidance as to what constitutes 'Token Gifts and Benefits' and 'Gifts and Benefits of Value'. (Part 5)
2. More than token value is defined as a gift or benefit exceeding \$20 (or such other amount that may be specified from time to time)
3. Recipients may retain token gifts or benefits (as listed in 5.3 of the Code of Conduct), or (if practical and appropriate) share the gift or benefit with others in council. Alternatively, the token gift or benefit may be relinquished and donated to the Mayor's Charity Fund.

While token gifts and benefits are not required to be entered into the Gifts Register, they should be disclosed to your Manager, Director, the General Manager or Mayor as appropriate.

Exception

If a member of staff, who does not exercise a regulatory function or is not involved in procurement or tendering activities, receives an invitation to attend a function that constitutes a token gift or benefit, as referred to in 5.3 of the Code of Conduct, and they wish to accept the invitation, they must:

- Complete a **Gifts and Benefits Declaration Form**; and then
- Obtain the approval of their Manager, or in the case of a Manager the approval of their Director, or in the case of a Director the approval of the General Manager **BEFORE accepting the invitation**.

The retention of any token gift or benefit must not give rise to the appearance that a person or body, through the provision of the token gift, benefit or hospitality is attempting to secure favourable treatment from council,

- 4 With regard to the offer of gifts and benefits of more than token value, a **Gifts and Benefits Declaration Form** must be completed and forwarded by a staff member to their Manager or Director, or in the case of a Councillor to the Mayor or General Manager.

Gifts and benefits of more than token value, which cannot be reasonably refused or returned, must be relinquished and will be donated to the Mayor's Charity Fund.



5. Staff members who exercise a **regulatory function** of council or who are involved in procurement and tendering activities are **prohibited** from accepting gifts, benefits or hospitality of any kind or value.

Staff members who exercise regulatory functions include, but are not necessarily limited to, regulatory services staff and development assessment staff.

Gifts or benefits of any value **offered** to these officers must be declared by way of completing and submitting a **Gifts and Benefits Declaration Form**. Gifts or benefits which cannot be reasonably refused or returned must immediately be relinquished to a supervisor, manager, the Director or the General Manager with a completed **Gifts and Benefits Declaration** form. These gifts or benefits will be donated to the Mayor's Charity Fund.

6. The relevant Manager, Director or General Manager is responsible for ensuring any receipt of a **Gifts & Benefits Declaration Form** is forwarded to Group Manager Governance.
7. The **Gifts Register** will be maintained by the Group Manager Governance and constitutes a public register.
8. The **Gifts & Benefits Declaration Form** and the **Gifts Register** will incorporate the following information in relation to the personal benefit:
 - 8.1. Date and time of receipt or provision of gift
 - 8.2. Date and time of entry into the register
 - 8.3. Provider or donator of the gift;
 - 8.4. If appropriate, the name of the business or organisation that the provider or donator represents;
 - 8.5. The receiver of the gift (if this is a team, area or division, identify the unit and the individual names of the recipients);
 - 8.6. A description of the gift;
 - 8.7. An estimated retail value
 - 8.8. Action taken and or decision made relating to the gift, for instance whether it was accepted, declined, returned, personally retained, relinquished, donated to charity and so on;
 - 8.9. The signature and date when signed by the staff member or councillor; and
 - 8.10. Signature and date when signed off by the staff member's Manager, or in the case of a Councillor, the Mayor or General Manager.
9. All declarations must be recorded in the **Gifts Register** as soon as practicable and no later than two weeks of offering, accepting or declining the gift or benefit.



10. Any gifts or benefits donated to the Mayor's Charity Fund must be formally received and acknowledged by the Mayor's office.
11. If a Councillor or staff member is uncertain about whether a gift, benefit or hospitality is a token gift or more than token value, they should discuss it with their Manager, the Mayor or General Manager.

Councillors and staff should err on the side of caution and... **if in doubt – declare it.**



Gifts & Benefits Declaration Form

For information on when and how to use this form refer to the Gifts Register procedure.

Dates and Times		Date	Time
Gift or benefit received or offered/provided:			
This form prepared:			
Gift or benefit provided by:			
Name:			
Organisation:			
Phone number (if available):			
Contact address (if available):			
Gift or benefit received by:			
(if applicable, list unit and all members of the unit receiving the gift or gifts)			
Details of Gift or Benefit			
Description:			
Estimated retail value			
Action taken with gift – Refused , Returned, Relinquished. Retained with approval			
Forwarded by Receiver of gift or benefit		Reviewed/Approved by Manager, Director, General Manager, or Mayor	
Signature:	Forward by email to verify identity	Signature:	Forward by email to verify identity
Name:		Name:	
Position:		Position:	
Date:		Date:	
Governance & Administration Processing:		Date	Time
Received by Governance Coordinator:			
Entered into Gifts Register:			
Gifts Register reference number:			
Gift donated to Mayor's Charity Fund received by Mayor's Office:	Signed:	Date:	

**Procedure: Use of Council Property**

1. Staff must not use Council resources for private purposes, however, they may make private use of:
 - 1.1. Fixed telephones and facsimile, provided the calls are local (such expression to include calls to adjoining STD areas), infrequent, short and do not unduly interfere with the business of Council.
 - 1.2. Mobile phones, provided that the actual cost of the private call is reimbursed to Council.
 - 1.3. Photocopiers, provided the use is infrequent and minimal.
 - 1.4. Computers, provided the use is infrequent and minimal, in accordance with Council's policy on computer usage, and does not interfere with the business of Council. No non-Council storage media (such as floppy disks, rewriteable CDs, and USB Flash Drives) are to be used in Council computers unless approved by the Manager Customer Services and Information Technology.
 - 1.5. Email and the Internet, provided the use is infrequent and minimal and does not interfere with the business of Council. Access to inappropriate Internet sites and the use of email to distribute or store offensive and inappropriate material will not be tolerated.
2. Council's resources and equipment must not be used in any circumstances by a member of staff in relation to a second job or business.
3. Council vehicles, pens, paper, clothing, material etc. are not to be used for private purposes unless lawfully authorised.
4. Council's 'Payment of Expenses and Provision of Facilities to Councillors Policy' sets out further information in relation to Councillors' rights and obligations relating to the provision of facilities for use in their role as a Councillor.
5. Approval to make use of the council logo or similar intellectual property of the Council is to be sought in the following manner:
 - 5.1. Any application for such use of the Council logo or other intellectual property must be made in writing and state the manner in which the logo or other intellectual property will be used and the purpose of such use.
 - 5.2. The Council may refuse to approve the use of its logo or intellectual property without giving reasons for its refusal except where the application is made by a Councillor for the purpose of advertising the Councillor's location and that the Councillor is a member of the Council.
 - 5.3. Any approval given by the Council to the use of the logo or other intellectual property may be on conditions which require that the



logo or other intellectual property are not so used as to give the appearance that a business, enterprise, club or any other activity is approved of or endorsed by the Council.


Policy: Fraud and Corruption Control
Title: Fraud and Corruption Control Policy

Category: Strategic Corporate

Key words: Fraud, fraud prevention, corruption, corrupt conduct, ethics, ethical conduct, personal benefit, council resources, reporting breaches.

File number: F-39-1

Policy owner: Director Corporate Services (Governance)

Authorisation: Council

Review date: As per Code of Conduct

Modification history: As per Code of Conduct

Related legislation: Local Government Act 1993 and Local Government (General) Regulations 2005

Independent Commission Against Corruption Act 1998

Public Interest Disclosures Act 1994

Privacy & Personal Information Protection Act 1998

Related policies: Code of Conduct
Complaints Management Policy
Risk Management Policy
Statement of Business Ethics
Tendering Policy

**References:**

NSW Department of Local Government Promoting Better Practice Review– Canterbury City Council September 2007

“Fraud Control: Developing an Effective Strategy” – The Audit Office of NSW

ICAC “Practical Guide to Corruption Prevention”

“Governance Health Check” issued jointly by the LGMA and the ICAC

AS8001:2003 Fraud and Corruption Control

AS/NZS 4360 Risk Management Standard and Risk Management Guidelines (HB436)

Related forms:

Gifts & Benefits Declaration form

Complaint Registration form

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1 Purpose

The aim of this policy is to demonstrate the City of Canterbury's commitment to the prevention, deterrence, detection and investigation of fraud and corrupt conduct. This policy establishes a framework in which fraud and corrupt conduct will not be tolerated by City of Canterbury and encourages the on-going development of staff through a culture that embraces the highest ethical standards.

1.1 Background

Fraud and corruption control is an essential element of our corporate governance. This policy is compliant with relevant legislation and provides guidance to Council officials and members of the public to ensure that Council is an ethical and honest workplace for the benefit of all stakeholders.

1.2 Rationale

This policy is designed to mitigate the City of Canterbury's exposure to fraud and corrupt conduct.

2 Objectives

This policy is designed to protect public funds and other assets, protect the integrity, security and reputation of the City of Canterbury, and assist in maintaining a high level of services to the community.

The objectives of this policy are to:

- Promote amongst Council officials and members of the public that fraudulent and corrupt acts against the City of Canterbury are unacceptable, may constitute a criminal offence and may result in prosecution or disciplinary action.
- Build a culture that supports Council officials and members of the public to report conduct they suspect may be fraudulent, corrupt or improper
- Reduce opportunities for fraudulent, corrupt or improper conduct
- Provide clear guidance to ensure that adequate investigation standards are followed
- Ensure that appropriate action is taken by the City of Canterbury if fraud, corruption or improper conduct is detected

3 Scope

This policy applies to all Council officials [Councillors, delegates and staff of the City of Canterbury] and any external entity providing goods or services to Council, and to any user of Council services or facilities.



4 Definitions

Fraud A deliberate act of deception, misrepresentation or omission committed with the intention of gaining an unjust advantage or to cause an unjust loss or disadvantage. This includes fraudulent or corrupt conduct by any person including theft of tangible or intangible assets.

Such behaviour includes, but is not limited to:-

- Breaches and attempted breaches of the law
- Unauthorised and/or illegal use of assets, information or services for private purposes
- Claiming unworked overtime on timesheets
- Allowing contractors to not fully meet contract requirements
- Misappropriation of tangible and intangible assets through:
 - Inappropriate reimbursement of expenses
 - Falsification of records for improper advantage
 - Payments to third parties not in accordance with our Purchasing policy
 - Theft, including theft or misuse of intellectual property
 - Inappropriate exertion of influence or coercion to act in a manner that is not in the City's best interest.

Corruption is defined in accordance with section 8 of the Independent Commission Against Corruption Act 1988 as:

- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Council official includes Councillors, members of staff of council and delegates of council.

Public Interest Disclosure is defined in accordance with the NSW Ombudsman as:

The Public Interest Disclosures Act provides protection for people who come forward with information about the following serious matters concerning the way agencies operate:

- corrupt conduct
- maladministration



- serious and substantial waste of public money
- government information contraventions
- local government pecuniary interest contraventions

5 Principles

The City of Canterbury expects Council officials to maintain a high standard of ethical conduct in all activities, in particular with respect to resources, information and authority. The community rightly expects the City of Canterbury to conduct its business in a fair and honest manner.

The City of Canterbury expects all Council officials to be familiar with and act in accordance with our Code of Conduct. Unacceptable behaviour and guidelines for appropriate behaviour for Council officials is contained in the Code of Conduct. We expect similar standards from the people, agencies or organisations that do business with us. These standards are detailed in our Statement of Business Ethics.

Council is committed to ensuring that its dealings with external parties are conducted in an ethical manner. Council has developed policies that it expects clients and stakeholders to adhere to, such as the Code of Conduct and Statement of Business ethics. Both documents are made available on our web site and the Statement of Business Ethics is included as part of all tender documentation.

We will ensure our community is aware that fraud and corruption committed against the Council is not acceptable by publishing appropriate information in our Annual Report.

6 Responsibilities

Council officials are responsible for reporting cases of suspected fraud or corrupt conduct.

Council officials also have a responsibility to act honestly and to follow diligently Council's policies and practices to prevent and mitigate fraud and corruption.

The General Manager is also responsible for the prevention, detection and reporting of fraud and corruption through the implementation of appropriate and effective internal control systems.

Directors, Managers, Coordinators and Team Leaders are also responsible for the prevention, detection and reporting of fraud and corrupt conduct by ensuring:



- there are mechanisms in place within their area of control to assess the risk of fraud and corrupt conduct,
- promotion of employee awareness and education on the prevention of fraud and corruption
- compliance with legislation and Council's policies and practices
- to report any fraudulent or corrupt matters to the General Manager.
- undertake risk and fraud detection through a Risk Management Program.

All Council officials must also report any identified weakness in internal controls that could potentially facilitate a fraudulent or corrupt act. These weaknesses should be reported to your Manager and/or the Group Manager Governance for determination and action as appropriate.

The Group Manager Governance will investigate and report incidents in accordance with our Code of Conduct.

7 Procedures

The following procedures will underpin our efforts in fraud and corruption prevention, detection and investigation.

7.1 Risk Assessment

Periodic and comprehensive fraud and corruption risk assessments will be conducted throughout the Council in accordance with the strategies outlined in our Risk Management Policy.

7.2 Awareness: Staff, Clients and Community

This policy will be communicated to all Council officials and members of the public and the highest possible level of awareness will be maintained. This policy will be promoted through:

- Staff training programs
- Internal communications
- Intranet; and
- Internet for the information of members of the public

7.3 Reporting

The General Manager encourages the reporting of any suspected fraud and corruption issues. To assist Council officials and members of the public, Council has mechanisms in place to provide guidance for reporting fraud and corruption. These reporting mechanisms are outlined below. If you would like assistance or further information, please discuss with your Manager or the Group Manager Governance.

Reporting by Council officials

Through our Code of Conduct we have developed an internal reporting structure that provides for Council officials to report any instances of corrupt



conduct or fraud. Council officials may also report any instances of fraud and corruption to their Manager or the Group Manager Governance.

External Reporting

The Code of Conduct also provides an alternative avenue for staff and Councillors to report fraud and corrupt conduct to external investigating authorities such as the Independent Commission Against Corruption, the NSW Ombudsman or the Division of Local Government.

Reporting by Members of the Public

We have also established a Complaints Management Policy that allows members of the public to report suspected fraud or corruption.

These policies are available on Council's intranet and web site.

7.4 Investigation

All instances of suspected fraud, corruption or improper conduct that is reported will be promptly and confidentially investigated by an appropriately skilled person to establish whether or not a basis exists for further action. Council has nominated the Group Manager Governance as the staff member responsible for progressing investigations. In the event that an issue relates to the Group Manager Governance, the investigation will be progressed by the Director Corporate Services. If necessary, the General Manager may determine that an investigation be carried out independent of Council and will arrange for an independent investigator to be appointed.

In conducting an investigation into allegations of corrupt conduct and/or fraud, we will follow the NSW Independent Commission Against Corruption (ICAC) "20 Step Guide to Conducting an Inquiry". The Guide recommends that an investigation comprise:

- Step 1: Maintaining confidentiality
- Step 2: Getting the big picture: An inquiry overview
- Step 3: Interviewing sources
- Step 4: Is the source making a protected disclosure?
- Step 5: Assessing the information
- Step 6: Setting up a file
- Step 7: Referrals
- Step 8: Defining your scope & purpose
- Step 9: Working out your powers
- Step 10: Being fair Part 1 — Listen to, and consider people's points of view
- Step 11: Thinking about 'affected persons'
- Step 12: Being fair Part 2 — No bias
- Step 13: Drafting a fact-finding plan
- Step 14: Fact-finding tools
- Step 15: Collecting documents



- Step 16: Collecting things
- Step 17: Interviewing people
- Step 18: Interviewing 'affected persons'
- Step 19: Fact-finding
- Step 20: Writing a report

Should possible corrupt conduct be uncovered, the matter will be immediately reported by the General Manager to the ICAC under Section 11 of the ICAC Act where it imposes a statutory obligation on the General Manager to report suspected corrupt conduct to the ICAC. The report by the General Manager to ICAC must be made as soon as there is reasonable suspicion that corrupt conduct may have occurred or may be occurring.

Should an investigation uncover possible criminal behaviour, the investigation will be terminated and the General Manager will report the matter immediately to Police.

7.5 Public Interest Disclosures Act 1994

Council is committed to the aims and objectives of the Public Interest Disclosures Act. Our Code of Conduct provides guidance on how to make a protected disclosure to Council's Public Interest Disclosures Coordinator. Council's Public Interest Disclosures Coordinator is the Group Manager Governance. Please refer to the policy on Public Interest Disclosures.

7.6 Disciplinary Action

Council will comply with the provisions of the Code of Conduct, relevant awards, conditions and legislation in dealing with confirmed fraudulent or corrupt acts.

7.7 Preventing Further Fraud or Corrupt Conduct

It is important that any acts of fraud or corruption are not repeated. Details of any fraudulent or corrupt acts will be provided to all Directors and Managers so they can review their operations for similar circumstances and risks. Staff from Governance will work with Managers to develop internal controls and procedures to reduce the risk of fraud or corruption re-occurring within their area.

The Group Manager Governance is empowered to initiate spot checks of processes and procedures applicable to any of Council's programs or operational functions for the purposes of ascertaining their efficiency/effectiveness and procedural integrity.

Council will document, where appropriate, proven cases of fraud or corruption and the disciplinary action taken against those involved for publication in Council's internal newsletter to discourage further instances of fraudulent and corrupt behaviour and to highlight Council's intent that fraud and corruption is not acceptable and will be dealt with appropriately.



PART 2

PROCEDURES FOR THE ADMINISTRATION OF THE CODE OF CONDUCT

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PART 1 INTRODUCTION

These procedures ("the Model Code Procedures") are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW ("the Model Code"). The Model Code and Model Code Procedures are made under sections 440 and 440AA respectively of the *Local Government Act 1993* ("the Act") and the *Local Government (General) Regulation 2005* ("the Regulation").

Sections 440 and 440AA of the Act require every council to adopt a code of conduct and procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted codes of conduct, councils may supplement the Model Code Procedures. However provisions of a council's adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

PART 2 DEFINITIONS

For the purposes of the procedures, the following definitions apply:

"the Act"	the <i>Local Government Act 1993</i>
Act of disorder	<p>clause 256 of the Local Government (General) Regulation 2005 specifies that a councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council:</p> <ul style="list-style-type: none"> (a) A contravenes the Act or any regulation in force under the Act, or (b) assaults or threatens to assault another councillor or person present at the meeting, or (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter, or (d) insults or makes personal reflections on or imputes improper motives to any other councillor, or (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.



“administrator”	an administrator of a council appointed under the Act other than an administrator appointed under section 66 of the Act
“code of conduct”	a code of conduct adopted under section 440 of the Act
“code of conduct complaint”	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct
“complainant”	a person who makes a code of conduct complaint
“complainant councillor”	a councillor who makes a code of conduct complaint
“complaints coordinator”	a person appointed by the general manager under these procedures as a complaints coordinator
conduct	any action or inaction relating to a matter of administration, and any alleged action or inaction relating to a matter of administration.
Panel of Conduct Reviewers	This is addressed in Part 3 of these Procedures
“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
“council committee”	a committee established by resolution of council
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
“councillor”	a person elected or appointed to civic office and includes a Mayor
“council official”	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
“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

“the Division”

the Division of Local Government, Department of Premier and Cabinet

“investigator”

a conduct reviewer or conduct review committee

maladministration

for the purposes of the Public interest disclosures Act 1994 (NSW), is conduct of a kind that involves action or inaction of a serious nature that is:

- a) contrary to law; or
- b) unreasonable, unjust, oppressive or improperly discriminatory; or
- c) based wholly or partly on improper motives.

NOTE: Conduct may still constitute ‘wrong conduct’ (see below) within the meaning of the Ombudsman Act 1974 (NSW) without necessarily amounting to maladministration within the meaning of the Public interest disclosures Act 1994 (NSW).

“the Regulation”

the *Local Government (General) Regulation 2005*

“subject person”

a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

waste

refers to serious and substantial waste of public money

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers. The City of Canterbury has entered into such an arrangement with other Councils through the Southern Sydney Regional Organisation of Councils.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.



- 3.5 To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:
- a) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations, or
 - ii) law, or
 - iii) public administration, or
 - iv) public sector ethics, or
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not be eligible to be a member of the panel of conduct reviewers if they are
- a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

[The appointment of complaints coordinators](#)

- 3.12 The general manager must appoint a member of staff of the council to act as a complaints coordinator. Where practicable, the complaints coordinator should be a senior and suitably qualified member of staff. The Group Manager Governance has been appointed as Council's Complaints Co-ordinator.
- 3.13 The general manager may appoint other members of staff to act as alternates to the complaints coordinator. The Governance Co-ordinator has been appointed as Council's alternate Complaints Co-ordinator.
- 3.14 The general manager must not undertake the role of complaints coordinator.
- 3.15 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.16 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct,
 - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
 - c) liaise with the Division of Local Government, and
 - d) arrange the annual reporting of code of conduct complaints statistics.

PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?[What is a "code of conduct complaint"?](#)

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.2 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a "code of conduct complaint" are to be dealt with under council's routine complaints management processes.

When must a code of conduct complaint be made?

- 4.3 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.4 A complaint made after 3 months may only be accepted if the general manager, or, in the case of a complaint about the general manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

How may a code of conduct complaint about a council official other than the general manager be made?

- 4.5 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.
- 4.6 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.7 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.9 Notwithstanding clauses 4.5 and 4.6, where the general manager becomes aware of a possible breach of the council's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the general manager be made?

- 4.10 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.11 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.



- 4.12 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.13 The Mayor or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.14 Notwithstanding clauses 4.10 and 4.11, where the Mayor becomes aware of a possible breach of the council's code of conduct by the general manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

PART 5 HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

- 5.1 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about members of staff of council and for determining the outcome of such complaints.
- 5.2 Where the general manager decides not to make enquiries into a code of conduct complaint about a member of staff, the general manager must give the complainant reasons in writing for their decision.
- 5.3 Without limiting clause 5.2, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are code of conduct complaints about delegates of council and council committee members to be dealt with?



- 5.6 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council and council committee members and for determining the outcome of such complaints.
- 5.7 Where the general manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of council and/or members of council committees depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure,
 - b) requiring the person to apologise to any person or organisation adversely affected by the breach,
 - c) prosecution for any breach of the law,
 - d) removing or restricting the person's delegation, or
 - e) removing the person from membership of the relevant council committee.
- 5.10 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.9, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of council's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
 - b) the person must be given an opportunity to respond to the allegation, and
 - c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.9.

[How are code of conduct complaints about conduct reviewers to be dealt with?](#)

- 5.11 The general manager must refer all code of conduct complaints about conduct reviewers to the Division for its consideration.
- 5.12 The general manager must notify the complainant of the referral of their complaint in writing.



5.13 The general manager must implement any recommendation made by the Division as a result of its consideration of a code of conduct complaint about a conduct reviewer.

[How are code of conduct complaints about administrators to be dealt with?](#)

5.14 The general manager must refer all code of conduct complaints about administrators to the Division for its consideration.

5.15 The general manager must notify the complainant of the referral of their complaint in writing.

[How are code of conduct complaints about councillors to be dealt with?](#)

5.16 The general manager must refer the following code of conduct complaints about councillors to the Division:

- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
- b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see section 328B of the Act),
- c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
- d) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

5.17 Where the general manager refers a complaint to the Division under clause 5.16, the general manager must notify the complainant of the referral in writing.

5.18 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.20.

5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.



5.20 The general manager must refer all code of conduct complaints about councillors other than those referred to the Division under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

5.21 The Mayor must refer the following code of conduct complaints about the general manager to the Division:

- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
- b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
- c) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.

5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Division under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.25.

5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

Referral of code of conduct complaints to external agencies

5.26 The general manager, Mayor or a conduct reviewer or conduct review committee may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the Division, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.

5.27 Where the general manager, Mayor, conduct reviewer or conduct review committee refers a complaint to an external agency or body under



clause 5.26, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

- 5.28 Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the council is subsequently advised otherwise by the referral agency or body.

Disclosure of the identity of complainants

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
 - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
 - d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - e) it is otherwise in the public interest to do so.
- 5.30 Clause 5.29 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.31 Where a councillor makes a code of conduct complaint about another councillor or the general manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.33 The general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.
- 5.34 Where a complainant councillor makes a request under clause 5.31, the general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

- 5.35 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.36 For a code of conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.
- 5.37 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.38 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.37, the general manager or the Mayor must refer the complaint to the Division for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

Special complaints management arrangements

- 5.39 The general manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.40 Where the Division receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
 - b) impeded or disrupted the effective administration by the council of its code of conduct, or
 - c) impeded or disrupted the effective functioning of the council.
- 5.41 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
 - b) the period that the arrangement will be in force.



- 5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.43 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.
- 5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.
- 5.45 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the general manager, review the arrangement to determine whether it should be renewed or amended.
- 5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.

PART 6 PRELIMINARY ASSESSMENT

Referral of code of conduct complaints to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the general manager or the Mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interests in relation to the matter referred to them, or



- b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
 - c) they or their employer has entered into one or more contracts with the council in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K, or
 - d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

Preliminary assessment by a conduct reviewer

- 6.9 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.10 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
- a) to take no action, or
 - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the Mayor, for resolution by alternative and appropriate strategies such as, but



not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or

- d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police, or
- e) to investigate the matter, or
- f) to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.

6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.

6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.

6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

6.14 The conduct reviewer must refer to the Division any complaints referred to him or her that should have been referred to the Division under clauses 5.16 and 5.21.

6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.

6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.

6.17 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:

- a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and



- b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
- c) that the matter is one that could not or should not be resolved by alternative means.

6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with the complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.

6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.

6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

Referral back to the general manager or Mayor for resolution

6.22 Where the conduct reviewer determines to refer a matter back to the general manager or to the Mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the Mayor, recommending the means by which the complaint may be resolved.

6.23 The conduct reviewer must consult with the general manager or Mayor prior to referring a matter back to them under clause 6.22.

6.24 The general manager or Mayor may decline to accept the conduct reviewer's recommendation. Where the general manager or Mayor declines to do so, the conduct reviewer may determine to deal with the complaint by other means under clause 6.10.

6.25 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager or, in the case of a complaint about the general manager, the Mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.

6.26 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager, or, in the case of a complaint about the general manager, the Mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

Complaints assessment criteria

6.27 In undertaking the preliminary assessment of a complaint, the conduct reviewer may have regard to the following considerations:

- a) whether the complaint is a “code of conduct complaint”,
- b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
- c) whether the complaint discloses prima facie evidence of a breach of the code,
- d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
- e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
- f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
- g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
- h) whether the conduct complained of forms part of a pattern of conduct,
- i) whether there were mitigating circumstances giving rise to the conduct complained of,
- j) the seriousness of the alleged conduct,
- k) the significance of the conduct or the impact of the conduct for the council,
- l) how much time has passed since the alleged conduct occurred, or
- m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES

7.1 Where a conduct reviewer recommends that the complaints coordinator convene a conduct review committee to investigate a matter, the conduct reviewer must notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.

7.2 The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:

- a) a panel of conduct reviewers established by the council, or
- b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.



- 7.3 In selecting suitable conduct reviewers for membership of a conduct review committee convened under clause 7.2, the complaints coordinator may have regard to the following:
- a) the qualifications and experience of members of the panel of conduct reviewers, and
 - b) any recommendation made by the conduct reviewer about the membership of the committee.
- 7.4 The conduct reviewer who made the preliminary assessment of the complaint must not be a member of a conduct review committee convened under clause 7.2.
- 7.5 A member of a panel of conduct reviewers may not be appointed to a conduct review committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the committee under clause 6.4.
- 7.6 Where the complaints coordinator convenes a conduct review committee, they will advise the complainant in writing that the committee has been convened and the membership of the committee.
- 7.7 Where, after a conduct review committee has been convened, a member of the committee becomes unavailable to participate in further consideration of the matter, the complaints coordinator may appoint another person from a panel of conduct reviewers to replace them.
- 7.8 Meetings of a conduct review committee may be conducted in person or by teleconference.
- 7.9 The members of the conduct review committee must elect a chairperson of the committee.
- 7.10 A quorum for a meeting of the conduct review committee is two members.
- 7.11 Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.
- 7.12 If a quorum is not present at a meeting of the conduct review committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the conduct review committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have a casting vote.



- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the conduct review committee in which it makes its determination in relation to the matter.
- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The conduct review committee may only conduct business in the absence of the public.
- 7.17 The conduct review committee must maintain proper records of its proceedings.
- 7.18 The complaints coordinator shall undertake the following functions in support of a conduct review committee:
- a) provide procedural advice where required,
 - b) ensure adequate resources are provided including secretarial support,
 - c) attend meetings of the conduct review committee in an advisory capacity, and
 - d) provide advice about council's processes where requested.
- 7.19 The complaints coordinator must not be present at, or in sight of a meeting of, the conduct review committee where it makes its final determination in relation to the matter.
- 7.20 The conduct review committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.

PART 8 INVESTIGATIONS

What matters may a conduct reviewer or conduct review committee investigate?

- 8.1 A conduct reviewer or conduct review committee (hereafter referred to as an "investigator") may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 8.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the Mayor.



- 8.3 The general manager or the Mayor is to deal with a matter reported to them by an investigator under clause 8.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

- 8.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
- a) disclose the substance of the allegations against the subject person, and
 - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and
 - d) invite the subject person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice, and
 - e) provide the subject person the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 8.5 The subject person may within 14 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the subject person to identify the substance of the allegation against them.
- 8.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the subject person in relation to the matter referred to them.
- 8.7 Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the investigator in the amended notice.
- 8.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the Mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
 - b) in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within 28 days or



such other reasonable period specified by the investigator in the notice.

Written and oral submissions

- 8.9 Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11 Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone.
- 8.12 Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 8.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.
- 8.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

- 8.15 Investigations are to be undertaken without undue delay.
- 8.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 8.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 8.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.



8.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

Referral or resolution of a matter after the commencement of an investigation

8.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:

- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
- b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
- c) refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police.

8.21 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.

8.22 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, the Mayor, discontinue their investigation of the matter.

8.23 Where the investigator discontinues their investigation of a matter under clause 8.22, this shall finalise the consideration of the matter under these procedures.

8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

- 8.25 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 8.26 The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.27 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.28 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 8.29 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. Where as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the subject person or an affected person, they must provide the subject person or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30 Where the subject person or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 8.31 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

Final investigation reports

- 8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.
- 8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.



8.34 The investigator's final report must:

- a) make findings of fact in relation to the matter investigated, and,
- b) make a determination that the conduct investigated either,
 - i. constitutes a breach of the code of conduct, or
 - ii. does not constitute a breach of the code of conduct, and
- c) provide reasons for the determination.

8.35 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that the subject person undertake any training or other education relevant to the conduct giving rise to the breach,
- c) that the subject person be counselled for their conduct,
- d) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation,
- e) that findings of inappropriate conduct be made public,
- f) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
- g) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
- h) in the case of a breach by a councillor, that the council resolves as follows:
 - i. that the councillor be formally censured for the breach under section 440G of the Act, and
 - ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.

8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that a person or persons undertake any training or other education.

8.37 In making a recommendation under clause 8.35, the investigator may have regard to the following:

- a) the seriousness of the breach,
- b) whether the breach can be easily remedied or rectified,
- c) whether the subject person has remedied or rectified their conduct,
- d) whether the subject person has expressed contrition,
- e) whether there were any mitigating circumstances,
- f) the age, physical or mental health or special infirmity of the subject person,
- g) whether the breach is technical or trivial only,
- h) any previous breaches,



- i) whether the breach forms part of a pattern of conduct,
- j) the degree of reckless intention or negligence of the subject person,
- k) the extent to which the breach has affected other parties or the council as a whole,
- l) the harm or potential harm to the reputation of the council or local government arising from the conduct,
- m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
- n) whether an educative approach would be more appropriate than a punitive one,
- o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
- p) what action or remedy would be in the public interest.

8.38 At a minimum, the investigator's final report must contain the following information:

- a) a description of the allegations against the subject person,
- b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated,
- c) a statement of reasons as to why the conduct reviewer considered that the matter warranted investigation,
- d) a statement of reasons as to why the conduct reviewer considered that the matter was one that could not or should not be resolved by alternative means,
- e) where the matter is investigated by a conduct review committee, a statement as to why the matter was one that warranted investigation by a conduct review committee instead of a sole conduct reviewer,
- f) a description of any attempts made to resolve the matter by use of alternative means,
- g) the steps taken to investigate the matter,
- h) the facts of the matter,
- i) the investigator's findings in relation to the facts of the matter and the reasons for those findings,
- j) the investigator's determination and the reasons for that determination,
- k) any recommendations.

8.39 The investigator must provide a copy of their report to the complaints coordinator, the subject person and the complainant.

8.40 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor and this will finalise consideration of the matter under these procedures.



- 8.41 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraph (a), the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.
- 8.42 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (b) or (c), the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.
- 8.43 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (d) to (h), the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

Consideration of the final investigation report by council

- 8.44 The role of the council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).
- 8.45 The council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.
- 8.46 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Model Code.



- 8.47 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator's recommendation/s.
- 8.48 Once the subject person has completed their oral submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 8.49 The council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 8.50 Prior to imposing a sanction, the council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
 - b) seek an opinion by the Division in relation to the report.
- 8.51 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Division.
- 8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council, the subject person and the complainant.
- 8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 8.55 The council is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56 A council may by resolution impose one or more of the following sanctions on a subject person:
- a) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution,
 - b) that findings of inappropriate conduct be made public,
 - c) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
 - d) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
 - e) in the case of a breach by a councillor:



- i. that the councillor be formally censured for the breach under section 440G of the Act, and
- ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.

8.57 The council is not obliged to adopt the investigator's recommendation/s. Where the council does not adopt the investigator's recommendation/s, the council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

8.58 The council may, by resolution, impose a sanction on the subject person under clause 8.56 different to the sanction recommended by the investigator in their final report.

8.59 Where the council resolves not to adopt the investigator's recommendation/s, the complaints coordinator must notify the Division of the council's decision and the reasons for it.

PART 9 RIGHTS OF REVIEW

Failure to comply with a requirement under these procedures

9.1 Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may, at any time prior to the council's consideration of an investigator's final report, raise their concerns in writing with the Division.

Practice rulings

9.2 Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Division to make a ruling on a question of procedure (a practice ruling).

9.3 Where the Division receives a request in writing for a practice ruling, the Division may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.

9.4 Where the Division makes a practice ruling, all parties are to comply with it.

9.5 The Division may decline to make a practice ruling. Where the Division declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

Requests for review

- 9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Division.
- 9.7 A review under clause 9.6 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
 - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
 - c) that the council has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 9.9 The Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The Division will undertake a review of the matter on the papers. However, the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Division.
- 9.12 Where a person requests a review under clause 9.6, the Division may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Division.
- 9.13 The Division must notify the person who requested the review and the complaints coordinator of the outcome of the Division's review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.
- 9.14 Where the Division considers that the investigator or the council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.



9.15 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:

- a) the complaints coordinator must provide a copy of the Division's determination in relation to the matter to the general manager or the Mayor, and
- b) the general manager or Mayor must review any action taken by them to implement the sanction, and
- c) the general manager or Mayor must consider the Division's recommendation in doing so.

9.16 In the case of a sanction imposed by the council by resolution under clause 8.56, where the Division recommends that the decision to impose a sanction be reviewed:

- a) the complaints coordinator must, where practicable, arrange for the Division's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and
- b) the council must:
 - i. review its decision to impose the sanction, and
 - ii. consider the Division's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

9.17 Where having reviewed its previous decision in relation to a matter under clause 9.16 the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

PART 10 PROCEDURAL IRREGULARITIES

10.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct except as may be otherwise specifically provided under the code of conduct.

10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:

- a) the non-compliance is isolated and/or minor in nature, or
- b) reasonable steps are taken to correct the non-compliance, or
- c) reasonable steps are taken to address the consequences of the non-compliance.

PART 11 PRACTICE DIRECTIONS



- 11.1 The Division may at any time issue a practice direction in relation to the application of these procedures.
- 11.2 The Division will issue practice directions in writing, by circular to all councils.
- 11.3 All persons performing a function prescribed under these procedures must consider the Division's practice directions when performing the function.

PART 12 REPORTING ON COMPLAINTS STATISTICS

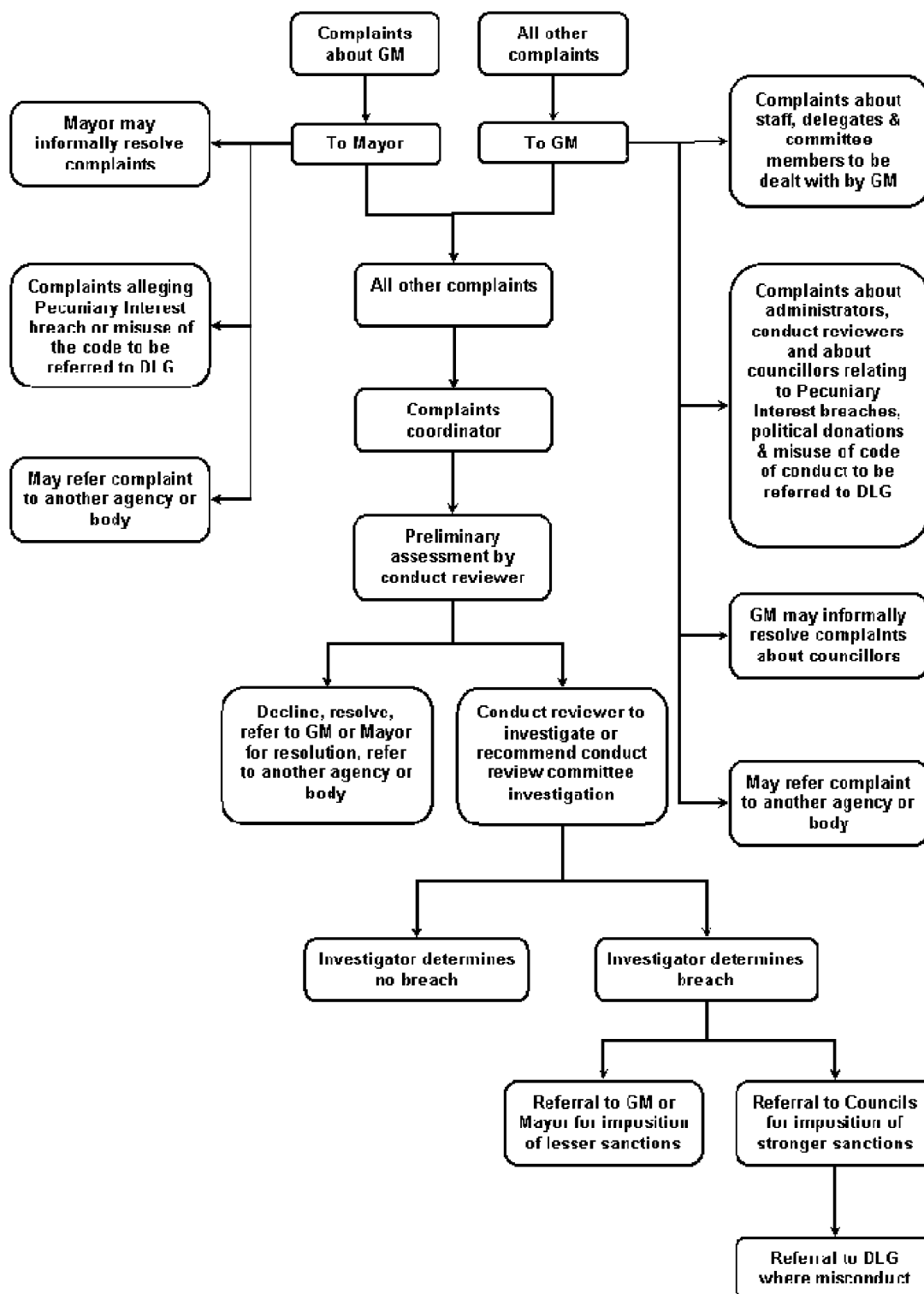
- 12.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September,
 - b) the number of code of conduct complaints referred to a conduct reviewer,
 - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
 - d) the number of code of conduct complaints investigated by a conduct reviewer,
 - e) the number of code of conduct complaints investigated by a conduct review committee,
 - f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
 - g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews, and
 - h) The total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.
- 12.2 The council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

PART 13 CONFIDENTIALITY

- 13.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.



Model Code Procedure Flowchart





City of Canterbury
City of Cultural Diversity

Code of Meeting Practice

canterbury.nsw.gov.au

Adopted:	26 May 1994	
Amended:	18 August 1994	Inclusion of Local Government Legislation (Miscellaneous Amendments) Act 1994 No 44.
Adopted:	3 August 1995	
Amended:	28 August 1995	Amendment to the policy provisions of Clause 24 relating to "disorder".
Amended:	20 October 1997	Inclusion of Local Government (Meetings) Amendment Regulation 1996 - Gazette No. 143.
Amended:	20 December 1997	To reflect Council's resolution (Min. No. 545) dealing with Standing Committee structure and delegated authority to Standing Committees.
Amended:	14 May 1998	Amendments arising from the proclamation of the Local Government Amendment (Open Meetings) Act 1997 and policy issues adopted at previous Council meetings.
Amended:	11 June 1998	To reflect Council's resolution (Min. No. 341) regarding the recording of Councillor's absences during meetings of Council or its Standing Committees.
Amended:	28 January 1999	Amendments arising from changes to the Local Government Act 1993 and resolutions of Council (Minute No's. 34 and 60) dealing with curfew provisions, public addresses, order of business for Standing Committees and questions to Councillors and Council employees.
Amended:	29 April 1999	To reflect Council's resolution (Min No. 211) dealing with rescission motions and notices of motion.
Adopted:	9 December 2004	Amendments incorporating changes to the Local Government Act 1993 and the Local Government (Meetings) Regulation 1999. Addition of Council's Charter, role of the Mayor, Deputy Mayor and Councillors, voting of funds by Councillors, mediation meetings/on-site inspections, public addresses, constitution and delegations of Committees.
Amended:	1 November 2005	Amendments incorporating the changes arising from the replacement of the Local Government (Meetings) Regulation 1999 by the Local Government (General) Regulation 2005.
Amended	26 November 2009	Amendments incorporating the Division of Local Government's Meeting Practice note 16.
Amended	26 June 2014	Amendments Incorporating the Guidelines on the Closure of Council and Committee Meetings April 2013 and other matters.
Amended	28 August 2014	Amended in response to resolution of Council 24 July 2014
Amended	23 October 2014	Amendments to 5.3 Amendments to Motions.

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PRELIMINARY INFORMATION

1. Objectives

To establish a Code of Meeting Practice that:

- (1) Sets standards for the calling, conduct and recording of Council and Committee meetings in such a way that the public is aware of business to be conducted and also Councillor deliberations.
- (2) Provides clear rules and guidelines for the orderly conduct of Council and Committee meetings.
- (3) Incorporates procedures to complement the Local Government (General) Regulation 2005 Part 10 - Meetings.
- (4) Provides guidelines to ensure that decisions made at Council and Committee meetings have legal effect and are within the scope of their powers.
- (5) Ensures maximum openness of all Council and Committee meetings.
- (6) Ensures that all Councillors fully understand their rights and obligations as participants in meetings of Council.
- (7) Ensures that proceedings are transparent and understandable to all persons attending meetings of Council and Committees.

2. Citation, Definitions, Guide to References

Citation

This Code may be cited as the Canterbury City Council Code of Meeting Practice.

Definitions

In this Code:

- **amendment**, in relation to an original motion, means a motion moving an amendment to that motion;
- **chairperson**,
 - (a) in relation to a meeting of the Council - means the person presiding at the meeting as provided in Section 369 of the Act.
 - (b) in relation to a meeting of a committee - means the person presiding at the meeting as provided by clause 267 of the Regulation.
- **committee** means a committee appointed or elected by the Council in accordance with clause 260(1) or the council when it has resolved itself into a committee of the whole;

- **record** means a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microfilm, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is or has been made or received in the course of official duties by a councillor or any employee of the Council and, in particular, includes the minutes of meetings of the council or of a committee of the Council;
- **relative**, in relation to a person, means any of the following:
 - (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse;
 - (b) the spouse or the de facto partner of the person or of a person referred to in paragraph (a).
- **the Act** means the Local Government Act 1993;
- **the Code** means the Canterbury City Council Code of Meeting Practice;
- **the Regulation** means the Local Government (General) Regulation 2005.

Except as otherwise provided, expressions used in this Code which are defined in the dictionary at the end of the Act have the meanings set out in the dictionary.

- **Act and Regulation**

- (a) This Code is made pursuant to section 360(2) of the Act.
- (b) It incorporates relevant provisions of the Regulation and the Act.
- (c) In the event of any inconsistency between the Code and the Act or the Regulation, the Act or the Regulation (as the case may be) prevails to the extent of the inconsistency.

Guide to References in this Code

This Code has been prepared in accordance with the provisions of the Local Government Act 1993 and the Local Government (General) Regulation 2005. The Division of Local Government's Meeting Practice Note 16 and the Closure of Council Meetings to the Public Guideline have also been taken into account in preparing the Code.

The section and clauses referred to in brackets under each heading of the Code refer to sections of the Act and clauses of the Regulation. "Supp Prov" refers to supplementary information obtained from the Meetings Practice Note and from previous Codes. Notes in the text of this code are provided to assist in understanding the Code. "Policy" refers to policy adopted by Council to embellish the provisions of the Act and Regulations.

PART 1 – BEFORE THE MEETING

1.1 Holding Meetings

1.1.1 When are Ordinary Council Meetings Held

(LGA Sec 365)

The council is required to meet at least 10 times each year, each time in a different month.

POLICY

1. Prior to the end of each calendar year, the General Manager shall submit a draft schedule of meeting dates to Council for the ensuing year and Council shall adopt a schedule of meeting dates in compliance with Section 365 of the Act.
2. No circumstances shall prevent Council from altering the schedule of meeting dates provided the public is given adequate notice.
3. Where four or more Councillors indicate their intention to attend any seminar or the like which would clash with a Council meeting, the date of that meeting shall be altered to ensure the availability of the maximum number of Councillors possible.

1.1.2 When is an Extraordinary Meeting Held

(LGA Sec 366)

If the mayor receives a request in writing signed by at least 2 councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable but in any event within 14 days after receipt of the request.

POLICY

The Mayor and the General Manager conjointly may call an extraordinary meeting of Council where, in their opinion, such a meeting is deemed expedient for the conduct of Council business.

1.1.3 Where are Council Meetings Held

(Supp Prov)

Meetings of Council and Standing Committees will be held in the Council Chamber, 2nd Floor, Administration Centre, 137 Beamish Street, Campsie. Should the Council Chamber not be available for any reason, the Mayor and General Manager will select a suitable alternative venue for meetings.

1.1.4 Who is entitled to attend meetings

(LGA Sec 10)

- (1) Except as provided by this part:
 - (a) everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, and
 - (b) a council must ensure that all meetings of the council and of such committees are open to the public

- (2) However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting:
 - (a) by a resolution of the meeting, or
 - (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.
- (3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.

POLICY

1. The person presiding at a Council or Council Committee meeting has the powers of expulsion referred to in Section 10(2). (By Minute number 269 of 18 August 1994.)
2. Members of the public may be permitted to address meetings of Council or Standing Committees on items before the meeting, in accordance with our policy on public addresses (refer Appendix "E").

NOTES

The reference in clause 10(3) to the Regulation is a reference to clauses 256-258 inclusive of the Regulation.

1.1.5 Gatherings of Councillors and Staff**(Supp Prov)**

Where the Mayor or the General Manager organise or convene workshops, discussion groups or other gatherings including one or more councillors together with staff for the purposes of discussion and the exchange of information concerning operational issues, these gatherings are not considered to be meetings for the purposes of this Code.

1.2 Notice of Meetings**1.2.1 What Notice has to be given to the Public of Ordinary Council and Standing Committees****(LGA Sec 9)**

- (1) A council must give notice to the public of the times and places of its meetings and meetings of those of its committees of which all the members are councillors.
- (2) A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the agenda and the associated business papers (such as correspondence and reports) for the meeting.
- (2A) In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public:
 - (a) the agenda for the meeting must indicate that the relevant item of business is of such a nature (but not give details of that item), and
 - (b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.
- (3) The copies are to be available to the public as nearly as possible to the time they are available to councillors.

- (4) The copies are to be available free of charge.
- 5) A notice given under this section or a copy of an agenda or of a business paper made available under this section may in addition be given or made available in electronic form.

(Reg 232)

- (1) This clause prescribes the manner in which the requirements outlined in section 9 (1) of the Act are to be complied with.
- (2) A notice of a meeting of a council or of a committee must be published in a newspaper circulating in the area before the meeting takes place.
- (3) The notice must specify the time and place of the meeting.
- (4) Notice of more than one meeting may be given in the same notice.
- (5) This clause does not apply to an extraordinary meeting of a council or committee.

POLICY

- 1. During December each year, the full schedule of council and standing committee meetings proposed for the following year is advertised in the local press.
- 2. Agendas for Ordinary meetings will be available at our Customer Service Centre and on our website from midday on the Monday prior to the meeting and at our libraries on the Tuesday prior to the meeting. Copies of the agendas will also be placed on the seats in the public gallery prior to the meeting.
- 3. Agendas for extraordinary meetings will be made available as soon as is possible, and no later than 9.00 am on the day of the meeting.

1.2.2 What Notice has to be given to councillors of ordinary council and standing committees**(LGA Sec 367)**

- (1) The general manager of a council must send to each councillor, at least 3 days before each meeting of the council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.
- (2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency.
- (3) A notice under this section and the agenda for, and the business papers relating to, the meeting may be given to a councillor in electronic form but only if all councillors have facilities to access the notice, agenda and business papers in that form.

(Reg 262)

- (1) The general manager of a council must send to each councillor, at least 3 days before each meeting of the committee, a notice specifying:
 - (a) the time and place at which and the date on which the meeting is to be held; and
 - (b) the business proposed to be transacted at the meeting.
- (2) However, notice of less than 3 days may be given of a committee meeting called in an emergency.

(Supp Prov)

The day of issue and the day of the meeting are not to be counted as days of notice (Sec 36 Interpretations Act 1987)

POLICY

1. Business papers for Council and Standing Committees meetings shall be distributed to Councillors on the Friday prior to the meeting day, whilst ever meetings are held on Thursday evenings.
2. Circumstances may necessitate the distribution of reports following the time specified in point 1 above. Such late reports, where possible will be delivered to Councillors prior to the commencement of the meeting.
3. Committee meetings will take place in the following sequence:
 - City Services Committee
 - City Development Committee
4. The City Services Committee meeting shall commence at 7.30 p.m. The commencement times of the City Development Committee shall follow sequentially.
5. Reports determined by the General Manager to be confidential in nature (refer Section 10A (2) of the Act) will be included on a confidential business paper and these reports shall be printed on coloured paper for identification purposes.

1.2.3 What notice has to be given of extraordinary meetings**(Supp Prov)**

Public notice must be given of the time and place of extraordinary meetings, but this does not have to be by publication in a local newspaper. Where it is not possible to publish details of the meeting in a local newspaper, notice of the meeting will be given on Council's website.

1.2.4 Minister to convene meetings in certain cases**(Reg 234)**

- (1) Whenever an area is constituted or reconstituted, the Minister is required:
 - (a) to convene the first meeting of the council of the area; and
 - (b) to nominate the business to be transacted at the meeting; and
 - (c) to give the councillors notice of the meeting.
- (2) If there is no quorum at that meeting, the Minister may convene meetings in the same manner until a quorum is present.
- (3) The council must transact the business nominated by the Minister for a meeting convened under this clause.

1.3 Times of Meetings**(Supp Prov)**

Council meetings and City Services Committee meetings will commence at 7.30pm unless there are special circumstances that restrict the meeting starting at that time. Meetings of the City Development Committee will commence at the conclusion of the City Services Committee meeting.

1.4 Agendas and Business Papers

(Reg 240)

- (1) The general manager must ensure that the business paper for a meeting of the council states:
 - (a) all matters to be dealt with arising out of the proceedings of former meetings of the council; and
 - (b) if the mayor is the chairperson - any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting; and
 - (c) subject to sub-clause (2), any business of which due notice has been given.
- (2) The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is (or the implementation of the business would be) unlawful. The general manager must report (without giving details of the item of business) any such exclusion to the next meeting of the council.
- (3) The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.
- (4) The general manager must ensure that the details of any item of business to which section 9 (2A) of the Act applies are included in a business paper for the meeting concerned.
- (5) Nothing in this clause limits the powers of the chairperson under Clause 243.

1.5 Order of Business

(Reg 239)

- (1) At a meeting of a council (other than an extraordinary meeting), the general order of business is (except as provided by this Regulation) as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix the general order of business) as fixed by resolution of the council.
- (2) The order of business fixed under sub-clause (1) may be altered if a motion to that effect is passed. Such a motion can be moved without notice.
- (3) Despite clause 250, only the mover of a motion referred to in sub-clause (2) may speak to the motion before it is put.

POLICY

1. The order of business for Council meetings shall be:
 - 1.1 Opening prayer and National Anthem
 - 1.2 Confirmation of minutes
 - 1.3 Receipt of apologies
 - 1.4 Mayoral minutes
 - 1.5 Public Addresses
 - 1.6 Petitions
 - 1.7 Matters referred from Committees
 - 1.8 Report of the Traffic Committee

- 1.9 Officers' Reports
- 1.10 Motions of which due notice has been given
- 1.11 Questions/Business without notice
- 1.12 Closed Council
2. The order of business for Standing Committees shall be:
 - 2.1 Confirmation of minutes
 - 2.2 Receipt of apologies
 - 2.3 Public addresses
 - 2.4 Officers' reports
3. Council may after confirmation of the Minutes of the previous meeting make a variation of the order of the business to bring forward in the proceedings any matter on the business paper for consideration. Such action may be achieved by a resolution to "suspend standing orders".
4. Only the mover of a motion to suspend "standing orders" may speak to such a motion. Further, there shall be no debate on the motion.
5. Standing orders may be suspended to: bring forward an item which is of particular interest to the public in attendance; or to hear a person/s previously granted special permission to address Council on a matter of business; and where an item within the business paper needs to be considered in conjunction with another item under a separate heading or any other circumstance allowed by the Chairperson.
6. A curfew of 11.00 p.m. will apply to all Council and Committee meetings. Business not concluded by this time will be (if no other resolution is passed dealing with disposing of the unfinished business) included on the next Ordinary Council, or if appropriate Standing Committee, business paper.

1.6 Public Access to Agendas, Business Papers and Minutes of Council and Committee Meetings

(Supp Prov)

The Government Information (Public Access) Act 2009 provides members of the public a right to access certain documents held by Council. These documents include:

- Code of Meeting Practice
- Agendas and business papers for Council and Committee meetings (except for business papers for closed meetings)
- Minutes of Council and Committee meetings
- Any other form of Open Access Information as that term is defined in Schedule 1 of the Government Information (Public Access) Regulation 2009.

PART 2 – AT THE MEETING: GENERAL

2.1 Coming Together

2.1.1 Presence at Meetings

(Reg 235)

A councillor cannot participate in a meeting of a council unless personally present at the meeting.

(LGA Sec 376)

- (1) The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all the members are councillors.
- (2) The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.
- (3) However, the general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

POLICY

1. A Councillor shall only be present at a Council or Committee meeting whilst in the Council Chamber. [see Note 2 below]
2. If a Councillor is absent from the Chamber his/her vote will not be counted or recorded in the minutes for a division as if it had been cast in the negative. However, it will be so counted where the Councillor remains within the Chamber, albeit not at their normal seating position.
3. In relation to LGA 376 (3) above, other employees of Council shall also be excluded from the meeting in such circumstances.
4. The presence of Officers at Council meetings shall be at the direction of the General Manager and as required under the terms of employment contracts.

NOTES

1. On occasions, Managers or staff with specialist knowledge of a particular matter may be required to attend Council or Committee meetings. Such attendance shall be at the discretion of the General Manager.
2. The area known as the Council Chamber includes the public gallery seating area. A Councillor, Officer, or member of the press or public have not left the Council Chamber until they have passed through either of the two doors leading to it.

2.1.2 Who presides at meetings of the council

(LGA Sec 369)

- (1) The mayor, or at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

- (2) If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

POLICY

1. An election to be conducted in accordance with sub-clause 2 of the Act shall be conducted by the General Manager or his nominee by a show of hands.
2. The role of the Chairperson is outlined in Appendix "A".

2.1.3 Councillor to be elected to preside at certain meetings

(Reg 236)

- (1) If no chairperson is present at a meeting of a council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.

Note: Section 369 (2) of the Act provides for a councillor to be elected to chair a meeting of a council when the mayor and deputy mayor are absent.

- (2) The election must be conducted:
- (a) by the general manager or, in his or her absence, an employee of the council designated by the general manager to conduct the election; or
 - (b) if neither of them is present at the meeting or there is no general manager or designated employee - by the person who called the meeting or a person acting on his or her behalf.
- (3) If, at an election of a chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- (4) For the purposes of sub-clause (3), the person conducting the election must:
- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips; and
 - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- (5) The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

POLICY

1. The provisions of clause 236 shall also apply to Committee meetings.
2. An election to be conducted in accordance with sub-clause 2 shall be conducted by the General Manager or his nominee by a show of hands.

NOTES

The provisions related to the election of a person to preside do not apply where a previously elected or appointed Deputy Chairperson is present.

2.1.4 Chairperson to have precedence**(Reg 237)**

When the chairperson rises during a meeting of a council:

- (a) any councillor then speaking or seeking to speak must, if standing, immediately resume his or her seat; and
- (b) every councillor present must be silent to enable the chairperson to be heard without interruption.

POLICY

1. The Mayor as Chairperson or a Councillor elected as Chairperson shall be empowered with the conduct of the Council or Committee meeting subject to the provisions of the Local Government Act 1993, the Local Government (General) Regulation 2005 and Council's adopted Code of Meeting Practice.
2. A Chairperson shall be heard without interruption and everyone should maintain silence whilst the Chairperson is speaking.
3. A Councillor shall address all remarks or questions, either through or to the Chairperson.
4. A Councillor or Officer of Council when in a Council meeting shall address and speak of other Councillors or Officers by their official designation eg. Mayor, Chairperson, Councillor, Director etc.
5. Once the debate is closed, the Mayor or Councillor in his or her capacity as Chairperson shall not further debate the matter.
6. Should the Chairperson wish to vacate the Chair to debate a motion, he/she should do so immediately after the motion has been moved and seconded. In order to maintain the neutrality of the Chair, the Chairperson should not resume the Chair until the motion has been voted upon.

2.1.5 Seating Arrangements**(Supp Prov)**

The seating arrangements for Councillors at meetings of the Council or Standing Committees shall be determined by the Mayor.

2.2 Business at Council Meetings**2.2.1 Giving notice of business****(Reg 241)**

- (1) A council must not transact business at a meeting of the council:
 - (a) unless a councillor has given notice of the business in writing within such time before the meeting as is fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that time) as is fixed by resolution of the council; and
 - (b) unless notice of the business has been sent to the councillors in accordance with section 367 of the Act.
- (2) Sub-clause (1) does not apply to the consideration of business at a meeting if the business:
 - (a) is already before, or directly relates to a matter that is already before, the council; or
 - (b) is the election of a chairperson to preside at the meeting as provided by clause 236 (1); or
 - (c) is a matter or topic put to the meeting by the chairperson in accordance with clause 243; or
 - (d) is a motion for the adoption of recommendations of a committee of the council.

Code of Meeting Practice

- (3) Despite sub-clause (1), business may be transacted at a meeting of a council even though due notice of the business has not been given to the councillors. However, this can happen only if:
- (a) a motion is passed to have the business transacted at the meeting; and
 - (b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.
- Such a motion can be moved without notice.
- (4) Despite clause 250, only the mover of a motion referred to in sub-clause (3) can speak to the motion before it is put.

POLICY

1. A Councillor may place a motion before Council provided the conditions of Clause 241 have been met.
2. Notices of Motion received by 12 noon on the Wednesday in the week immediately prior to the Council meeting week shall be included on the business paper by the General Manager, if the General Manager considers that the content of the motion meets the requirements of Clause 240 (2) of the Local Government (General) Regulation 2005:

240 Agenda and business papers for council meetings

(2) The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is (or the implementation of the business would be) unlawful. The general manager must report (without giving details of the item of business) any such exclusion to the next meeting of the council.
3. There is no limitation on the number of notices that a Councillor may give to the general manager of business that the Councillor wishes to have included in the agenda for a Council meeting. However, before giving such notice to the general manager Councillors should consider whether the business they seek to put before the meeting could be more effectively or efficiently dealt with by the lodgement of a "Councillor Request for Action" form. Councillors should also note that the general manager must not include in the agenda for a meeting of the Council any business if in the general manager's opinion that business is (or the implementation of the business would be) unlawful. Examples of business that is unlawful include:
 - Business that would contravene any Act or any Regulation that is in force;
 - Business that has an unlawful purpose
 - Business that deals with a matter that is outside the jurisdiction of the Council;
 - Business that includes insults or makes personal reflections on or imputes improper motives to any other Councillor
 - Business that contains information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion unless it is information that is strictly necessary to render the business intelligible and can be authenticated
 - Business disclosing confidential matters that have been previously, or are yet to be, discussed in a closed meeting of the Council, as listed in section 10A(2) of the Local Government Act 1993;
 - Business that would have the effect of exposing a Councillor, the Council, or a member of staff to an action for defamation.
4. A Notice of Motion (except a Notice of Motion to rescind a resolution of Council – refer to s372 of the Act) is only required to be signed by the proposer; the formal moving and seconding shall take place at the meeting.
5. The wording of the motion shall be precise and clear and shall be reprinted on the business paper without alteration.
6. The Chairperson may call over the Notices of Motion on the business paper, in order in which they appear thereon; and if there is no objection to a motion being taken as a formal motion, it may, without discussion be put to the vote. In this case, the Motion shall still be moved and seconded.
7. All Notices of Motion shall be dated and numbered as received and shall be entered by the General Manager upon the business paper in the order in which they are received.
8. In relation to Regulation 241, sub-clause 3, if a Councillor wishes to raise a motion without notice, the basis of the motion shall be put to the Mayor who will first rule whether the motion is one of urgency, and therefore if it is competent for Council to consider it.

NOTES

In order to meet the intent of providing all Councillors and the public with proper notice of business to be conducted, late reports will not be considered except in accordance with the provisions of sub-clause 3.

2.2.2 Agenda for extraordinary meeting**(Reg 242)**

- (1) The general manager must ensure that the agenda for an extraordinary meeting of a council deals only with the matters stated in the notice of the meeting.
- (2) Despite sub-clause (1), business may be transacted at an extraordinary meeting of a council even though due notice of the business has not been given to the councillors. However, this can happen only if:
 - (a) a motion is passed to have the business transacted at the meeting; and
 - (b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.

Such a motion can be moved without notice but only after the business notified in the agenda for the meeting has been disposed of.
- (3) Despite clause 250, only the mover of a motion referred to in sub-clause (2) can speak to the motion before it is put.

NOTES

Refer to sections 366 and 367 of the Act for details relating to the calling of extraordinary meetings.

2.2.3 Questions may be put to councillors and council employees**(Reg 249)**

- (1) A councillor:
 - (a) may, through the chairperson, put a question to another councillor; and
 - (b) may, through the general manager, put a question to a council employee.
- (2) However, a councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.
- (3) The councillor must put every such question directly, succinctly and without argument.
- (4) The chairperson must not permit discussion on any reply or refusal to reply to a question put to a councillor or council employee under this clause.

POLICY

1. Questions Without Notice raised at a Council meeting, shall be in accordance with Subclause 1 above.
2. Questions will be in a written format when asked, then delivered to the General Manager for inclusion in the Minutes
3. Questions put to any Council employee during a Council meeting shall only relate to the business before Council or a particular matter under discussion.
4. If a question is put without notice, it can be ruled out of order if it does not relate to, or arise naturally out of, subjects before Council.
5. A Councillor who gives due notice of a question has no right to demand that it shall be replied to.
6. Responses to questions from Councillors shall be recorded in the Minutes either verbatim or in précis form.
7. Only three 'questions without notice' may be put by a Councillor (to another Councillor or Officer) during the 'Questions/Business without notice' section of the meeting agenda. Time and other unfinished business permitting, the Chairperson may allow additional questions without notice (from a particular Councillor who has already asked three questions) if the Chairperson considers it appropriate. A Councillor who is not granted leave by the Chairperson to raise further questions without notice can submit them as questions on notice for inclusion in the business paper of the next scheduled meeting.

8. Questions and motions which are of a personal nature or have nothing to do with Council business shall not be raised or debated.

2.2.4 Limitation as to number of speeches

(Reg 250)

- (1) A councillor who, during a debate at a meeting of a council, moves an original motion has the right of general reply to all observations that are made by another councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment.
- (2) A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- (3) A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time. However, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment and for longer than 5 minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- (4) Despite sub-clauses (1) and (2), a councillor may move that a motion or an amendment be now put:
 - (a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it; or
 - (b) if at least 2 councillors have spoken in favour of the motion or amendment and at least 2 councillors have spoken against it.
- (5) The chairperson must immediately put to the vote, without debate, a motion moved under sub-clause (4). A seconder is not required for such a motion.
- (6) If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under sub-clause (1).
- (7) If a motion that the original motion or an amendment be now put is rejected, the Chairperson must allow the debate on the original motion or the amendment to be resumed.

POLICY

1. The provisions of Clause 250 shall apply to Committee meetings.
2. In relation to sub-clause (3) of this section of the Regulation, a Councillor may be granted with the leave of the meeting, an extension of two minutes in which to complete his/her speech. Further extensions will be of two minutes at a time and granted upon resolution of Council.
3. In relation to sub-clauses (4) and (5) of the Regulation, the Chairperson shall ensure that at least two Councillors have spoken "for" and that two Councillors have spoken "against" the motion or amendment, unless the mover has spoken and there is no indication that there is a speaker against it before the matter may be put.
4. Debate shall not be permitted on any motion to which no objection has been raised.

2.2.5 Committee of the whole

(Reg 259)

- (1) All the provisions of this Regulation relating to meetings of a council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provision limiting the number and duration of speeches.
- (2) The general manager or, in the absence of the general manager, an employee of the council designated by the general manager is responsible for reporting to the council proceedings in committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.
- (3) The council must ensure that a report of the proceedings (including any recommendations of the Committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.

POLICY

That the provisions of the Act, Regulations and Code of Meeting Practice apply to the Committee of the Whole, unless the Committee resolves on any occasion not to restrict the number or duration of speeches in that Committee.

(Supp Prov)

If at the time Council resolves itself into committee of the whole the meeting was open to the public, then the meeting will remain open to the public unless council resolves to exclude the public in accordance with section 10A of the Act.

2.2.6 Report of a Departmental representative to be tabled at council meeting

(Reg 244)

When a report of a Departmental representative has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report:

- (a) is laid on the table at that meeting; and
- (b) is subsequently available for the information of councillors and members of the public at all reasonable times.

2.3 Mayoral Minutes

(Reg 243)

- (1) If the mayor is the chairperson at a meeting of a council, the chairperson is, by minute signed by the chairperson, entitled to put to the meeting without notice any matter or topic that is within the jurisdiction of the council or of which the council has official knowledge.
- (2) Such a minute, when put to the meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of the minute without the motion being seconded.
- (3) A recommendation made in a minute of the chairperson (being the mayor) or in a report made by a council employee is, so far as adopted by the council, a resolution of the council.

POLICY

1. A "Mayoral Minute" prepared in accordance with this regulation may be by formal notice contained in the business paper or tabled at the meeting.
2. Although a seconder is not required if the Mayor is the mover, the normal rules of debate shall apply to ensure the motion is adequately discussed prior to being put to the meeting for a vote.

2.4 Voting at Meetings

2.4.1 Voting entitlements of councillors

(LGA Sec 370)

- (1) Each councillor is entitled to one vote.
- (2) However, the person presiding at a meeting of the council has in the event of an equality of votes, a second or casting vote.

(Supp Prov)

Each councillor is entitled to one vote on each motion that comes before the meeting. If the voting on a motion is equal, the chairperson has a second or "casting" vote. The legislation does not specify how a casting vote is to be used. It is a matter for the chairperson as to how they will vote, after taking into consideration all relevant information. They do not need to vote the same way on their first and second vote. Should the chairperson decline or fail to exercise a casting vote the motion being voted upon would be lost.

POLICY

1. The provision of Section 370 shall also apply to Committee meetings.
2. Voting on motions and amendments shall be determined on the voices ie. "Aye" for the motion, "No" against the motion.
3. Should the Chairperson or Councillors be in doubt as to the decision, the Chairperson may call for a show of hands.

2.4.2 Conduct of voting at council meetings

(Reg 251)

- (1) A councillor who is present at a meeting of a council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- (2) If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.

- (3) The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than 2 councillors rise and demand a division.
- (4) When a division on a motion is demanded, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are respectively recorded in the council's minutes.
- (5) Voting at a council meeting, including voting in an election at such a meeting, is to be by open means (such as on the voices or by show of hands). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

(Supp Prov)

A councillor must be present (in person) at a council or committee meeting to vote (Reg 235). Councillors cannot participate in a meeting by video-conferencing or tele-conference. There is also no provision for proxy votes to be allowed at council and committee meetings.

POLICY

- 1. The provisions of clause 251 shall also apply to Committee meetings.
- 2. A decision supported by a majority of the votes at a meeting of the Council or Committees at which a quorum is present is a decision of the Council.
- 3. A Councillor shall be present at a meeting whilst ever in the Council Chamber unless he/she has declared a pecuniary interest or a significant non-pecuniary interest in a particular matter before the meeting. The area known as the Council Chamber includes the public gallery seating area. A Councillor is deemed not to have left the Chamber until they have passed through either of the two doors leading to it.
- 4. In relation to the recording of motions and amendments, the minutes of the meeting shall show the motion or amendment, whether it was "carried" or "lost", and the mover and seconder of the motion or amendment. The result of the vote will not be recorded, except as provided in sub-clause (4) above (Divisions).
- 5. If a Councillor is temporarily absent from the Council Chamber during a meeting, his/her absence shall be recorded in the minutes of the meeting.
- 6. The provisions of sub-clause (4) relating to Divisions, shall also include a division on an amendment.
- 7. It will not be in order to move a motion of recommittal of any matter where the result of the vote has been decided by means of a division. A rescission motion in respect of such matter may still however be submitted in accordance with this Code.

NOTES

The Local Government (General) Regulations 2005 Part 11 Elections provides that a council is to resolve whether an election by the councillors for mayor or deputy mayor is to be by preferential ballot, ordinary ballot or open voting (clause 394 of Part 11 and clause 3 of Schedule 7). Clause 3 of Schedule 7 also makes it clear that "ballot" has its normal meaning of secret ballot.

2.4.3 Recording of voting on planning matters

(LGA Sec 375A)

- (1) In this section, "planning decision" means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

POLICY

A division on a planning matter will take place by way of show of hands. The result of the division will be recorded in the minutes of the meeting.

2.5 Decisions of Council

2.5.1 Valid Decisions

(LGA Sec 371)

A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of that council.

NOTES

In accordance with Section 375 of the Act, decisions made by Council shall be accurately recorded in the minutes of the meeting.

(Supp Prov)

A quorum is the minimum number of councillors necessary to conduct a meeting. At Canterbury, the quorum for council and standing committees is six councillors. If a quorum is not present at any time during a meeting, then the meeting cannot continue until a quorum is achieved or restored. If a quorum cannot be achieved or restored, the meeting must be adjourned (Reg 233).

2.5.2 Certain Circumstances do not invalidate a Council Decision

(LGA Sec 374)

Proceedings at a meeting of a council or a council committee are not invalidated because of:

- (a) a vacancy in a civic office; or
- (b) a failure to give notice of the meeting to any councillor or committee member; or
- (c) any defect in the election or appointment of a councillor or committee member; or
- (d) a failure of a councillor or a committee member to disclose a pecuniary interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with section 451; or
- (e) a failure to comply with the code of meeting practice.

NOTES

It would appear the intention of this Section is to validate a council's proceedings where there is some defect. The section does not provide a loophole for Chairpersons, Councillors and Officers of Council to avoid compliance with the requirements of the Act, Regulation or Code of Meeting Practice. The Section merely provides that the proceedings are not invalidated because of a failure on someone's part to observe a legal requirement or regulation.

2.5.3 Council Decisions Prior to a Local Government Election

(Reg 393B)

- (1) The following functions of a council must not be exercised by the council, or the general manager or any other delegate of the council (other than a Joint Regional Planning Panel or the Central Sydney Planning Committee), during a caretaker period:
 - (a) entering a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$150,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger),
 - (b) determining a controversial development application, except where:
 - (i) a failure to make such a determination would give rise to a deemed refusal under section 82 of the **Environmental Planning and Assessment Act 1979**, or
 - (ii) such a deemed refusal arose before the commencement of the caretaker period,
 - (c) the appointment or reappointment of a person as the council's general manager (or the removal of a person from that position), other than:
 - (i) an appointment of a person to act as general manager under section 336 (1) of the Act, or
 - (ii) a temporary appointment of a person as general manager under section 351 (1) of the Act.
- (2) Despite subclause (1), such a function may be exercised in a particular case with the consent of the Minister.
- (3) In this clause:
 - caretaker period means the period of 4 weeks preceding the date of an ordinary election.
 - controversial development application means a development application under the **Environmental Planning and Assessment Act 1979** for which at least 25 persons have made submissions under section 79 (5) of that Act by way of objection.

2.6 Recommendations of the Independent Hearing and Assessment Panel (IHAP)

(Supp Prov)

Council and the City Development Committee must include in their resolution made on matters considered by the IHAP, the reason/s for any decision by the Council or City Development Committee that is not in accordance with a recommendation by IHAP (section 268X of the Environmental Planning and Assessment Regulation 2000).

2.7 When do the Mayor and Councillors start and finish holding office?

(Supp Prov)

All councillors start holding office on the day the person is declared to be elected (LGA sec 233). All councillors, other than the Mayor, stop holding office on the day of the ordinary election (LGA Sec 233).

The Mayor holds office until his or her successor is declared elected (LGA Sec 230). This applies even if the (outgoing) Mayor has not been re-elected.

2.8 Defamatory Statements

(Supp Prov)

The NSW Ombudsman's publication "Better Service and Communication for Councils", states:

"A statement may be defamatory of a person if it is likely to cause an ordinary reasonable member of the community to think less of a person or to shun or avoid the person."

Councillors, staff and members of the public can seek legal compensation, apology etc if they are defamed.

Councillors acting within their official capacity at meetings of council or council committees have a defence of "qualified privilege" to actions of defamation. This recognises that Councillors may need to speak freely and publicly in carrying out their duties. However, qualified privilege must be treated with great caution. It only covers statements made at a council or committee meeting when a Councillor is carrying out his/her duties and on business relevant to the council. Statements must also be made with good intentions, not malice.

A statement made outside a council or committee meeting will not be protected by qualified privilege, but may be protected under the Defamation Act 2005

. Councillors should be guided by their own legal advice on defamation issues.

Further information on the law of defamation is contained in Appendix D.

NOTES

1. Councillors should be aware in terms of their participation at meetings of the laws in relation to defamation (see Appendix "D").
2. Councillors may be sued for defamation for remarks made in meetings of the Council or its Committees which are open to the public. While the defences of qualified privilege or justification may attach, there is no absolute privilege in relation to Council proceedings of the kind which attaches to statements made in Parliamentary proceedings.

3. The law of defamation is primarily concerned with the protection of reputation and to provide a remedy for injury to reputation caused by any defamatory communication or publication. A statement may be said to be defamatory if the communication or publication is likely to cause the ordinary, reasonable member of the community to think less of the person concerned, or to shun or avoid him/her. Of course, for a statement to be defamatory, its meaning must be communicated to a person other than the defamed person. This can be by spoken words, signs or gestures, writing, images, in person or by broadcast. (Refer Sly and Wiegall - "The Local Government Law Guide" (Dec.93) pp.412-414).

2.9 Role of the Mayor Between Meetings

(Supp Prov)

When necessary, the mayor may exercise the policy-making functions of the council between meetings (LGA Sec 226). The Mayor should report his/her actions to the next meeting of council.

2.10 Public Addresses

(Supp Prov)

There is no automatic right under legislation for the public to participate in a council or committee meeting, either by written submission or oral presentation. However, it is considered good practice to allow public addresses to Council and committee meetings in certain circumstances. Our rules for public addresses are contained in Appendix E.

2.11 Audio or visual recording of meetings

2.11.1 Tape recording of meeting of council or committee prohibited without permission

(Reg 273)

- (1) A person may use a tape recorder to record the proceedings of a meeting of a council or a committee of a council only with the authority of the council or committee.
- (2) A person may, as provided by section 10 (2) (a) or (b) of the Act, be expelled from a meeting of a council or a committee of a council for using or having used a tape recorder in contravention of this clause.
- (3) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.
- (4) In this clause, tape recorder includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used or not.

2.11.2 Audio recording of Meetings

(Supp Prov)

Council has adopted a policy for the audio recording of meetings. In summary the policy states that Audio recordings will be made of Council and Standing Committee meetings for the purpose of:

- assisting in the preparation of minutes;
- ensuring decisions are accurately recorded;
- verifying the accuracy of minutes prior to their confirmation.

In order to comply with the Surveillance Devices Act 2007 and the Privacy and Personal Information Protection Act 1998 advice is provided to the members of the public attending meetings that an audio recording of the meeting will be made. The advice is displayed on notices in the public gallery and included on the call notice for each meeting. The wording of the advice is as follows

'This meeting is being recorded on audio tape for minute-taking purposes as authorized by the Local Government Act 1993.'

Audio recordings are stored until the minutes from the meeting to which they relate are confirmed by Council as required by State Records NSW General Authority 39 (GA 39)

A copy of the policy can be obtained from Council's website.

2.12 Adjourned Meetings

(Supp Prov)

A meeting may be adjourned to a time later in the same day. An adjourned meeting is a continuation of the same meeting; it is not a new meeting.

If a meeting is adjourned to a different date, time or place, each councillor and the public should be notified of the new date, time or place.

PART 3 – CONFLICTS OF INTERESTS (PECUNIARY AND NON-PECUNIARY)

3.1 Pecuniary Conflicts of Interest

3.1.1 What is a pecuniary interest

(LGA Sec 442)

- (1) For the purposes of this chapter, 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.
- (2) 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 section 448.

3.1.2 Who has a pecuniary interest

(LGA Sec 443)

- (1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
 - (a) the person, or
 - (b) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or
 - (c) a company or other body of which the person, or a nominee, partner or employer of the person, is a member.
- (2) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (1) (b) or (c):
 - (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.

3.1.3 What interests do not have to be disclosed

(LGA Sec 448)

The following interests do not have to be disclosed for the purposes of this Part:

- (a) an interest as an elector,
- (b) an interest as a ratepayer or person liable to pay a charge,
- (c) an interest 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 Part,
- (d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,
- (e) an interest 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) an interest of a member of a council committee 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 the committee member has been appointed to represent the organisation or group on the committee,

- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
 - (i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
 - (ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,
- (h) an interest 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,
- (i) an interest of a person 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 a relative of the person 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,
- (j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person 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 the 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,
- (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
- (l) 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,
- (m) 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,
- (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,
- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

3.1.4 Disclosure and presence in meetings

(LGA Sec 451)

- (1) A councillor or a member of a council committee 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.
- (2) The councillor or 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.
- (3) For the removal of doubt, a councillor or a member of a council committee is not prevented by this section 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 member has an interest in the matter of a kind referred to in section 448.
- (4) Subsections (1) and (2) do 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 part 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 part of the council's area, and
 - (b) the councillor made a special disclosure under this section in relation to the interest before the commencement of the meeting.
- (5) The special disclosure of the pecuniary interest must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and must:
- (a) be in the form prescribed by the regulations, and
 - (b) contain the information required by the regulations.

3.1.5 Special disclosure of pecuniary interests in meetings

(Reg 195A)

- (1) A special disclosure of the pecuniary interest under section 451 of the Act must be in the form set out in Schedule 3A and must contain the information required by that form.
- (2) If a special disclosure of a pecuniary interest is made at a meeting of a council or council committee, a copy of the special disclosure is to be recorded in the minutes of the meeting.

3.2 Disclosures to be recorded'

(LGA Sec 453)

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

3.3 General disclosure

(LGA Sec 454)

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

- (a) a member, or in the employment, of a specified company or other body; or
- (b) a partner, or in the employment, of a specified person,

is unless and until the notice is withdrawn, sufficient disclosure of the councillor's or member's interests in a matter relating to the specified company, body or person that may be subject of consideration by the council or council committee after the date of the notice.

3.4 Circumstances in which sections 451 and 456 of the LGA are not breached

(LGA Sec 457)

A person does not breach section 451 or 456 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 he or she had a pecuniary interest.

NOTES

Section 456 deals with the duty of disclosure imposed on advisers to the council or its committees and for this reason has not been included in this code.

3.5 Non Pecuniary Conflicts of Interest

3.5.1 Managing Non-Pecuniary Conflicts of Interest

(Supp Prov)

A non-pecuniary conflict of interests is a conflict between a councillor's private interest in a matter being considered by the council, and his or her interest as a civic official. Section 6 of the Code of Conduct prescribes procedures to cover such conflicts.

If a councillor has a non-pecuniary interest that conflicts with their public duty they must fully disclose that interest. Should a councillor be in doubt about a possible non-pecuniary conflict of interest they should seek legal advice.

3.5.2 Disclosing Conflicts of Interest

Councillors with a conflict of interest must complete a disclosure of conflict of interest form (Appendix H) and submit it to the General Manager at least 24 hours before the meeting at which the matter involving the interest will be considered.

The General Manager will take any declarations received to the meeting and advise the Chairperson of that meeting that declarations have been received.

However, the current practice of Councillors declaring a conflict of interest immediately prior to the matter being considered at Council or Standing Committees meetings, will continue, and these declarations both in writing, as above, and verbal will be recorded in the Minutes.

3.6 Political Donations

(Supp Prov)

Councillors should note Section 6 of the Code of Conduct as it provides detailed information regarding the requirement to disclose political donations.

Section 6.23 of the Code of Conduct states that where a councillor's official agent has received "political contributions" or "political donations" within the meaning of the Election Funding Act 1981 exceeding \$1000 which directly benefit their campaign:

- From a political or campaign donor or related entity: and
- Where the political or campaign donor or related entity has a matter before the Council,
- Then the councillor must declare a non-pecuniary conflict of interest, disclose the nature of the interest, and manage the conflict of interest in accordance with clause 6.17 (b).

If a councillor has received a donation of the kind referred to above, that councillor is not prevented from participating in a decision to delegate council's decision making role to the General Manager.

Political donations below \$1,000, or political contributions 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 and take the appropriate action to manage them.

3.7 Statutory Requirements to Manage Conflicts of Interest

(Supp Prov)

A Councillor who has a conflict of interest is required to manage the conflict in accordance with the requirements of:

- The Act
- The General Regulation

- Council's Code of Conduct

Councillors are expected to have an understanding of the different types of interest that need to be disclosed. These are explained in the Code of Conduct and are:

- Pecuniary interest
- Significant non-pecuniary interest
- Less than significant non-pecuniary interest
- Political donations

Responsibility for identifying a conflict of interest and declaring the interest rests solely with the Councillor affected

Disclosure of pecuniary interest requirements by Councillors are detailed in the Act, the General Regulation and Code of Conduct.

PART 4 – QUORUM AND ATTENDANCE

4.1 Attendance at Meetings

4.1.1 Councillor absence from meetings

(Supp Prov)

If a councillor is absent from three consecutive ordinary meetings of Council without the leave of the council having been granted then the councillor automatically vacates office (LGA Sec 234 (1)). Leave can only be granted by Council prior to the meeting or at the meeting concerned. However this provision does not apply to a councillor suspended from office by the Local Government Pecuniary Interest Tribunal (LGA Sec 482).

4.1.2 How to apply for leave of absence

(Reg 235A)

(1) A councillor's application for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent.

(2) A councillor who intends to attend a council meeting despite having been granted leave of absence should, if practicable, give the general manager at least 2 days' notice of his or her intention to attend.

(Supp Prov)

A request for leave of absence by a councillor from a meeting should be made in writing to the General Manager. The written request should state the dates of the meetings the Councillor is expected to be absent, together with the reasons for absence.

Councillor leave of absence may be granted at the discretion of Council (LGA Sec 234 (1)). Leave of absence may be granted by the council prior to the meeting, or at the meeting for which leave is requested. An application for leave does not need to be made in person and the council may grant leave in the councillor's absence (LGA Sec 234 (2)).

4.1.3 Is tendering an apology the same as applying for leave of absence?

(Supp Prov)

No. The tendering of an apology is an accepted convention by which those present at a meeting are notified that the councillor tendering the apology will not be attending the meeting. It is a form of courtesy to those attending the meeting. Its purpose is also to aid the efficient conduct of meetings by informing the chairperson as to who will not be attending. This avoids delaying the opening of a meeting pending the arrival of such persons.

4.2 Quorum at Meetings

4.2.1 What is a quorum?

(Supp Prov)

A quorum is the minimum number of councillors required to hold a meeting. This minimum is set so that decisions are made by an appropriate number of councillors. Provided a quorum of councillors is present, council business can go ahead. If a quorum is not reached and maintained, a meeting cannot commence/continue.

4.2.2 What is the quorum for a meeting

(LGA Sec 368)

The quorum for a meeting of the council is a majority of the councillors of the council who hold office for the time being and are not suspended from office.

(Supp Prov)

In determining the number of councillors for the purposes of calculating quorum any casual vacancies in councillor offices and any suspended councillors are not to be counted. For example, Canterbury has nine councillors plus the mayor, therefore six councillors must be present at a council or committee meeting to form a quorum. If one councillor is suspended from office and another resigned, then eight councillors hold office for the time being and the quorum would be five councillors.

Without a quorum the meeting is not a meeting of the Council. While a meeting without a quorum can be opened, resolutions cannot be made and any action taken will have no legal validity.

4.2.3 How do Pecuniary Interests affect a Quorum

(LGA Sec 458)

The Minister may, conditionally or unconditionally allow a councillor or a member of a council committee 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.

(Supp Prov)

The case of *Levenstrath Community Association Incorporated v Council of the Shire of Nymboida* (1999) confirmed that a councillor who is not capable of voting on the business before the council (by reason of having disclosed a pecuniary interest or a significant non-pecuniary interest in a matter) is regarded as being absent from the meeting for the purpose of determining whether or not a quorum is present.

4.2.4 What happens when a quorum is not present

(Reg 233)

- (1) A meeting of a council must be adjourned if a quorum is not present:
 - (a) within half an hour after the time designated for the holding of the meeting; or
 - (b) at any time during the meeting.
- (2) In either case, the meeting must be adjourned to a time, date and place fixed:
 - (a) by the chairperson; or
 - (b) in his or her absence - by the majority of the councillors present; or
 - (c) failing that, by the general manager.
- (3) The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

4.2.5 Loss of Quorum for Non-Delegable Matters

(Supp Prov)

Part 4 (cls 4.25 to 4.29) of the new Model Code of Conduct for Local Councils in NSW includes provisions for the occasions where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act. Councillors may apply in writing to the Division of Local Government to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.

POLICY

1. If during a meeting of Council or Standing Committee, a quorum is not present, the Chairperson shall suspend the proceedings for a period of three minutes. If a quorum is not then present at the end of the three-minute suspension, the provisions of Clause 233 of the Regulation shall apply.
2. A reconvened meeting, being for the purpose of completing unfinished business of the previous adjourned meeting shall be deemed a continuation of that adjourned meeting, and no new business shall be brought forward.
3. The minutes of the meeting shall record the names of those Councillors who have left the meeting, and the time at which they left the Council Chamber/meeting venue.
4. Where the meeting is adjourned and the General Manager is of the opinion that it would be desirable to give effect to resolutions already taken at the adjourned meeting, it will be competent for such minutes to be produced and resolutions acted upon. The General Manager may also decide to direct that the production of the official minutes be deferred until following the conclusion of the reconvened part of the meeting.

PART 5 – MOTIONS AND AMENDMENTS

5.1 Terminology

5.1.1 What is a motion

(Supp Prov)

A motion is a proposal to be considered by council at a meeting. It is a request to do something or to express an opinion about something. A motion formally puts the subject of the motion as an item of business for the council to consider. Further information on motions is contained in Appendix B.

5.1.2 What is an amendment

(Supp Prov)

An amendment is a change to the motion before the council (the initial motion), and is moved while the initial motion is being debated. An amendment to a motion must be put forward in a motion itself. It cannot be a direct negative of the original motion.

5.1.3 What is a resolution

(Supp Prov)

A resolution is a motion that has been passed by a majority of councillors at the meeting. While in practice it means the “council decision,” the word “resolution” also indicates the process by which the decision was made.

5.2 Motions

5.2.1 Motions to be seconded

(Reg 246)

A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 243 (2) and 250 (5).

POLICY

1. The mover of a motion may be allowed by the Chairperson to speak to the motion before a “seconded” is sought.
2. The seconder of a motion or of an amendment may reserve the right to speak later in the debate.
3. Where a motion has been seconded, it shall not be withdrawn without the seconder's permission.

5.3 Amendments to Motions

5.3.1 Moving an Amendment to a Motion

(Supp Prov)

An amendment to a motion requires a mover and a seconder to put it forward. To be accepted as an amendment, it must relate to the motion. The amendment must be dealt with before voting on the main motion takes place. If the amendment is carried, the original motion lapses. Debate is only allowed in relation to the amendment and not the main motion – which is suspended while the amendment is considered.

5.3.2 How subsequent amendments may be moved

(Reg 247)

If an amendment has been rejected, a further amendment can be moved to the motion to which the rejected amendment was moved, and so on, but no more than one motion and one proposed amendment can be before the council at any one time.

POLICY

1. An original amendment to a motion shall be dealt with before another amendment can be considered.
2. If an amendment and a motion are before the Chair, a Councillor may “foreshadow” a further amendment to the motion, although it cannot be debated until such time as only a motion remains. If the original motion is carried, the foreshadowed motion lapses.
3. The mover of an amendment shall be given the opportunity to explain the proposed amendment before the seconder is called for.
4. When an amendment is defeated, the original motion shall stand and then and only then a further amendment may be moved, seconded, debated and voted upon. If the further amendment is defeated, the original motion still stands and another amendment then can be moved.
5. When an amendment is carried, it becomes the motion and shall be put to the vote.
6. An amendment which is a direct negative of the motion proposed is not legitimate and shall not be accepted by the Chairperson.
7. The mover or seconder of the motion may not move or second an amendment to it, but the Councillor shall be entitled to speak upon any amendment and to vote in favour of it.
8. Only discussion relevant to the particular amendment that is being dealt with shall be allowed.
9. The mover of an original motion may exercise a right of reply but shall confine himself/herself to answering remarks previously made and not introduce new matter.
10. Additions and alterations to a motion or amendment shall be allowed, so long as the fundamental nature and effect of the motion is not destroyed. An addition or alteration which is a direct negative of the motion it seeks to alter or amend is not permitted, as the same effect can be achieved by voting against the original motion. Such alterations and additions may be in the form of an addendum subject to acceptance by the mover and seconder.

5.3.3 Amendments to Motions relating to planning matters

Where a Councillor at any meeting of Council or a Standing Committee moves a substantive or amending motion in relation to planning proposals, re-zonings, planning instruments, development applications or other planning matters referred to the meeting for determination, the Councillor must explain to the meeting, for inclusion in the minutes of the meeting, the reasons for the motion. Failure to do so will result in the motion being ruled out of order by the meeting Chairperson.

5.4 Notice of motion - absence of mover

(Reg 245)

In the absence of a councillor who has placed a notice of motion on the business paper for a meeting of a council:

- (a) any other councillor may move the motion at the meeting; or
- (b) the chairperson may defer the motion until the next meeting of the council at which the motion can be considered.

POLICY

A Councillor who has placed a Notice of Motion on the business paper and is unable to attend the meeting may request in writing that the motion be deferred, and upon receipt of the request, and provided the request is received prior to the meeting the Chairperson shall defer the motion to a future meeting.

5.5 Chairperson's duty with respect to motions

(Reg 238)

- (1) It is the duty of the chairperson at a meeting of a council to receive and put to the meeting any lawful motion that is brought before the meeting.
- (2) The chairperson must rule out of order any motion that is unlawful or the implementation of which would be unlawful.
- (3) Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been rejected.

POLICY

1. The Chairperson shall have the right to rule out of order any motion on the ground that the proposed resolution would if implemented, involve a contravention of the law.
2. Adjournments (except where disorder arises or a quorum is not present) shall only be taken following a resolution to that effect by Council or the Committee.
3. Debate shall not be permitted on any motion for adjournment of a meeting of the Council or Committee.
4. If a motion for adjournment is negatived, the business of the meeting shall proceed, and it shall not be in order for any Councillor to again move a motion for adjournment within half an hour of the previous negatived motion for adjournment except as may be acceptable to the Chairperson.
5. A motion for adjournment may specify the time, date and place of the adjourned meeting; however, if a motion for adjournment is carried but does not specify the time, date and place of the adjourned meeting, the chairperson shall make a determination with respect to whichever of these matters has not then been specified.
6. Regulation 238 also applies to committees.

NOTES

1. Section 223 of the Act provides that the "role of Council is to direct and control the affairs of the Council in accordance with the Act."
2. Matters which do not directly affect Local Government and are not within the scope of any Act conferring functions upon Council are out of order.

5.6 Motions for Voting of funds by Councillors

(Supp Prov)

Motions from Councillors for the expenditure of funds on works and/or services other than those already provided for in the Budget must identify the source of funding for the expenditure the subject of the motion. If the motion does not identify a funding source, the meeting will determine that the motion be deferred, pending a report from an Officer of Council on the availability of funds for implementing the motion if adopted.

5.7 Motions for Mediation meetings/on-site inspections

(Supp Prov)

Whenever a motion is carried to conduct a mediation meeting/on-site inspection, wherever practicable, the time and date of mediation meetings and on-site inspections will be determined at the Council or Standing Committee meeting approving the meeting/inspection. Where these times and dates are not set at the meeting, the time and dates are to be set by the Mayor and General Manager.

5.8 Motions Without Notice

(Supp Prov)

A Councillor may move a motion without notice at a meeting of Council, but such motion will only be acceptable if the Chairperson considers and rules that the matters raised in the motion are of great urgency. If the Chairperson so rules, then the motion can be seconded, debated and voted on.

However, if the Chairperson rules that the motion raises issues that are not of great urgency, the motion cannot be considered at the meeting.

Should the Chairperson rule that the matter raised in the motion is not of great urgency, the Councillor raising the motion should submit the motion in writing to the General Manager for inclusion in the business paper for a subsequent Council meeting.

5.9 Procedural Motions

5.9.1 General Procedural Motions

(Supp Prov)

A procedural motion is a motion that refers to the conduct of a meeting. In general, a procedural motion requires a seconder, unless stated to the contrary in the Code of Meeting Practice.

There is no debate on procedural motions and procedural motions have precedence over substantive motions.

5.9.2 Point of Order

(Supp Prov)

A Councillor may draw the attention of the Chairperson to an alleged breach of the Code of Meeting Practice. The Councillor shall draw the attention of the Chairperson by raising a "point of order." A point of order does not require a seconder.

A point of order must be taken immediately it is raised. The Chairperson must suspend business before the meeting and permit the Councillor raising the point of order to state the meeting procedure(s) he/she believes have been infringed. The Chairperson will then rule on the point of order – either upholding it or overruling it. Further information on points of order can be found in Appendix C.

5.9.3 Motions of dissent

(Reg 248)

- (1) A councillor can, without notice, move to dissent from the ruling of the chairperson on a point of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- (2) If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been discharged as out of order, the chairperson must restore the motion or business to the business paper and proceed with it in due course.
- (3) Despite clause 250, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

POLICY

1. A motion of dissent shall not be debated until it has been seconded.
2. The Chairperson shall not be bound to leave the Chair during debate on a Motion of Dissent.
3. A Councillor upon moving a Motion of Dissent from the ruling of the Chairperson at a Council meeting shall be given the opportunity to explain the reason for such motion.
4. The Chairperson may reply to the Motion of Dissent and there shall be no further debate before the motion is put to the vote.
5. If a Motion of Dissent is carried, the ruling is overturned; if it is not, the ruling stands and the business shall proceed as if the Motion had not been presented.
6. The Mayor or Chairperson shall have a casting vote on any motion of dissent.

PART 6 – RESCISSION MOTIONS

6.1 Rescinding or altering resolutions

(LGA Sec 372)

- (1) A resolution passed by a council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360, or the council's code of meeting practice.
- (2) If notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.
- (3) If a motion has been negatived by a council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the council's code of meeting practice.
- (4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negatived by the council, must be signed by 3 councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negatived, as the case may be.
- (5) If a motion to alter or rescind a resolution has been negatived, or if a motion which has the same effect as a previously negatived motion, is negatived, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.
- (6) A motion to which this section applies may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of council.
- (7) The provisions of this section concerning negatived motions do not apply to the motions of adjournment.

POLICY

1. A rescission motion shall only prevent a resolution of Council from being effective immediately, if notice is given at the meeting at which the resolution is passed.
2. A rescission motion shall be in writing and shall be signed by three Councillors.
3. If a notice of motion to rescind a resolution is given after the meeting at which the resolution is carried and the notice of motion is received by the General Manager no later than 12 midday on the next day after the date on which the resolution is carried, the General Manager shall suspend implementation of the resolution that is the subject of the rescission notice until the Council has considered the notice of motion.
4. Notices of motion to rescind which attempt to alter or stop some course of action which has been substantially proceeded with shall be ruled out of order.
5. The re-committal of a matter which has already been determined earlier in the meeting and the carrying of the motion of re-committal shall expunge the previous resolution on the subject matter and the matter must be dealt with afresh. It is competent for the Chairperson, instead of insisting on a rescission motion for an item dealt with earlier in the meeting, to accept as valid a motion that a previously determined matter be brought back before Council for fresh consideration (i.e. motion of re-committal).
6. It will not be in order to move a motion of re-committal of any matter where the result of the earlier vote was decided by means of a division.
7. If there is a lapse in the continuity of the meeting, such as adjournment to another day, no re-committal shall be permitted from the previously adjourned section of the meeting.

8. (a) A motion to rescind or alter a resolution of Council can be withdrawn only with the consent of all signatories to such motion. The request to withdraw will be accepted only on the occasion of such motion's consideration by Council.
- (b) Consent can only be granted for such a request for withdrawal when that proposition is put to the meeting (as a motion) by the Chairperson and such motion is carried by a majority of the Council.
- (c) If consent to the request to withdraw is given, no debate shall be allowed. If consent to the request to withdraw is not given the motion to rescind or alter must be considered by Council.
9. (a) A request by a Councillor to withdraw a Notice of Motion on the business paper standing in his or her name may be submitted in writing or raised verbally by that Councillor on the occasion such Notice of Motion is before the Council.
- (b) Consent can only be granted for such a request for withdrawal when that proposition is put to the meeting (as a motion) by the Chairperson and such motion is carried by a majority of the Council.
10. This section of the Code of Meeting Practice also applies to meetings of Standing Committees.
11. Rescission motions submitted in relation to a decision of a Standing Committee can be considered and determined at a Council meeting.

6.2 Rescission of resolutions granting development consent

(Supp Prov)

Under section 83 of the Environmental Planning and Assessment Act 1979 development consent has effect from the date endorsed on the written notification (subject to any appeal action).

In the case of *Townsend v Evans Shire Council* ([2000] NSWLEC 163) it was held that there was no effective development consent until formal notice of a determination was issued to the applicant and that "...it is necessary that the communication of the consent have some formal character as being authenticated on behalf of the council."

Verbal advice from the Mayor or Chairperson at a Council or Standing Committee meeting that the consent had been given was not notice to the applicants so as to "tie the council's hands." In this case, the rescission motion had been lodged with the general manager before the time required in the Planning Regulations for issuing a notice of determination.

Once the applicant has been formally advised of council's decision, there may be issues of compensation to the applicant if consent is later rescinded.

PART 7 – CLOSED PARTS OF MEETINGS

7.1 Closure of meetings to the public

(LGA Sec 10A)

- (1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:
 - (a) the discussion of any of the matters listed in sub-clause (2), or
 - (b) the receipt or discussion of any of the information so listed.
- (2) the matters and information are the following:
 - (a) personnel matters concerning particular individuals (other than councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) Information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the council, councillors, council staff or council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
 - (i) alleged contraventions of any code of conduct requirements applicable under section 440.
- (3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) A council, or a committee of the council may allow members of the public to make representations to or at the meeting, before any part of the meeting is closed to the public, as to whether that particular part of the meeting should be closed.

POLICY

1. After a motion to close part of a meeting to the public has been moved and seconded, the Chairperson at his or her discretion will ask the General Manager if there are any written representations from the public on the proposed closure.
2. The General Manager will either; read out the representations; or summarise their collective content (depending on the number of submissions); or state that no written representations have been received.
3. An invitation will then be made to persons present at the meeting to make verbal representations on the proposal for closure, and the “fixed period” referred to in clause 252 of the Regulation shall be the period between when the “closure motion” is moved and seconded and when the Chairperson declares the result of the voting on the motion however it will be competent for a recomittal motion to be moved up until the time the doors of the Chamber are locked to exclude the press and the public gallery.

NOTES

In respect of sub-clause 10A (2)(d) the Office of Local Government has advised that it considers decisions involving tenders and the setting of reserve prices are recognised categories of confidential information the disclosure of which could damage Council's competitive position. Therefore these matters can be considered in closed meetings in accordance with clause 10A (2) (d).

In respect of sub-clause 10A(2)(i) of the Act, Clause 8.45 of the prescribed Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW state that a council is to close its meeting to the public to consider a final investigation report where it is permitted to do so under section 10A. However, in closing a meeting to consider a conduct reviewer's report, the council is still required to apply the public interest test under section 10B (1) (b).

7.2 Limitation on closure of meetings to the public

(LGA Sec 10B)

- (1) A meeting is not to be closed during the discussion of anything referred to in section 10A (2):
 - (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
 - (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret - unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.
- (2) A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A (2) (g) unless the advice concerns legal matters that:
 - (a) are substantial issues relating to a matter in which the council or committee is involved, and
 - (b) are clearly identified in the advice, and
 - (c) are fully discussed in that advice.
- (3) If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A (3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A (2)).
- (4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
 - (a) a person may mis-interpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council or committee.
- (5) In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must have regard to any relevant guidelines issued by the Director-General.

7.3 Closure of meeting to public in urgent cases

(LGA Sec 10C)

Part of a meeting of council, or a committee of the council of which all the members are councillors, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting as a matter that is likely to be considered when the meeting is closed, but only if:

- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in section 10A (2) and
- (b) the council or committee, after considering any representations made under section 10A (4), resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

7.4 Grounds for closure to be specified

(LGA Sec 10D)

- (1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.
- (2) The grounds must specify the following:
 - (a) the relevant provision of section 10A (2),
 - (b) the matter that is to be discussed during the closed part of the meeting,
 - (c) the reasons why the part of the meeting is being closed including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

7.5 Resolutions passed at closed meetings to be made public

(Reg 253)

If a council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.

7.6 Representations by members of the public - closure of part of meeting

(Reg 252)

- (1) A representation at a Council meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.
- (2) That period is as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that period) as fixed by resolution of the council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.

(Reg 264)

- (1) A representation at a committee meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.
- (2) That period is as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that period) as fixed by resolution of the council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.

7.7 Disclosure and misuse of information

(LGA Sec 664)

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
 - (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) in accordance with a requirement imposed under the Ombudsman Act 1974 or the Government Information (Public Access) Act 2009, or
 - (e) with other lawful excuse.
- (1A) In particular, if part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10A (1), a person must not, without the authority of the council or the committee, disclose (otherwise than to the council or a councillor of the council) information with respect to the discussion at, or the business of, the meeting.
- (1B) Subsection (1A) does not apply to:
 - (a) the report of a committee of a council after it has been presented to the council, or
 - (b) disclosure made in any of the circumstances referred to in subsection (1) (a)-(e), or
 - (c) disclosure made in circumstances prescribed by the regulations, or
 - (d) any agenda, resolution or recommendation of a meeting that a person is entitled to inspect in accordance with the Government Information (Public Access) Act.
- (2) A person acting in the administration or execution of this Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known, for the purpose of gaining either directly or indirectly a financial advantage for the person, the person's spouse or de facto partner or a relative of the person.
- (3) A person acting in the administration or execution of this Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person, influence:
 - (a) the determination of an application for an approval, or
 - (b) the giving of an order.

(Supp Prov)

A breach of section 664 of the Act shall be treated as a breach of both the Act and Council's Code of Conduct and will be investigated in accordance with the provisions of the Code of Conduct.

PART 8 – ORDER AT MEETINGS

8.1 Questions of order

(Reg 255)

- (1) The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- (2) A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- (3) The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- (4) The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

POLICY

1. The Chairperson may name any Councillor who is guilty of:
 - (a) interrupting a speaker except upon a point of order;
 - (b) interrupting the Chairperson except on a point of dissent;
 - (c) refusing to accept a ruling from the Chairperson.
2. Any Councillor who is named by the Chairperson three times in one meeting for a disorder referred to in (a) - (c) above and fails to apologise for the disorder if requested to by the chairperson may be expelled from the meeting by resolution of Council in accordance with clauses 255 and 256 of the Regulation.

NOTES

Acts of disorder are explained at Clause 256 of the Regulation.

8.2 Acts of disorder

(Reg 256)

- (1) A councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council:
 - (a) contravenes the Act or any regulation in force under the Act; or
 - (b) assaults or threatens to assault another councillor or person present at the meeting; or
 - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter; or
 - (d) insults or makes personal reflections on or imputes improper motives to any other councillor; or
 - (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.

- (2) The chairperson may require a councillor:
- (a) to apologise without reservation for an act of disorder referred to in sub-clause (1) (a) or (b); or
 - (b) to withdraw a motion or an amendment referred to in sub-clause (1) (c) and, where appropriate, to apologise without reservation; or
 - (c) to retract and apologise without reservation for an act of disorder referred to in sub-clause (1) (d) or (e).
- (3) A councillor may, as provided by section 10(2) (a) or (b) of the Act, be expelled from a meeting of a council for having failed to comply with a requirement under sub-clause (2). The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

(Supp Prov)

Acts of disorder committed by councillors during council or committee meetings may amount to misbehaviour, leading to censure by the council or suspension in accordance with Section 11 of the Code of Conduct.

POLICY

1. A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a Committee of the Council reads at length from any correspondence, report or other document, without the leave of Council.
2. The expulsion of a Councillor shall be recorded in the minutes of the meeting.
3. A Councillor expelled from a meeting in accordance with Clause 256 (3) of the Regulation shall leave the Chamber for the duration of the meeting.
4. Further to Clause 256 (1) of the Regulation, a Councillor commits an act of disorder if the Councillor insults or makes personal reflections on or imputes improper motives to any Officer of Council.
5. Councillors, Council Officers and members of the gallery must ensure that their mobile phones are switched off during meetings of Council and Standing Committees. Failure to do so or an attempt to use a mobile phone during a meeting of Council or Standing Committee will be deemed to be an act of disorder and render the offender liable to expulsion from the meeting. Council has authorised the Mayor (and Chairperson) to expel a person (whether a Councillor or another person) from the meeting for disorder.
6. The person presiding at a Committee meeting of Council has the power of expulsion pursuant to Section 10(2) of the Local Government Act (Minute Number 269 of 18 August, 1994).

8.3 Disorder in committee meetings

(Reg 270)

The provisions of the Act and of this Regulation relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

POLICY

1. Refer to Clauses 255 and 256 of the Regulation.
2. The person presiding at a Committee meeting of Council has the power of expulsion pursuant to Section 10(4) (b) of the Local Government Act (Minute Number 269 of 18 August 1994).

8.4 How disorder at a meeting may be dealt with

(Reg 257)

- (1) If disorder occurs at a meeting of a council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The council, on reassembling, must, on a question put from the chair, decide without debate whether the business is to be proceeded with or not. This sub-clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.
- (2) A member of the public may, as provided by section 10 (2) (a) or (b) of the Act, be expelled from a meeting of a council for engaging in or having engaged in disorderly conduct at the meeting.

8.5 Power to remove persons from meeting after expulsion resolution

(Reg 258)

If a councillor or a member of the public fails to leave the place where a meeting of a council is being held:

- (a) immediately after the council has passed a resolution expelling the councillor or member from the meeting; or
- (b) where the council has authorised the person presiding at the meeting to exercise the power of expulsion, immediately after being directed by the person presiding to leave the meeting,

a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member from that place and, if necessary, restrain the councillor or member from re-entering that place.

POLICY

The power to remove a Councillor be confined to those circumstances that constitute a failure to comply with a requirement under Clause 256 of the Regulation and this Code.

8.6 Certain persons may be expelled from council committee meetings

(Reg 271)

- (1) If a meeting or part of a meeting of a committee of a council is closed to the public in accordance with section 10(A) of the Act, any person who is not a councillor may be expelled from the meeting as provided by section 10(2) (a) or (b) of the Act.
- (2) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council, committee or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place.

8.7 Conduct at Meetings

(Supp Prov)

Council's Code of Conduct also provides standards for appropriate behaviour and sanctions for misbehaviour at meetings. Councillors should also be aware of the provisions of the Code of Conduct in regard to these matters.

PART 9 – COMMITTEES, THEIR MEMBERS AND FUNCTIONS

9.1 Council may appoint committees

(Reg 260)

- (1) A council may, by resolution, establish such committees as it considers necessary.
- (2) A committee is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.
- (3) The quorum for a meeting of a committee is to be:
 - (a) such number of members as the council decides, or
 - (b) if the council has not decided a number a majority of the members of the committee.

POLICY

1. Committees established under this Clause shall be known as "Standing Committees" and comprise Elected Members only.
2. The City Services and City Development Committees shall consist of all Councillors and require a quorum of six Councillors.
3. The Standing Committees detailed in Clause 2 of this policy have such authority to make binding resolutions on all relevant matters as may be delegated from Council from time to time.

9.2 Council May Resolve Itself into a Committee

(LGA Sec 373)

A council may resolve itself into a committee to consider any matter before the council.

9.3 Functions of committees

(Reg 261)

A council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

(Supp Prov)

The purpose of Canterbury's committees is detailed in appendix G.

9.4 Procedure in committees

(Reg 265)

- (1) Subject to sub-clause (3), each committee of a council may regulate its own procedure.

- (2) Without limiting sub-clause (1), a committee of a council may decide that, whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote.
- (3) Voting at a committee is to be by open means (such as on the voices or by show of hands).

POLICY

1. The rules of debate and procedures applicable to the City Services and City Development Committees shall be those contained in the Act, the Regulation and the adopted Code of Meeting Practice.
2. The Chairperson of each Standing Committee shall have a casting vote.
3. Questions relating only to items before Committees may be asked at Committees. Any matter raised by a member of a Committee that does not or is not directly related to an item of business before the Committee, may be referred to Council by way of a Notice of Motion by any Councillor.
4. There shall be no debate permitted where a motion is moved and seconded calling for an inspection, mediation meeting or referral to Council.

9.5 Chairperson and deputy chairperson of committees

(Reg 267)

- (1) The chairperson of each committee of the council, must be:
 - (a) the mayor; or
 - (b) if the mayor does not wish to be the chairperson of a committee - a member of the committee elected by the council; or
 - (c) if the council does not elect such a member - a member of the committee elected by the committee.
- (2) A council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- (3) If neither the chairperson nor the deputy chairperson of a committee of a council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- (4) The chairperson is to preside at a meeting of a committee of a council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

POLICY

1. The Mayor shall be entitled to attend and vote at any Committee meeting of Council. However, if a Chairperson has been elected or appointed to a particular Committee by Council, the Mayor shall not have the right to preside at a meeting of that Committee unless the Chairperson or Deputy Chairperson is unable or unwilling to preside and then and only if the Mayor has first been elected by the members of the Committee as the Committee's Acting Chairperson.
2. The Chairpersons of Standing Committees shall be appointed by Council.
3. The role of the Chairperson is outlined in Appendix "A".

9.6 Absence from committee meetings

(Reg 268)

- (1) A member (other than the Mayor) ceases to be a member of a committee if the member:
 - (a) has been absent from 3 consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences; or
 - (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.
- (2) Sub-clause (1) does not apply if all of the members of the council are members of the committee.

Note: The expression "year" means the period beginning 1st July and ending the following June. See the Dictionary to the Act.

9.7 Non-members entitled to attend committee meetings

(Reg 263)

- (1) A councillor who is not a member of a committee of a council is entitled to attend, and to speak at, a meeting of the committee.
- (2) However, the councillor is not entitled:
 - (a) to give notice of business for inclusion in the agenda for the meeting, or
 - (b) to move or second a motion at the meeting, or
 - (c) to vote at the meeting.

9.8 Reports of committees

(Reg 269)

- (1) If in a report of a committee of the council distinct recommendations are made, the decision of the council may be made separately on each recommendation.
- (2) The recommendations of a committee of the council, are so far as adopted by Council, resolutions of the council.
- (3) If a committee of a council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting, that is closed to the public, the chairperson must:
 - (a) make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended; and
 - (b) report the resolution or recommendation to the next meeting of the council.

PART 10 – AFTER THE MEETING

10.1 Acting on Council Decisions

(Supp Prov)

The Act requires Councillors as a group to direct and control the Council's affairs, allocate Council's resources, determine Council policies and objectives and monitor Council's performance.

The General Manager is responsible for the efficient and effective operation of Council's organisation, the day-to-day management of the council, employment of council staff and for acting on Council decisions (LGA Sec 335)

10.2 Public Availability of Decisions

(Supp Prov)

The public has the opportunity to review all Council decisions, even those made at closed meetings, through the inspection of Council's meeting minutes. The right of the public to inspect meeting agendas, business papers and minutes of council and committee meetings, is expressly provided for under the Government Information (Public Access) Act 2009.

10.3 Public Access to correspondence and reports

(LGA Sec 11)

- (1) A council and a committee of which all the members are councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.
- (2) This section does not apply if the correspondence or reports:
 - (a) relate to a matter that was received or discussed; or
 - (b) were laid on the table at, or submitted to, the meeting, when the meeting was closed to the public.
- (3) This section does not apply if the council or committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A (2), are to be treated as confidential.

PART 11 – MINUTES

11.1 Why and How Should Minutes be Kept?

(LGA Sec 375)

- (1) The council must ensure that full and accurate minutes are kept of the proceedings of a meeting of the council.
- (2) The minutes must, when they have been confirmed at a subsequent meeting of the council, be signed by the person presiding at that subsequent meeting.

POLICY

1. The provision of Section 375 shall also apply to Committee meetings.
2. The purpose of the minutes is to record procedural motions and substantive motions arrived at by the meeting. The minutes shall not record things said by way of debate or comment unless Council so resolves.
3. The correctness of the minutes of every proceeding ordinary or extraordinary meeting, not previously confirmed shall be taken into consideration as the first business at every ordinary meeting of Council, in order that such minutes can be confirmed.
4. A motion or discussion shall not be in order with respect to such minutes except with regard to their accuracy as a true record of proceedings.
5. In the absence of any formal direction from the Council, the structure and presentation of the minutes shall be at the General Manager's discretion.
6. Minutes may be confirmed at an extraordinary meeting of the Council.

11.2 What matters must be included in the minutes of council meetings

(Reg 254)

The general manager must ensure that the following matters are recorded in the council's minutes:

- (a) details of each motion moved at a council meeting and of any amendments moved to it,
- (b) the names of the mover and seconder of the motion or amendment,
- (c) whether the motion or amendment is passed or lost

POLICY

The provisions of Clause 254 shall also apply to Standing Committee meetings.

(Supp Prov)

The Act and Regulations provides that the following matters must be included in the minutes of meetings:

1. The grounds for closing part of a meeting to the public
2. The report of a Council Committee leading to a rescission motion

3. The disclosure to a meeting by a councillor of a pecuniary interest
4. Details of each motion moved and any amendments
5. The names of the mover and seconder of each motion and amendment
6. Whether each motion and amendment is passed or lost
7. The circumstances and reasons relating to the absence of a quorum together with the names of the councillors present
8. The dissenting vote of a councillor, if requested.
9. The names of the Councillors who voted for a motion in a division and those who voted against it. A division is always required when a motion for a planning decision is put at a meeting of the Council
10. A report of the proceedings of the committee of the whole, including any recommendations of the committee.

11.3 Minutes for Closed Meetings

(Supp Prov)

Minutes must include the details of all motions and amendments; the names of their movers and seconders; and whether the motions and amendments are passed or lost.

11.4 Minutes from Committee Meetings

(Reg 266)

- (1) Each Committee of a council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, a committee must ensure that the following matters are recorded in the committee's minutes:
 - (a) details of each motion moved at a meeting and of any amendments to it;
 - (b) the names of the mover and seconder of the motion or amendment;
 - (c) whether the motion or amendment is passed or lost.
- (2) As soon as the minutes of an earlier meeting of a committee of the council have been confirmed at a later meeting of the committee, the person presiding at the later meeting must sign the minutes of the earlier meeting.

11.5 Inspection of the minutes of a council or committee

(Reg 272)

- (1) An inspection of the minutes of a council or committee of a council is to be carried out under the supervision of the general manager or an employee of the council designated by the general manager to supervise inspections of those minutes.
- (2) The general manager must ensure that the minutes of the council and any minutes of a committee of the council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.

11.6 Confirmation of Minutes

(LGA Sec 703)

Every entry in the minutes of the business transacted at a meeting of the council and purporting to be signed by the person presiding at a subsequent meeting of the council is, until the contrary is proved, evidence:

- (a) that the business as recorded in the minutes was transacted at the meeting; and
- (b) that the meeting was duly convened and held.

(Supp Prov)

The minutes of a meeting are “unconfirmed” until they are submitted for confirmation at a subsequent meeting. The minutes can be changed by Council resolution at the meeting prior to confirmation.

PART 12 – CODE OF MEETING PRACTICE

12.1 Conduct of meetings of council and committees

(LGA Sec 360)

- (1) The regulations may make provision with respect to the conduct of meetings of councils and committees of council of which all the members are councillors.
- (2) A council may adopt a code of meeting practice that incorporates the regulations made for the purposes of this section and supplements those regulations with provisions that are not inconsistent with them.
- (3) A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

12.2 Preparation, public notice and exhibition of draft code

(LGA Sec 361)

- (1) Before adopting a code of meeting practice, a council must prepare a draft code.
- (2) The council must give public notice of the draft code after it is prepared.
- (3) The period of public exhibition must not be less than 28 days.
- (4) The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to the council.
- (5) The council must publicly exhibit the draft code in accordance with its notice.

12.3 Adoption of draft code

(LGA Sec 362)

- (1) After considering all submissions received by it concerning the draft code, the council may decide:
 - (a) to amend those provisions of its draft code that supplement the regulations made for the purposes of section 360; or
 - (b) to adopt the draft code as its code of meeting practice.
- (2) If the council decides to amend its draft code, it may publicly exhibit the amended draft in accordance with this Division or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft code without public exhibition as its code of meeting practice.

NOTES

1. The Council must consider all submissions received.
2. It is a matter for Council to determine whether any amendments are considered to be substantial in terms of Clause 362 (2) of the Act, and therefore not a matter capable of being determined by a delegate of Council.

12.4 Amendment of the code

(LGA Sec 363)

A council may amend a code adopted under this Part by means only of a code so adopted.

POLICY

Changes that are made to the Act and Regulation will automatically be incorporated into this Code and such changes will not be advertised or reported to Council.

NOTES

Any further code adopted by Council must be prepared, notified, exhibited and adopted in accordance with the provisions of Sections 360, 361, 362 and 364 of the Act.

12.5 Public availability of the code

(LGA Sec 364)

- (1) The code of meeting practice adopted under this Division by a council must be available for public inspection free of charge at the office of the council during ordinary office hours.
- (2) Copies of the code must be available free of charge or, if the council determines, on payment of approved fee.

NOTES

The Code will be available for public inspection by contacting Council's Public Officer.

PART 13 – COUNCIL SEAL

(Reg 400)

- (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
 - (a) the mayor and the general manager; or
 - (b) at least 1 councillor (other than the mayor) and the general manager; or
 - (c) the mayor and at least 1 other councillor; or
 - (d) at least 2 councillors other than the mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in sub-clause (2)) attest by their signatures that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.
- (5) For the purposes of sub-clause (4), a document in the nature of a reference or certificate of service for an employee of the council does not relate to the business of the council.

POLICY

The General Manager shall have custody of Council's Common Seal in accordance with Clause 400 (1) of the Regulation (Minute number 228 of 28 July, 1994).

(Supp Prov)

A council seal is like the signature of the council. It signifies Council's approval to the content of the document to which it is affixed.

Clause 400 (4) of the Regulation requires a council resolution before each use of the seal. The resolution must specifically refer to the document to be sealed.

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APPENDICES

APPENDIX "A" The Role of Chairperson

1. The Chairperson shall insist upon the proper conduct of debate.
2. The Chairperson should be impartial and consistent in rulings on all occasions regardless of their personal views and beliefs on the subject being discussed whether or not they have made their view known.
3. The Chairperson shall receive and put to the meeting any motion which is brought before the meeting in accordance with the Act, Regulation and Code of Meeting Practice.
4. The Chairperson should not permit discussion unless there is a motion before the meeting.
5. The Chairperson shall have no power to adjourn the meeting of his or her own accord except, but not limiting the provisions of the Act or the regulation where the meeting lacks a quorum and when disorder arises.
6. The Chairperson shall have the right to rule out of order motions that do not relate to the business before Council and motions that are "ultra vires".
7. The Chairperson may refuse to put motions and amendments that are not couched in clear terms.
8. The Chairperson may advise and counsel the meeting.
9. The Chairperson shall preserve order and endeavour to prevent interference with speakers by private talk or heckling remarks, offensive statements and the imputation of improper motives. In the event of such occurrences, the Chairperson may call upon speakers to withdraw and apologise. (Refer to Clause 255 of the Regulation – **Questions of Order**)

APPENDIX "B" Motions

1. A motion is a proposal put forward by a member of the Committee or the Council calling for a specific action to be taken or a decision to be made on the particular matter before the Committee or Council.
2. If that motion is passed it becomes a resolution of the Council or the Committee.

The mover of a motion may be given the opportunity to explain the motion before a seconder is called for, if considered necessary by the Chairperson.
3. Once a motion is moved and seconded the meeting can then try and reach a sound decision by considering the specific proposal with speakers supporting it, opposing it, or suggesting changes to it.
4. If there is no objection to a motion or amendment before Council or Committee, there shall be no right of reply, and the Chairman shall put the motion or amendment.
5. A motion should be very specific in its intention, and must be capable of being implemented.
6. If possible, a motion should be qualified by referring to a timetable, financial implications, who is to take the necessary action, etc.
7. The motion should be simple and easy to understand so that there is no doubt about its meaning - it should be well structured and if it involves a number of different aspects then there should be different parts to the motion.
8. A Councillor seconding the motion is in effect saying "I support this proposal." If no person present is prepared to second it then the motion lapses and should not be discussed further.
9. If a motion is complex in its wording and intent, then to assist other Councillors of the Committee/Council it is always advisable that a Councillor submit the motion in writing so that it can be circulated to all members present. This will remove any doubt in the minds of Councillors as to what exactly is being moved. Likewise, the Chairperson should ensure that any motion is clearly understood by all Councillors present, and if necessary, request that the motion or amendment, as the case may be, be read to the Committee or Council.
10. Motions from Councillors for the expenditure of funds must be preceded by the words 'That a report be prepared ...'.
Similarly, if a motion seeks to introduce new policy or amend existing Council policy, it must also be preceded by the words 'That a report be prepared ...'.
11. Motions should be written in a positive sense so that a "yes" vote indicates support for the action, and a "no" vote indicates that no action should be taken.
12. The mover of the motion has the right to speak first, and a general "right of reply" at the end of the debate. No new arguments or material should be argued during the "right of reply."
13. The seconder of the motion speaks after the mover, but may choose to hold over their speaking rights until later in the debate.
14. At the end of the debate, the Chairperson puts the motion to the meeting for voting upon by councillors.

APPENDIX "C" Calling a Point of Order

1. A Point of Order may be called in the following circumstances:
 - (a) A matter is raised that does not relate to the subject being discussed.
 - (b) There is no quorum present in the Council Chamber.
 - (c) There has been a failure to comply with some rule, regulation, standing order, policy or accepted rules of debate.
 - (d) A Councillor has used objectionable, insulting, offensive, abusive language or defamatory insinuations about a person's motives or conduct.
 - (e) A speaker has exceeded the time limit for speeches.
 - (f) An amendment under discussion has not been seconded.
 - (g) A matter is raised which is outside the powers of the Council.
2. The Chairperson may rule a Councillor out-of-order in two (2) ways - generally upon a ruling being given by the Chairperson after another Councillor has made a point of order, or by the Chairperson on his or her own initiative making the ruling.
3. When a Councillor raises a point of order, the person speaking must stop and resume his/her seat until the point has been dealt with.
4. The Chairperson will then either agree and rule the speaker out-of-order or disagree and allow the speaker to continue.
5. If there is an objection to the Chairperson's ruling, a Councillor may move a Motion of Dissent. (Refer Clause 248 of the Regulation)
6. A Point of Order must not be taken for the purpose of contradicting statements made by another Councillor or providing a personal explanation. It must only be concerned with the conduct of the meeting. An explanation or contradiction is not a Point of Order.

APPENDIX "D" Law of Defamation - Potential Defences

(Sly & Weigall - "The Local Government Law Guide" (Dec 1993) pages 412-414)

Of the potential defences available to councillors in relation to defamation, the major ones are:

(a) Common law qualified privilege:

- (i) That, analogous to the absolute privilege enjoyed by Parliament, councillors are protected by qualified privilege while taking part in meetings of the council or its committees. (See *Horrocks v Lower* (1975) AC 135 :)

"...what is said by members of a local council at meetings of the council or any of its committees is spoken on a privileged occasion. The reason for the privilege is that those who represent the local government electors should be able to speak freely and frankly, boldly and bluntly, on any matter which they believe affects the interests or welfare of the inhabitants. They may be swayed by strong political prejudice, they may be obstinate and pig-headed, stupid and obtuse; but they were chosen by the electors to speak their minds on matters of local concern and as long as they do so honestly they run no risk of liability for defamation of those who are the subjects of the criticism".
- (ii) For the defence of qualified privilege to be available, the statements made by councillors must be:
 - relevant to the business of the council and in particular the matter at hand; and
 - made in good faith and in the absence of malice.
- (iii) A councillor must establish that the occasion was one *"...where the person who makes (the) communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it"* (*Adam v Ward* (1917) AC 309 at 334). In this case Lord Diplock stated that the privilege is qualified to the extent that a member of a council is not protected if some other dominant motive on his or her part is proved.
- (iv) Statements may be malicious if they contain such things as:
 - known false allegations;
 - language utterly beyond and disproportionate to the facts as known to the person making the statement;
 - deliberately introduced extraneous material;
 - misleading impressions caused by the deliberate omission of material; or
 - language which is deliberately or unnecessarily strong in a manner which might unreasonably harm the person the subject of the statement.

- (v) There is also a defence of qualified privilege where an open attack has been made and the statements complained of are in reply to such attack. In the case of *Loveday v Sun Newspapers Ltd* (1938) 59 CLR 503, the High Court considered that in the hypothetical case of the town clerk (as an appropriate officer of the municipality) who responded to an attack or criticism of something done under the council's administration, which had been widely publicised; he or she would be entitled to rely on the defence of qualified privilege. However, the statements published by that clerk would need to be confined to answering the criticism by justifying or explaining a course of action taken, or in attempting to remove or mitigate the effect of the attack or criticism.
- (vi) Councillors should be aware that statements made by them may not attract a defence of qualified privilege if made:
 - outside meetings of the council or its committees; or
 - in the chamber but prior to the commencement or after the conclusion of such meetings.
- (vii) If a councillor, for example, repeats remarks on the steps of the town hall, which were originally made on the floor of the chamber, the councillor loses the defence of qualified privilege and must defend the communication or publication on any other available ground.

(b) Statutory qualified privilege

- (i) In New South Wales, in addition to common law qualified privilege, there is also the statutory defence of qualified privilege under the *Defamation Act 2005*.
- (ii) Section 30 of the Defamation Act 2005 provides:
 - “(1) Where in respect of matter published to any person:
 - (a) the recipient has an interest or an apparent interest in having information on some subject;
 - (b) the matter is published to the recipient in the course of giving to him information on the subject; and
 - (c) the conduct of the publisher in publishing that matter is reasonable in the circumstances,
 there is a defence of qualified privilege for that publication.
 - (2) For the purposes of subsection (1), a person has an apparent interest in having information on some subject if, but only if, at the time of the publication in question, the publisher believes on reasonable grounds that the person has that interest.”
- (iii) Although a communication or publication outside a council or council committee meeting will not attract common law qualified privilege, the matter complained of may still attract the statutory defence of qualified privilege, if the provisions of section 22 are met.

(c) Justification

Under section 25 of the *Defamation Act 2005*, it is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true.

(d) **Statutory defence of acting in good faith**

- (i) A further defence that may be available to certain councillors in certain circumstances, as well as to council staff, can be found in section 731 of the Act. For that section to apply for the benefit of a councillor or a member of staff, the act complained of must have been done:
- either when the councillor was "*acting as the council*" (eg. the mayor during the council Christmas recess) or was "*acting under the direction of the council*", or the member of staff was acting under direction of or delegation from the council or the general manager, as appropriate;
 - in good faith;
 - for the purpose of executing the Local Government Act or any other Act; and
 - for and on behalf of the council.
- (ii) As the modern trend in the law is that provisions of this nature are read very narrowly by the Courts, the safest approach to take is to view this section as providing minimal protection.

APPENDIX “E” Guidelines for Public Addresses

Aim

To assist the decision-making process, Council has provided the opportunity to members of the public to address Council and Committee meetings.

Guidelines

A person who has an interest in a report included on a Council or Committee meeting agenda may address the subject meeting provided

- a) written application to address either Council or a Committee meeting is lodged with Governance staff prior to 12 noon on the day of the meeting.
- b) the application must include:
 - Details of the report on which the person wishes to speak
 - Whether the speaker is an applicant, objector or otherwise
 - Name, address and contact phone number of the speaker
- c) the request is approved by the General Manager in consultation with the Mayor or Chairperson as appropriate
- d) any address being made by way of statement and being limited to five minutes. A two-minute extension to this time limit may be granted at the discretion of Council
- e) the speaker being willing to accept questions from Councillors or Council officers
- f) the speaker not engaging in debate with the Councillors or Council officers
- g) the General Manager in consultation with the Mayor or Chairperson as appropriate having the right to limit the number of speakers on any one issue
- h) while the Chairperson may seek assistance of Council Officers during the address, speakers are not permitted to question the Officers or engage in debate with them.

A ‘report included on a Council or Committee meeting agenda’ does not refer to Mayoral Minutes, Notices of Motions, Rescission or Procedural Motions, matters already considered at other forums (e.g. IHAP, Advisory Committees, JRPP), or other matters as determined by the General Manager or the Mayor.

APPENDIX “F” Policy on the Conduct of On-Site Inspections

The purpose

For Councillors to familiarise themselves with the site and area to gain an understanding of the impact of any proposal.

Decisions to have an on-site inspection

When a decision to hold an inspection is made, it is important that a clear indication be given as to who will be notified of the inspection.

Conduct of inspections

The purpose of the inspection is for the gathering of facts and for Councillors to gain an appreciation and a full understanding of the onsite circumstances of a proposal. Any parties present are expected to contribute to this purpose. A decision on the proposal will not be made at the inspection.

- The Chairperson at the inspection will have absolute authority.
- Applicants and objectors may be asked to contribute by assisting with advice and explanation of their various points of view and to answer questions from Councillors and Council officers.
- Objectors and applicants will be asked to select a personal representative (maximum 2), to put their points of view/concerns in a concise manner.
- Objectors/applicants are not to debate issues with each other, Councillors or Council officers but will, with the agreement of the Chairperson, be given the opportunity to briefly comment (once), on the other's presentation.
- Applicants and objectors will have the right to apply to address Council or Committee meeting when the matter is under consideration.

Chairperson of inspection

The Chairperson of the inspection will be either the Mayor, Chairperson/Deputy Chairperson of the relevant Committee or a Ward Councillor present at the inspection.

Agenda for conduct of onsite inspections

- Council Officer introduces Chairperson and Councillors to those present.
- Chairperson explains
 - purpose of inspection
 - procedures and conduct of inspection including rights and obligations of the various parties present
 - Council Officer outlines the proposal including reference to plans
- If appropriate, applicants and objectors are asked to put their views to the Councillors with the purpose of contributing to the understanding of the Councillors present

APPENDIX “G” Constitution of Committees and Committee Delegations

City Services Committee

Membership:	All Councillors
Quorum:	Six
Meeting date, place and time:	Second Thursday of each month (except as otherwise determined by Council) in the Council Chamber, commencing at 7.30 p.m.
Casting vote:	Chairperson
Purpose	To consider and make resolutions concerning the following types of matters: <ul style="list-style-type: none"> • Roads and drainage • Environmental protection • Recreation and culture • Public health and safety • Social development • Community services • Economic services • Organisational support and organisational development
Authority:	To exercise Council's powers and functions (other than those precluded from being delegated by Section 377 of the Local Government Act 1993) in the achievement of the Committee's purpose

City Development Committee

Membership:	All Councillors
Quorum:	Six
Meeting date, place and time:	Second Thursday of each month (except as otherwise determined by Council), in the Council Chamber, commencing at the conclusion of the City Services Committee.
Casting Vote:	Chairperson
Purpose:	To consider and make resolutions concerning the following types of matters: <ul style="list-style-type: none"> • Rezoning and other Local Environmental Plans • Applications for development approval and related matters • Land use planning policy, including but not limited to Development Control Plans and Codes • Other reports on land use planning-related matters
Authority:	To exercise Council's powers and functions (other than those precluded from being delegated by Section 377 of the Local Government Act 1993) in the achievement of the Committee's purpose.

APPENDIX "H" Councillor's Disclosure of Pecuniary or Non Pecuniary Interest form



COUNCILLOR'S DISCLOSURE OF PECUNIARY OR NON PECUNIARY CONFLICT OF INTEREST, INCLUDING LESS THAN SIGNIFICANT CONFLICT OF INTEREST

Please ensure completed form is submitted to the General Manager **24 hours before the meeting** to which the disclosure relates.

PART A: Please complete all sections of this Part.

Meeting Name: _____

Meeting Date: _____

Item Number and Subject: _____

Details of the Disclosure and Nature of the Interest:

Type of Disclosure: Pecuniary / Non Pecuniary (please circle)

If Non Pecuniary, is it: Significant / Less than Significant (please circle)

NOTE: If the disclosure relates to a pecuniary or significant non pecuniary conflict of interest, the Councillor cannot have any involvement in this matter and must absent themselves from the Chambers and not take part in any debate or voting on the issue.

PART B: Please complete this Part only if the disclosure involves a less than significant non pecuniary conflict of interest.

DISCLOSURE OF LESS THAN SIGNIFICANT NON PECUNIARY CONFLICT OF INTEREST

Reason the non pecuniary interest is considered less than significant and does not require further action. (These comments will be recorded in the Minutes of the meeting):

Councillor's Name.....

Councillor's Signature and Date.....

Office Use Only File Number:

Recorded in Minutes:

(Initials and date)



Code of Conduct





Part 1 Code of Conduct

Part 2 Procedures for the Administration of the Code of Conduct



PART 1

CODE OF CONDUCT

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Code of Conduct - Policy 23-032
Adopted 25 February 2016
Council Minute No. 37



FOREWORD – A STRONG ETHICAL CULTURE

The City of Canterbury is a great place to live and work and we want to see this continue in the future. We are a responsible and customer-focused council serving the people of Canterbury, and we provide quality service in all of our activities in order to achieve this future.

An important way in which we can continue to be a responsible council is through a strong ethical culture. Honesty and integrity in the way we do things as an organisation will give us strength, resilience and effectiveness.

This Code of Conduct is an important foundation for a strong ethical culture. It articulates the standards of behaviour expected of councillors and staff and gives us a basis for our decision making process.

This code has the full support of Councillors, the General Manager, senior management and staff.

Personal responsibility

Councillors, members of staff of council and delegates of the council must comply with the applicable provisions of this code of conduct. It is the personal responsibility of all council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the any provisions of council's code of conduct relevant to their activities.

Failure by a councillor to comply with an applicable requirement of council's code of conduct constitutes misbehaviour. Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

Legislative foundations

The Local Government Act 1993 requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW.

This Code of Conduct uses the Model Code of Conduct as a basis, and supplements it with specific provisions relevant to Canterbury City Council. For the purposes of section 440 of the Act, this Code comprises all parts of the Model Code.

This Code should be read in conjunction with the Act. However, nothing in this Code overrides or affects the Act or any other law.

Council has also adopted a policy, consistent with the Public Interest Disclosures Act 1994, for the protection of those making internal disclosures of corrupt conduct, maladministration, serious and substantial waste within the Council, government information contravention and pecuniary interest contravention. In some

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circumstances the reporting of breaches of this Code of Conduct will require the use of this policy.

Values

This Code of Conduct reflects and supports our values. Values are beliefs we have that provides a basis for choices we make. They ultimately determine the quality of our lives.

We have expressed these as simple action statements. The pictorial format is inspired by the upgraded pavements in Beamish Street, Campsie. The lighter colour is our mission, which sets out our purpose in the things we do. The other statements describe the way we want to do these things.

we are responsible to council and our community	we respect and value people	we don't tolerate discrimination, bullying or harassment	we accept responsibility for our actions
through the City Strategic Plan	we welcome diversity	the way we want to do things here	we act with integrity
to achieve real improvements in quality of life	we encourage innovative contributions	we seek to learn and continually improve	we recognise and celebrate success
for people living and working in the City of Canterbury	we operate fairly and transparently	we make all decisions based on merit	we manage risk responsibly

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23-032**Key Principles**

The Code of Conduct is based on the following key principles:

Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Leadership

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council.

This means promoting public duty to others in the council and outside, by your own ethical behaviour.

Selflessness

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests.

This means making decisions because they benefit the public, not because they benefit the decision maker.

Impartiality

You must make decisions solely on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits.

This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.

Accountability

You are accountable to the public for your decisions and actions and must consider issues on their merits, taking into account the views of others.

This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands.

This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.



Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest.

This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.

Respect

You must treat others with respect at all times.

This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

Guide to Ethical Decision-Making

If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Conflict of interests

If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these six points:

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interests?
- Do your personal interests conflict with your official role?
- What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?

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Political donations and conflict of interests

Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of undue influence in relation to their vote or support.

Seeking advice

Remember – you have the right to question any instruction or direction given to you that you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This may include your supervisor or trusted senior officer, your union representatives, the Division of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

Contact Information

General Manager – Jim Montague	9789 9447
Public Interest Disclosures Coordinator and	
Complaints Co-ordinator– Brad McPherson	9789 9398
Independent Commission Against Corruption	8281 5999
NSW Ombudsman	9286 1000
NSW Division of Local Government	4428 4100



PART 1 INTRODUCTION

The new Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct) was released in March 2013. Section 440 of the Local Government Act 1993 requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct.

For the purposes of section 440 of the Act, this Code comprises all parts of the Model Code of Conduct supplemented by specific provisions relevant to the City of Canterbury.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances 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 Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

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

A better conduct guide has also been developed to assist councils to review and enhance their codes of conduct. This guide supports this code and provides further information on the provisions in this code. (Currently under development by DLG)

PART 2 PURPOSE OF THE CODE OF CONDUCT

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist council officials to:

- understand 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 of the Act)
- act in a way that enhances public confidence in the integrity of local government.

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NOTE: You act "honestly" if you act in good faith, with no ulterior or improper purpose. A breach of the obligation to act honestly involves a consciousness that what is being done is not in the interests of Council, or the community, or both, and deliberate conduct in disregard of that knowledge. Honesty is more than the absence of dishonesty. Anything that is not a fact, or not in accordance with the facts, is dishonest.

**PART 3 GENERAL CONDUCT OBLIGATIONS**General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
 - b) is detrimental to the pursuit of the charter of a council
 - c) is improper or unethical
 - d) is an abuse of power or otherwise amounts to misconduct
 - e) causes, comprises or involves intimidation, harassment or verbal abuse
 - f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
 - g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
 - h) is unreasonable, unjust, or oppressive;
 - i) may cause any reasonable person unwarranted offence or embarrassment;
 - j) may give rise to the reasonable suspicion or appearance of improper conduct or partial performance of your public or professional duties;
 - k) is contrary to law
- 3.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439 of the Act*)
- 3.3 You must treat others with respect, courtesy, compassion and sensitivity at all times.

Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must always act in the public interest.
- 3.6 You must not act for an ulterior purpose or on irrelevant grounds.
- 3.7 You must take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained.
- 3.8 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.

NOTE: The general law requires all decision-makers to act fairly, reasonably and otherwise lawfully. That means, among other things, that decision-makers must act strictly within the powers conferred or imposed, and strictly for the purpose for which those powers were conferred or imposed.

Harassment and discrimination

3.9 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

Development decisions

3.10 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

3.11 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

3.12 Councillors must not attend pre-determination development assessment meetings on Council premises involving staff below Manager/Director level unless both the applicant and other interested parties are present. Minutes must also be taken at these meetings by Council staff present. This does not prevent Councillors from meeting with applicants and objectors by mutual consent as they see fit.

Council Support

3.13 A council official who honestly and faithfully observes the requirements of this Code and any relevant law is entitled to expect the publicly expressed support of his or her Council and colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties.

Binding caucus votes

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



- 3.15 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.
- 3.16 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.
- 3.17 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.

Relations with the Media

- 3.18 You must at all times promote a positive image of Council and local government generally when dealing with the public.
- 3.19 You must refrain from making any public statement which insults or makes personal reflections on or imputes improper motives to any other council official.
- 3.20 Where a situation arises where a Councillor's comment is sought on an issue of community interest, the Councillor must clearly state that their expressed view is a personal view, and does not necessarily represent the views of Council on the particular issue.
- 3.21 When making public comment on issues or participating in political or industrial activities, staff should not indicate that their views are those of Council. Staff should not provide official comment on matters related to Council unless they are authorised to do so by the General Manager. Public comment includes:
- a) interviews with the media
 - b) public speaking engagements
 - c) expressing views in letters to the media or in notices, articles or any other medium

Tendering

- 3.22 You must not be involved in any presentation on behalf of any tenderer whether it involves a cost or not.
- 3.23 You must not discuss with a tenderer or prospective tenderer any aspect of a tender for a contract to be let by Council, except where a staff member or delegate has been authorised to respond to enquiries relating to the tender.
- 3.24 During all tendering processes staff must comply with Council's Procurement policy which is available on the policy register or from the Group Manager Governance.

Alcohol and other drugs

- 3.25 Council officials must not be intoxicated or drug affected when performing their official duties and must observe the relevant provisions of Council's adopted Drug and Alcohol Management policy, as in force from time-to-time.

We have adopted a drug and alcohol policy for Council staff. The purpose of the policy is to ensure the health, safety and welfare of all employees by effectively dealing with any problems in the work place associated with the misuse of drugs and alcohol. A copy of the policy is available on the intranet or from the Manager Human Resources.

Lobbying

- 3.26 The Code of Conduct and the Act both recognize that appropriate lobbying of councillors is a normal part of the democratic process. However, it is in the public interest that lobbying is done fairly and does not undermine public confidence in council decision making. The Independent Commission Against Corruption (ICAC) has produced a publication regarding the lobbying of Councillors. The ICAC publication is available on the ICAC website.

Health, Wellbeing and Safety

- 3.27 Councillors and Council staff should ensure that council's premises are adequate to ensure the health, safety and wellbeing of other council officials and members of the public in accordance with their obligations under the Work Health and Safety Act 2011.

Child Protection

- 3.28 Child Protection legislation provides substantial requirements for the reporting of suspected and actual child abuse as well as checks for criminal history of employees of Council.

Working with children checks are carried out for all staff positions within Council responsible for supervising or working with children

**PART 4 CONFLICT OF INTERESTS**

- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 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. (*section 442 of the Act*)
- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*section 443 of the Act*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449 of the Act*)
 - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451 of the Act*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459 of the Act*)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441 of the Act), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What are non-pecuniary interests?

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

4.11 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

4.13 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. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.

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

4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships 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, sporting body, club, corporation or association that is particularly strong.

4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why



you consider that the conflict does not require further action in the circumstances.

- 4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the general manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) where the major political donor has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.17(b).
- 4.22 For the purposes of this Part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.
- 4.23 Councillors should note that political donations below \$1,000, 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 interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.23, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.20 above).



Loss of quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
 - b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 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 interests 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 part 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 part of the council's area, and
 - b) the non-pecuniary conflict of interests arises only because of an interest that a person has in that person's principal place of residence, and
 - c) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

- 4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict



with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353 of the Act*)

- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- conflict with your official duties
 - involve using confidential information or council resources obtained through your work with the council
 - require you to work while on council duty
 - discredit or disadvantage the council.

We have adopted the Other Business or Employment policy for Council staff. The purpose of the policy is to ensure council staff are aware of their requirements and seek approval from the General Manager for secondary employment before they undertake any such activity. All staff are expected to act in accordance with the provisions of the policy. A copy of the policy is available on the intranet or from the Manager Human Resources.

Personal dealings with council

- 4.32 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 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.

Bankruptcy

- 4.33 Senior staff must comply with Section 341 of the Act in relation to bankruptcy and similar provisions.

Political support and community participation

- 4.34 Staff must ensure that any participation in political activities does not conflict with their primary duty as an employee to serve the Council in a politically neutral manner.

If an employee becomes aware that a conflict of interest has arisen or might arise due to their participation in party political activities they should inform their Director or the General Manager immediately and take adequate steps to manage that conflict in accordance with the Code.

Case Study

A councillor is a member of a large metropolitan club. He is not, however, active in the club or involved with the management of the club. In this situation the councillor merely enjoys the facilities of the club as a privilege of membership.

Should a matter relating to the club arise at council, it is appropriate that the councillor inform the council of his membership. It is unlikely, however, that his interest as a club member would conflict with his role as a councillor representing the view of residents and ratepayers generally. He could therefore participate in the decision making process.

If the councillor was, however, an office holder in the club, the interest may constitute a pecuniary interest.

**PART 5 PERSONAL BENEFIT**

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Gifts and benefits

- 5.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 5.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Token gifts and benefits

- 5.3 Generally speaking, token gifts and benefits include:
- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i) the discussion of official business
 - ii) council work related events such as training, education sessions, workshops
 - iii) conferences
 - iv) council functions or events
 - v) social functions organised by groups, such as council committees and community organisations
 - b) invitations to and attendance at local social, cultural or sporting events
 - c) gifts of single bottles of reasonably priced alcohol (not exceeding a value of \$20) to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
 - d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers
 - e) prizes of token value.

Gifts and benefits of value

- 5.4 Notwithstanding clause 5.3, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

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

- 5.5 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) accept any gift or benefit of more than token value
 - e) accept an offer of cash or a cash-like gift, regardless of the amount.
- 5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.
- 5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.
 - 5.7.1 More than token value is defined as a gift or benefit with a value exceeding \$20 or such other amount as may be specified from time to time.
 - 5.7.2 Staff members who:
 - i) exercise a regulatory function of council
 - ii) are involved in procurement or tendering evaluation panels
 are prohibited from accepting gifts or benefits of any kind or value.

Staff members who exercise regulatory functions include, but are not limited to, regulatory services staff and development assessment staff.

Gifts offered to, or left for, these staff members which cannot be reasonably refused or returned must immediately be relinquished to a supervisor, manager, the Director or the General Manager and will be donated to the Mayor’s Charity Fund.
 - 5.7.3 The procedure for registering gifts and benefits to the gifts register is provided in the Appendices.

Bribes

- 5.8 If a bribe or other improper inducement is offered to you, you must immediately report the matter to the General Manager, to enable the General Manager to fulfil his obligations pursuant to Section 11 of the Independent Commission Against Corruption Act 1998. Such a report must be in writing and be provided to the General Manager as soon as possible following the incident.

Improper and undue influence

- 5.9 You must not use your position to influence other council officials in the performance of their public or professional duties 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 appropriate exercise of their representative functions.
- 5.10 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

Case Study

Over a period of time, one local council employee was involved in a series of inspections to registered premises. During the period, the owner of the premises offered the employee a number of gifts including a present for the employee's new born child. The employee accepted the gifts as he felt they were offered as unconditional and genuine tokens of appreciation for his work. He did not interpret the gifts as attempts to gain his favour. In accepting the gifts he did not contravene the council's code of conduct.

Later the owner of the premises made an application for variation to the conditions of his licence. The employee, dutifully, was not compromised by the gifts, and made a recommendation that was not in the owner's interests. After the recommendation was made, the owner complained to the council about the employee accepting the gifts.

Although the employee accepted the gifts in good faith, he nevertheless placed himself in a vulnerable position. While each of these gifts was of modest value, when viewed in total, the value of the gifts seemed quite substantial. The owner also alleged the employee had accepted bribes.

The employee's acceptance of the gifts could also be used as circumstantial evidence of bribery. Furthermore, the employee could not rely on the fact that he made a decision he would have made, regardless of the gifts, as a defence to bribery.



PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

This Part should be read in conjunction with our Procedure: Interaction between Council officials which is included in the Appendices.

Obligations of councillors and administrators

6.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.

6.2 Councillors or administrators must not:

- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352 of the Act*)
- 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 member or delegate (*Schedule 6A of the Act*)
- 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 council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

Case Study

A councillor was driving down a local street in her ward and noticed that the nature strips in front of several houses were very unkempt. She immediately contacted a Team Leader whom she knew quite well by mobile phone and requested that Council personnel mow the strip as a matter of urgency as it was disturbing the general environmental amenity.

This contact was inappropriate as councillors must refrain from directing council staff. In this situation the Team Leader correctly and politely referred the councillor to the General Manager.

Obligations of staff

6.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.



6.4 Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out 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 conflict with the performance of their official duties.

6.5 When exercising a regulatory inspection or other function in relation to members of the public, a member of staff must notify the General Manager when dealing with relatives and close friends, and disqualify themselves from the dealing.

6.6 When making decisions or taking actions under delegated authority a member of staff must ensure that:

- a) the decision or action is within their delegated authority as specified by the relevant instrument of delegation;
- b) all decision making requirements and procedures required by the delegation are complied with;
- c) the decision or action is in accordance with the spirit and the letter of any relevant legislation; and
- d) any decisions and the evidence upon which they are based are properly documented.

Obligations during meetings

6.7 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.

6.8 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

6.9 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 broader workforce policy issues.
- b) Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
- c) Council staff refusing to give information that is available to other councillors to a particular councillor.



- d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
- e) Councillors and administrators being overbearing or threatening to council staff.
- f) Councillors and administrators making personal attacks on council staff in a public forum.
- g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
- h) 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.
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

**PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES**Councillor and administrator access to information

- 7.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009*.
- 7.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 7.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 7.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Councillors and administrators to properly examine and consider information

- 7.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

- 7.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 7.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

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

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

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

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body
- f) not disclose any information discussed during a confidential session of a council meeting.

NOTE: If you have access to confidential or sensitive information as part of a local government function, you are in a position of absolute trust, and have a 'fiduciary duty' to Council to keep confidential the information to which you have access. Refer to Section 664 of the Act for more information.

Personal information

7.11 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) council's privacy management plan
- e) the Privacy Code of Practice for Local Government

Use of council resources

7.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised in accordance with the Procedure: Use of Council Property (included in the Appendices), and proper payment is made where appropriate.

7.13 Union delegates and consultative committee members may have reasonable access to council resources 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.



- 7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 7.15 You must not make use of the council logo or similar intellectual property of the Council without first obtaining the written approval of the Council to such use. Refer to the Procedure: Use of Council Property (included in the Appendices) for instructions on how such approval may be sought.
- 7.16 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.
- 7.17 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaign 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.
- 7.18 The interests of a councillor in their re-election are considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate.
- 7.19 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 7.20 You must not convert any property of the council to your own use unless properly authorised.
- 7.21 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.
- 7.22 You must comply with the requirements of Council's Information Technology Usage policy when using our computer resources. A copy of the policy is available on our web page or by contacting our Group Manager Customer and Information Services.

Councillor access to council buildings

- 7.23 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.



- 7.24 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff
- 7.25 Councillors and administrators are not to use entry cards in a manner or for a purpose not otherwise authorised by this Code of Conduct or by Council, including the purpose of gaining access to any part of Council premises to which access is otherwise denied or excluded by this Code.
- 7.26 Councillors and administrators who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public.
- 7.27 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

Fraud and Corruption Prevention

- 7.28 We have established a policy on fraud and corruption prevention. All Council officials must abide by the policy. A copy of the policy is included in the Appendices.

**PART 8 MAINTAINING THE INTEGRITY OF THIS CODE**

8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

Complaints made for an improper purpose

8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.

8.3 For the purposes of clause 8.2, 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 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 this code
- g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
- h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
- i) to prevent or disrupt the effective administration of this code.

Detrimental action

8.4 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 under this code except as may be otherwise specifically permitted under this code.

8.5 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 this code except as may be otherwise specifically permitted under this code.

8.6 For the purposes of clauses 8.4 and 8.5 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 this code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 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 this code

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

- 8.14 Complaints alleging a breach of this Part (Part 8) by a councillor, the general manager or an administrator are to be made to the Division of Local Government.
- 8.15 Complaints alleging a breach of this Part by other council officials are to be made to the general manager.



PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act	the <i>Local Government Act 1993</i>
act of disorder	see the definition in clause 256 of the Local Government (General) Regulation 2005
administrator	an administrator of a council appointed under the Act other than an administrator appointed under section 66 of the Act
Chief Executive	Chief Executive of the Division of Local Government, Department of Premier and Cabinet
committee	a council committee
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
corrupt conduct	<p>a)</p> any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or <p>b)</p> any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or <p>c)</p> any conduct of a public official or former public official that constitutes or involves a breach of public trust, or <p>d)</p> any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or



any public authority and which could involve any of the following matters:

- a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- b) bribery,
- c) blackmail,
- d) obtaining or offering secret commissions,
- e) fraud,
- f) theft,
- g) perverting the course of justice,
- h) embezzlement,
- i) election bribery,
- j) election funding offences,
- k) election fraud,
- l) treating,
- m) tax evasion,
- n) revenue evasion,
- o) currency violations,
- p) illegal drug dealings,
- q) illegal gambling,
- r) obtaining financial benefit by vice engaged in by others,
- s) bankruptcy and company violations,
- t) harbouring criminals,
- u) forgery,
- v) treason or other offences against the Sovereign,
- w) homicide or violence,
- x) matters of the same or a similar nature to any listed above,
- y) any conspiracy or attempt in relation to any of the above.

HOWEVER, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a) a criminal offence, or
- b) a disciplinary offence, or
- c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament a substantial breach of an applicable code of conduct.

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council committee	a committee established by resolution of council
“council committee member”	A person other than a councillor or member of staff of a council who is a member of a council committee
council official	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
councillor	a person elected or appointed to civic office and includes a Mayor
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	<p>Section 441 of the Local Government Act 1993 defines a designated person as:</p> <ul style="list-style-type: none"> • the General Manager • other senior staff • a person (other than a senior staff member) who is a member of staff, a delegate, or a committee member of the council and who is designated person because their position or membership of a committee involves the exercise of functions under this 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, delegate or committee member and the person’s private interest.
election campaign	includes council, State and Federal election campaigns
non pecuniary interest	means any private or personal interest that does not pertain to money (eg. kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity).
pecuniary interest	means 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 or another person with whom the person is associated, that is not too remote or insignificant.
personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion

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public area	means, in relation to any premises or part or parts of premises, of Council, so much of those premises as are made generally or specially available to the public as of right, but does not include any such premises at any time when they are not so made available to the public (eg. access corridors to staff areas), and in any case does not include staff areas whether open office areas or private staff offices.
senior staff of Council	means the General Manager and the Directors
the Regulation	the Local Government (General) Regulation 2005

The term “you” used in the Model Code of Conduct refers to council officials. References to sections of the Act in this Code of Conduct are references to sections in the Local Government Act 1993.

The phrase “this code” used in the Model Code of Conduct refers also to the procedures for the administration of the Model Code of Conduct prescribed under the Local Government (General) Regulation 2005. (See Section 2 of this document)

Expressions used in this Code of Conduct that are defined in relevant legislation have the meanings set out in the legislation. A number of other expressions are defined here. Notes and case studies are provided to assist in understanding and applying this Code of Conduct. The notes and case studies do not, however, constitute part of the Code of Conduct.

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PART 10 APPENDICES

PROCEDURE: INTERACTON BETWEEN COUNCIL OFFICIALS

PROCEDURE: GIFTS REGISTER

PROCEDURE; USE OF COUNCIL PROPERTY

POLICY: FRAUD AND CORRUPTION CONTROL

**Procedure: Interaction between Council Officials**

The following procedure applies to the interaction between Council Officials outside of meetings:

1. The General Manager is responsible to the Council for performance and direction of all staff and day to day management of Council. Therefore, all requests for information and approaches to staff outside the forum of a Council or Committee meeting, shall be directed to the General Manager, to a Director, or to a Manager.
2. Only Senior Staff or Managers may provide advice to councillors.
3. It is within the discretion of the General Manager, Director or Manager to require councillors to make an appointment, to put a request in writing, or to put it on notice to Council to obtain detailed or otherwise time-consuming information. The General Manager, Director or Manager must indicate in writing, the reasons for refusing a request.
4. For all but straightforward advice on administrative matters, councillors should put their requests for information or advice in writing to be answered by the General Manager, the appropriate Director or Manager.
5. A Director or Manager has the discretion to refer any request for information to the General Manager. The Director or Manager must indicate to the councillor that the councillor's request has been referred on.
6. If a councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the councillor is still dissatisfied they should request the information by way of a Question on Notice or Notice of Motion to the Council.
7. Councillors must not attempt to direct staff as to the performance of their work. Staff must report all such attempts immediately to their Director or the General Manager.
8. Councillors must not request staff to undertake work of a private nature for the councillor or any other person except where otherwise authorised or permitted by law.
9. Councillors must not enter staff-only areas of council buildings without either:
 - 9.1. The express authorisation of either the General Manager or Director; or
 - 9.2. By authority of a resolution of Council.

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NOTE: A councillor is not, of course, prevented from bringing some matter to the attention of an appropriate staff member where the matter in question is of civic and public importance, and the purpose of bringing the matter to the notice of the staff member is to do no more than convey information (eg. as to the state or condition of a road or park), with no direction being given as to what action, if any, should be taken.

NOTE: A member of staff is not subject to direction by the council as to the content of any advice or recommendation made by the member, but the Council is not prevented from directing a member of staff to provide advice or a recommendation: see Section 352 of the Local Government Act 1993 (NSW).



Procedure: Gifts Register

1. Councillors and staff must declare, and have recorded in the **Gifts Register**, gifts and benefits of more than token value whether the gift or benefit is declined, accepted (and donated to the Mayor's Charity Fund) or returned. The Code of Conduct provides guidance as to what constitutes 'Token Gifts and Benefits' and 'Gifts and Benefits of Value'. (Part 5)
2. More than token value is defined as a gift or benefit exceeding \$20 (or such other amount that may be specified from time to time)
3. Recipients may retain token gifts or benefits (as listed in 5.3 of the Code of Conduct), or (if practical and appropriate) share the gift or benefit with others in council. Alternatively, the token gift or benefit may be relinquished and donated to the Mayor's Charity Fund.

While token gifts and benefits are not required to be entered into the Gifts Register, they should be disclosed to your Manager, Director, the General Manager or Mayor as appropriate.

Exception

If a member of staff, who does not exercise a regulatory function or is not involved in procurement or tendering activities, receives an invitation to attend a function that constitutes a token gift or benefit, as referred to in 5.3 of the Code of Conduct, and they wish to accept the invitation, they must:

- Complete a **Gifts and Benefits Declaration Form**; and then
- Obtain the approval of their Manager, or in the case of a Manager the approval of their Director, or in the case of a Director the approval of the General Manager **BEFORE accepting the invitation**.

The retention of any token gift or benefit must not give rise to the appearance that a person or body, through the provision of the token gift, benefit or hospitality is attempting to secure favourable treatment from council,

- 4 With regard to the offer of gifts and benefits of more than token value, a **Gifts and Benefits Declaration Form** must be completed and forwarded by a staff member to their Manager or Director, or in the case of a Councillor to the Mayor or General Manager.

Gifts and benefits of more than token value, which cannot be reasonably refused or returned, must be relinquished and will be donated to the Mayor's Charity Fund.



5. Staff members who exercise a **regulatory function** of council or who are involved in procurement and tendering activities are **prohibited** from accepting gifts, benefits or hospitality of any kind or value.

Staff members who exercise regulatory functions include, but are not necessarily limited to, regulatory services staff and development assessment staff.

Gifts or benefits of any value **offered** to these officers must be declared by way of completing and submitting a **Gifts and Benefits Declaration Form**. Gifts or benefits which cannot be reasonably refused or returned must immediately be relinquished to a supervisor, manager, the Director or the General Manager with a completed **Gifts and Benefits Declaration** form. These gifts or benefits will be donated to the Mayor's Charity Fund.

6. The relevant Manager, Director or General Manager is responsible for ensuring any receipt of a **Gifts & Benefits Declaration Form** is forwarded to Group Manager Governance.
7. The **Gifts Register** will be maintained by the Group Manager Governance and constitutes a public register.
8. The **Gifts & Benefits Declaration Form** and the **Gifts Register** will incorporate the following information in relation to the personal benefit:
 - 8.1. Date and time of receipt or provision of gift
 - 8.2. Date and time of entry into the register
 - 8.3. Provider or donator of the gift;
 - 8.4. If appropriate, the name of the business or organisation that the provider or donator represents;
 - 8.5. The receiver of the gift (if this is a team, area or division, identify the unit and the individual names of the recipients);
 - 8.6. A description of the gift;
 - 8.7. An estimated retail value
 - 8.8. Action taken and or decision made relating to the gift, for instance whether it was accepted, declined, returned, personally retained, relinquished, donated to charity and so on;
 - 8.9. The signature and date when signed by the staff member or councillor; and
 - 8.10. Signature and date when signed off by the staff member's Manager, or in the case of a Councillor, the Mayor or General Manager.
9. All declarations must be recorded in the **Gifts Register** as soon as practicable and no later than two weeks of offering, accepting or declining the gift or benefit.

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10. Any gifts or benefits donated to the Mayor's Charity Fund must be formally received and acknowledged by the Mayor's office.
11. If a Councillor or staff member is uncertain about whether a gift, benefit or hospitality is a token gift or more than token value, they should discuss it with their Manager, the Mayor or General Manager.

Councillors and staff should err on the side of caution and... **if in doubt – declare it.**

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Gifts & Benefits Declaration Form

For information on when and how to use this form refer to the Gifts Register procedure.

Dates and Times		Date	Time
Gift or benefit received or offered/provided:			
This form prepared:			
Gift or benefit provided by:			
Name:			
Organisation:			
Phone number (if available):			
Contact address (if available):			
Gift or benefit received by:			
(if applicable, list unit and all members of the unit receiving the gift or gifts)			
Details of Gift or Benefit			
Description:			
Estimated retail value			
Action taken with gift – Refused , Returned, Relinquished. Retained with approval			
Forwarded by Receiver of gift or benefit		Reviewed/Approved by Manager, Director, General Manager, or Mayor	
Signature:	Forward by email to verify identity	Signature:	Forward by email to verify identity
Name:		Name:	
Position:		Position:	
Date:		Date:	
Governance & Administration Processing:		Date	Time
Received by Governance Coordinator:			
Entered into Gifts Register:			
Gifts Register reference number:			
Gift donated to Mayor's Charity Fund received by Mayor's Office:	Signed:	Date:	

**Procedure: Use of Council Property**

1. Staff must not use Council resources for private purposes, however, they may make private use of:
 - 1.1. Fixed telephones and facsimile, provided the calls are local (such expression to include calls to adjoining STD areas), infrequent, short and do not unduly interfere with the business of Council.
 - 1.2. Mobile phones, provided that the actual cost of the private call is reimbursed to Council.
 - 1.3. Photocopiers, provided the use is infrequent and minimal.
 - 1.4. Computers, provided the use is infrequent and minimal, in accordance with Council's policy on computer usage, and does not interfere with the business of Council. No non-Council storage media (such as floppy disks, rewriteable CDs, and USB Flash Drives) are to be used in Council computers unless approved by the Manager Customer Services and Information Technology.
 - 1.5. Email and the Internet, provided the use is infrequent and minimal and does not interfere with the business of Council. Access to inappropriate Internet sites and the use of email to distribute or store offensive and inappropriate material will not be tolerated.
2. Council's resources and equipment must not be used in any circumstances by a member of staff in relation to a second job or business.
3. Council vehicles, pens, paper, clothing, material etc. are not to be used for private purposes unless lawfully authorised.
4. Council's 'Payment of Expenses and Provision of Facilities to Councillors Policy' sets out further information in relation to Councillors' rights and obligations relating to the provision of facilities for use in their role as a Councillor.
5. Approval to make use of the council logo or similar intellectual property of the Council is to be sought in the following manner:
 - 5.1. Any application for such use of the Council logo or other intellectual property must be made in writing and state the manner in which the logo or other intellectual property will be used and the purpose of such use.
 - 5.2. The Council may refuse to approve the use of its logo or intellectual property without giving reasons for its refusal except where the application is made by a Councillor for the purpose of advertising the Councillor's location and that the Councillor is a member of the Council.
 - 5.3. Any approval given by the Council to the use of the logo or other intellectual property may be on conditions which require that the

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logo or other intellectual property are not so used as to give the appearance that a business, enterprise, club or any other activity is approved of or endorsed by the Council.

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23-032**Policy: Fraud and Corruption Control**

Title: Fraud and Corruption Control Policy

Category: Strategic Corporate

Key words: Fraud, fraud prevention, corruption, corrupt conduct, ethics, ethical conduct, personal benefit, council resources, reporting breaches.

File number: F-39-1

Policy owner: Director Corporate Services (Governance)

Authorisation: Council

Review date: As per Code of Conduct

Modification history: As per Code of Conduct

Related legislation: Local Government Act 1993 and Local Government (General) Regulations 2005

Independent Commission Against Corruption Act 1998

Public Interest Disclosures Act 1994

Privacy & Personal Information Protection Act 1998

Related policies: Code of Conduct
Complaints Management Policy
Risk Management Policy
Statement of Business Ethics
Tendering Policy

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References: NSW Department of Local Government Promoting Better Practice Review– Canterbury City Council September 2007
“Fraud Control: Developing an Effective Strategy” – The Audit Office of NSW
ICAC “Practical Guide to Corruption Prevention”
“Governance Health Check” issued jointly by the LGMA and the ICAC
AS8001:2003 Fraud and Corruption Control
AS/NZS 4360 Risk Management Standard and Risk Management Guidelines (HB436)

Related forms: Gifts & Benefits Declaration form
Complaint Registration form

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	7.7	Preventing Further Fraud or Corrupt Conduct



1 Purpose

The aim of this policy is to demonstrate the City of Canterbury's commitment to the prevention, deterrence, detection and investigation of fraud and corrupt conduct. This policy establishes a framework in which fraud and corrupt conduct will not be tolerated by City of Canterbury and encourages the on-going development of staff through a culture that embraces the highest ethical standards.

1.1 Background

Fraud and corruption control is an essential element of our corporate governance. This policy is compliant with relevant legislation and provides guidance to Council officials and members of the public to ensure that Council is an ethical and honest workplace for the benefit of all stakeholders.

1.2 Rationale

This policy is designed to mitigate the City of Canterbury's exposure to fraud and corrupt conduct.

2 Objectives

This policy is designed to protect public funds and other assets, protect the integrity, security and reputation of the City of Canterbury, and assist in maintaining a high level of services to the community.

The objectives of this policy are to:

- Promote amongst Council officials and members of the public that fraudulent and corrupt acts against the City of Canterbury are unacceptable, may constitute a criminal offence and may result in prosecution or disciplinary action.
- Build a culture that supports Council officials and members of the public to report conduct they suspect may be fraudulent, corrupt or improper
- Reduce opportunities for fraudulent, corrupt or improper conduct
- Provide clear guidance to ensure that adequate investigation standards are followed
- Ensure that appropriate action is taken by the City of Canterbury if fraud, corruption or improper conduct is detected

3 Scope

This policy applies to all Council officials [Councillors, delegates and staff of the City of Canterbury] and any external entity providing goods or services to Council, and to any user of Council services or facilities.



4 Definitions

Fraud A deliberate act of deception, misrepresentation or omission committed with the intention of gaining an unjust advantage or to cause an unjust loss or disadvantage. This includes fraudulent or corrupt conduct by any person including theft of tangible or intangible assets.

Such behaviour includes, but is not limited to:-

- Breaches and attempted breaches of the law
- Unauthorised and/or illegal use of assets, information or services for private purposes
- Claiming unworked overtime on timesheets
- Allowing contractors to not fully meet contract requirements
- Misappropriation of tangible and intangible assets through:
 - Inappropriate reimbursement of expenses
 - Falsification of records for improper advantage
 - Payments to third parties not in accordance with our Purchasing policy
 - Theft, including theft or misuse of intellectual property
 - Inappropriate exertion of influence or coercion to act in a manner that is not in the City's best interest.

Corruption is defined in accordance with section 8 of the Independent Commission Against Corruption Act 1988 as:

- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Council official includes Councillors, members of staff of council and delegates of council.

Public Interest Disclosure is defined in accordance with the NSW Ombudsman as:

The Public Interest Disclosures Act provides protection for people who come forward with information about the following serious matters concerning the way agencies operate:

- corrupt conduct
- maladministration



- serious and substantial waste of public money
- government information contraventions
- local government pecuniary interest contraventions

5 Principles

The City of Canterbury expects Council officials to maintain a high standard of ethical conduct in all activities, in particular with respect to resources, information and authority. The community rightly expects the City of Canterbury to conduct its business in a fair and honest manner.

The City of Canterbury expects all Council officials to be familiar with and act in accordance with our Code of Conduct. Unacceptable behaviour and guidelines for appropriate behaviour for Council officials is contained in the Code of Conduct. We expect similar standards from the people, agencies or organisations that do business with us. These standards are detailed in our Statement of Business Ethics.

Council is committed to ensuring that its dealings with external parties are conducted in an ethical manner. Council has developed policies that it expects clients and stakeholders to adhere to, such as the Code of Conduct and Statement of Business ethics. Both documents are made available on our web site and the Statement of Business Ethics is included as part of all tender documentation.

We will ensure our community is aware that fraud and corruption committed against the Council is not acceptable by publishing appropriate information in our Annual Report.

6 Responsibilities

Council officials are responsible for reporting cases of suspected fraud or corrupt conduct.

Council officials also have a responsibility to act honestly and to follow diligently Council's policies and practices to prevent and mitigate fraud and corruption.

The General Manager is also responsible for the prevention, detection and reporting of fraud and corruption through the implementation of appropriate and effective internal control systems.

Directors, Managers, Coordinators and Team Leaders are also responsible for the prevention, detection and reporting of fraud and corrupt conduct by ensuring:



- there are mechanisms in place within their area of control to assess the risk of fraud and corrupt conduct,
- promotion of employee awareness and education on the prevention of fraud and corruption
- compliance with legislation and Council's policies and practices
- to report any fraudulent or corrupt matters to the General Manager.
- undertake risk and fraud detection through a Risk Management Program.

All Council officials must also report any identified weakness in internal controls that could potentially facilitate a fraudulent or corrupt act. These weaknesses should be reported to your Manager and/or the Group Manager Governance for determination and action as appropriate.

The Group Manager Governance will investigate and report incidents in accordance with our Code of Conduct.

7 Procedures

The following procedures will underpin our efforts in fraud and corruption prevention, detection and investigation.

7.1 Risk Assessment

Periodic and comprehensive fraud and corruption risk assessments will be conducted throughout the Council in accordance with the strategies outlined in our Risk Management Policy.

7.2 Awareness: Staff, Clients and Community

This policy will be communicated to all Council officials and members of the public and the highest possible level of awareness will be maintained. This policy will be promoted through:

- Staff training programs
- Internal communications
- Intranet; and
- Internet for the information of members of the public

7.3 Reporting

The General Manager encourages the reporting of any suspected fraud and corruption issues. To assist Council officials and members of the public, Council has mechanisms in place to provide guidance for reporting fraud and corruption. These reporting mechanisms are outlined below. If you would like assistance or further information, please discuss with your Manager or the Group Manager Governance.

Reporting by Council officials

Through our Code of Conduct we have developed an internal reporting structure that provides for Council officials to report any instances of corrupt



conduct or fraud. Council officials may also report any instances of fraud and corruption to their Manager or the Group Manager Governance.

External Reporting

The Code of Conduct also provides an alternative avenue for staff and Councillors to report fraud and corrupt conduct to external investigating authorities such as the Independent Commission Against Corruption, the NSW Ombudsman or the Division of Local Government.

Reporting by Members of the Public

We have also established a Complaints Management Policy that allows members of the public to report suspected fraud or corruption.

These policies are available on Council's intranet and web site.

7.4 Investigation

All instances of suspected fraud, corruption or improper conduct that is reported will be promptly and confidentially investigated by an appropriately skilled person to establish whether or not a basis exists for further action. Council has nominated the Group Manager Governance as the staff member responsible for progressing investigations. In the event that an issue relates to the Group Manager Governance, the investigation will be progressed by the Director Corporate Services. If necessary, the General Manager may determine that an investigation be carried out independent of Council and will arrange for an independent investigator to be appointed.

In conducting an investigation into allegations of corrupt conduct and/or fraud, we will follow the NSW Independent Commission Against Corruption (ICAC) "20 Step Guide to Conducting an Inquiry". The Guide recommends that an investigation comprise:

- Step 1: Maintaining confidentiality
- Step 2: Getting the big picture: An inquiry overview
- Step 3: Interviewing sources
- Step 4: Is the source making a protected disclosure?
- Step 5: Assessing the information
- Step 6: Setting up a file
- Step 7: Referrals
- Step 8: Defining your scope & purpose
- Step 9: Working out your powers
- Step 10: Being fair Part 1 — Listen to, and consider people's points of view
- Step 11: Thinking about 'affected persons'
- Step 12: Being fair Part 2 — No bias
- Step 13: Drafting a fact-finding plan
- Step 14: Fact-finding tools
- Step 15: Collecting documents



- Step 16: Collecting things
- Step 17: Interviewing people
- Step 18: Interviewing 'affected persons'
- Step 19: Fact-finding
- Step 20: Writing a report

Should possible corrupt conduct be uncovered, the matter will be immediately reported by the General Manager to the ICAC under Section 11 of the ICAC Act where it imposes a statutory obligation on the General Manager to report suspected corrupt conduct to the ICAC. The report by the General Manager to ICAC must be made as soon as there is reasonable suspicion that corrupt conduct may have occurred or may be occurring.

Should an investigation uncover possible criminal behaviour, the investigation will be terminated and the General Manager will report the matter immediately to Police.

7.5 Public Interest Disclosures Act 1994

Council is committed to the aims and objectives of the Public Interest Disclosures Act. Our Code of Conduct provides guidance on how to make a protected disclosure to Council's Public Interest Disclosures Coordinator. Council's Public Interest Disclosures Coordinator is the Group Manager Governance. Please refer to the policy on Public Interest Disclosures.

7.6 Disciplinary Action

Council will comply with the provisions of the Code of Conduct, relevant awards, conditions and legislation in dealing with confirmed fraudulent or corrupt acts.

7.7 Preventing Further Fraud or Corrupt Conduct

It is important that any acts of fraud or corruption are not repeated. Details of any fraudulent or corrupt acts will be provided to all Directors and Managers so they can review their operations for similar circumstances and risks. Staff from Governance will work with Managers to develop internal controls and procedures to reduce the risk of fraud or corruption re-occurring within their area.

The Group Manager Governance is empowered to initiate spot checks of processes and procedures applicable to any of Council's programs or operational functions for the purposes of ascertaining their efficiency/effectiveness and procedural integrity.

Council will document, where appropriate, proven cases of fraud or corruption and the disciplinary action taken against those involved for publication in Council's internal newsletter to discourage further instances of fraudulent and corrupt behaviour and to highlight Council's intent that fraud and corruption is not acceptable and will be dealt with appropriately.



PART 2

PROCEDURES FOR THE ADMINISTRATION OF THE CODE OF CONDUCT

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PART 1 INTRODUCTION

These procedures ("the Model Code Procedures") are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW ("the Model Code"). The Model Code and Model Code Procedures are made under sections 440 and 440AA respectively of the *Local Government Act 1993* ("the Act") and the *Local Government (General) Regulation 2005* ("the Regulation").

Sections 440 and 440AA of the Act require every council to adopt a code of conduct and procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted codes of conduct, councils may supplement the Model Code Procedures. However provisions of a council's adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

PART 2 DEFINITIONS

For the purposes of the procedures, the following definitions apply:

"the Act"	the <i>Local Government Act 1993</i>
Act of disorder	<p>clause 256 of the Local Government (General) Regulation 2005 specifies that a councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council:</p> <ul style="list-style-type: none"> (a) A contravenes the Act or any regulation in force under the Act, or (b) assaults or threatens to assault another councillor or person present at the meeting, or (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter, or (d) insults or makes personal reflections on or imputes improper motives to any other councillor, or (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.

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“administrator”	an administrator of a council appointed under the Act other than an administrator appointed under section 66 of the Act
“code of conduct”	a code of conduct adopted under section 440 of the Act
“code of conduct complaint”	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct
“complainant”	a person who makes a code of conduct complaint
“complainant councillor”	a councillor who makes a code of conduct complaint
“complaints coordinator”	a person appointed by the general manager under these procedures as a complaints coordinator
conduct	any action or inaction relating to a matter of administration, and any alleged action or inaction relating to a matter of administration.
Panel of Conduct Reviewers	This is addressed in Part 3 of these Procedures
“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
“council committee”	a committee established by resolution of council
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
“councillor”	a person elected or appointed to civic office and includes a Mayor
“council official”	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
“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

“the Division”

the Division of Local Government, Department of Premier and Cabinet

“investigator”

a conduct reviewer or conduct review committee

maladministration

for the purposes of the Public interest disclosures Act 1994 (NSW), is conduct of a kind that involves action or inaction of a serious nature that is:

- a) contrary to law; or
- b) unreasonable, unjust, oppressive or improperly discriminatory; or
- c) based wholly or partly on improper motives.

NOTE: Conduct may still constitute ‘wrong conduct’ (see below) within the meaning of the Ombudsman Act 1974 (NSW) without necessarily amounting to maladministration within the meaning of the Public interest disclosures Act 1994 (NSW).

“the Regulation”

the *Local Government (General) Regulation 2005*

“subject person”

a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

waste

refers to serious and substantial waste of public money

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers. The City of Canterbury has entered into such an arrangement with other Councils through the Southern Sydney Regional Organisation of Councils.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.



- 3.5 To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:
- a) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations, or
 - ii) law, or
 - iii) public administration, or
 - iv) public sector ethics, or
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not be eligible to be a member of the panel of conduct reviewers if they are
- a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

[The appointment of complaints coordinators](#)

- 3.12 The general manager must appoint a member of staff of the council to act as a complaints coordinator. Where practicable, the complaints coordinator should be a senior and suitably qualified member of staff. The Group Manager Governance has been appointed as Council's Complaints Co-ordinator.
- 3.13 The general manager may appoint other members of staff to act as alternates to the complaints coordinator. The Governance Co-ordinator has been appointed as Council's alternate Complaints Co-ordinator.
- 3.14 The general manager must not undertake the role of complaints coordinator.
- 3.15 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.16 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct,
 - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
 - c) liaise with the Division of Local Government, and
 - d) arrange the annual reporting of code of conduct complaints statistics.

PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?[What is a "code of conduct complaint"?](#)

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.2 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a "code of conduct complaint" are to be dealt with under council's routine complaints management processes.

When must a code of conduct complaint be made?

- 4.3 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.4 A complaint made after 3 months may only be accepted if the general manager, or, in the case of a complaint about the general manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

How may a code of conduct complaint about a council official other than the general manager be made?

- 4.5 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.
- 4.6 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.7 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.9 Notwithstanding clauses 4.5 and 4.6, where the general manager becomes aware of a possible breach of the council's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the general manager be made?

- 4.10 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.11 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.



- 4.12 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.13 The Mayor or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.14 Notwithstanding clauses 4.10 and 4.11, where the Mayor becomes aware of a possible breach of the council's code of conduct by the general manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

PART 5 HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

- 5.1 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about members of staff of council and for determining the outcome of such complaints.
- 5.2 Where the general manager decides not to make enquiries into a code of conduct complaint about a member of staff, the general manager must give the complainant reasons in writing for their decision.
- 5.3 Without limiting clause 5.2, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are code of conduct complaints about delegates of council and council committee members to be dealt with?



- 5.6 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council and council committee members and for determining the outcome of such complaints.
- 5.7 Where the general manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of council and/or members of council committees depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure,
 - b) requiring the person to apologise to any person or organisation adversely affected by the breach,
 - c) prosecution for any breach of the law,
 - d) removing or restricting the person's delegation, or
 - e) removing the person from membership of the relevant council committee.
- 5.10 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.9, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of council's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
 - b) the person must be given an opportunity to respond to the allegation, and
 - c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.9.

How are code of conduct complaints about conduct reviewers to be dealt with?

- 5.11 The general manager must refer all code of conduct complaints about conduct reviewers to the Division for its consideration.
- 5.12 The general manager must notify the complainant of the referral of their complaint in writing.



5.13 The general manager must implement any recommendation made by the Division as a result of its consideration of a code of conduct complaint about a conduct reviewer.

[How are code of conduct complaints about administrators to be dealt with?](#)

5.14 The general manager must refer all code of conduct complaints about administrators to the Division for its consideration.

5.15 The general manager must notify the complainant of the referral of their complaint in writing.

[How are code of conduct complaints about councillors to be dealt with?](#)

5.16 The general manager must refer the following code of conduct complaints about councillors to the Division:

- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
- b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see section 328B of the Act),
- c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
- d) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

5.17 Where the general manager refers a complaint to the Division under clause 5.16, the general manager must notify the complainant of the referral in writing.

5.18 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.20.

5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.



5.20 The general manager must refer all code of conduct complaints about councillors other than those referred to the Division under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

5.21 The Mayor must refer the following code of conduct complaints about the general manager to the Division:

- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
- b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
- c) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.

5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Division under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.25.

5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

Referral of code of conduct complaints to external agencies

5.26 The general manager, Mayor or a conduct reviewer or conduct review committee may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the Division, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.

5.27 Where the general manager, Mayor, conduct reviewer or conduct review committee refers a complaint to an external agency or body under



clause 5.26, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

- 5.28 Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the council is subsequently advised otherwise by the referral agency or body.

Disclosure of the identity of complainants

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
 - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
 - d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - e) it is otherwise in the public interest to do so.
- 5.30 Clause 5.29 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.31 Where a councillor makes a code of conduct complaint about another councillor or the general manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.33 The general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.
- 5.34 Where a complainant councillor makes a request under clause 5.31, the general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

- 5.35 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.36 For a code of conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.
- 5.37 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.38 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.37, the general manager or the Mayor must refer the complaint to the Division for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

Special complaints management arrangements

- 5.39 The general manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.40 Where the Division receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
 - b) impeded or disrupted the effective administration by the council of its code of conduct, or
 - c) impeded or disrupted the effective functioning of the council.
- 5.41 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
 - b) the period that the arrangement will be in force.



- 5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.43 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.
- 5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.
- 5.45 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the general manager, review the arrangement to determine whether it should be renewed or amended.
- 5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.

PART 6 PRELIMINARY ASSESSMENT

Referral of code of conduct complaints to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the general manager or the Mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interests in relation to the matter referred to them, or



- b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
 - c) they or their employer has entered into one or more contracts with the council in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K, or
 - d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

Preliminary assessment by a conduct reviewer

- 6.9 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.10 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
- a) to take no action, or
 - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the Mayor, for resolution by alternative and appropriate strategies such as, but



not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or

- d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police, or
- e) to investigate the matter, or
- f) to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.

6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.

6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.

6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

6.14 The conduct reviewer must refer to the Division any complaints referred to him or her that should have been referred to the Division under clauses 5.16 and 5.21.

6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.

6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.

6.17 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:

- a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and



- b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
- c) that the matter is one that could not or should not be resolved by alternative means.

6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with the complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.

6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.

6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

Referral back to the general manager or Mayor for resolution

6.22 Where the conduct reviewer determines to refer a matter back to the general manager or to the Mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the Mayor, recommending the means by which the complaint may be resolved.

6.23 The conduct reviewer must consult with the general manager or Mayor prior to referring a matter back to them under clause 6.22.

6.24 The general manager or Mayor may decline to accept the conduct reviewer's recommendation. Where the general manager or Mayor declines to do so, the conduct reviewer may determine to deal with the complaint by other means under clause 6.10.

6.25 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager or, in the case of a complaint about the general manager, the Mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.

6.26 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager, or, in the case of a complaint about the general manager, the Mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.


[Complaints assessment criteria](#)

6.27 In undertaking the preliminary assessment of a complaint, the conduct reviewer may have regard to the following considerations:

- a) whether the complaint is a “code of conduct complaint”,
- b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
- c) whether the complaint discloses prima facie evidence of a breach of the code,
- d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
- e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
- f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
- g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
- h) whether the conduct complained of forms part of a pattern of conduct,
- i) whether there were mitigating circumstances giving rise to the conduct complained of,
- j) the seriousness of the alleged conduct,
- k) the significance of the conduct or the impact of the conduct for the council,
- l) how much time has passed since the alleged conduct occurred, or
- m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES

7.1 Where a conduct reviewer recommends that the complaints coordinator convene a conduct review committee to investigate a matter, the conduct reviewer must notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.

7.2 The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:

- a) a panel of conduct reviewers established by the council, or
- b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.



- 7.3 In selecting suitable conduct reviewers for membership of a conduct review committee convened under clause 7.2, the complaints coordinator may have regard to the following:
- a) the qualifications and experience of members of the panel of conduct reviewers, and
 - b) any recommendation made by the conduct reviewer about the membership of the committee.
- 7.4 The conduct reviewer who made the preliminary assessment of the complaint must not be a member of a conduct review committee convened under clause 7.2.
- 7.5 A member of a panel of conduct reviewers may not be appointed to a conduct review committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the committee under clause 6.4.
- 7.6 Where the complaints coordinator convenes a conduct review committee, they will advise the complainant in writing that the committee has been convened and the membership of the committee.
- 7.7 Where, after a conduct review committee has been convened, a member of the committee becomes unavailable to participate in further consideration of the matter, the complaints coordinator may appoint another person from a panel of conduct reviewers to replace them.
- 7.8 Meetings of a conduct review committee may be conducted in person or by teleconference.
- 7.9 The members of the conduct review committee must elect a chairperson of the committee.
- 7.10 A quorum for a meeting of the conduct review committee is two members.
- 7.11 Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.
- 7.12 If a quorum is not present at a meeting of the conduct review committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the conduct review committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have a casting vote.



- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the conduct review committee in which it makes its determination in relation to the matter.
- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The conduct review committee may only conduct business in the absence of the public.
- 7.17 The conduct review committee must maintain proper records of its proceedings.
- 7.18 The complaints coordinator shall undertake the following functions in support of a conduct review committee:
- a) provide procedural advice where required,
 - b) ensure adequate resources are provided including secretarial support,
 - c) attend meetings of the conduct review committee in an advisory capacity, and
 - d) provide advice about council's processes where requested.
- 7.19 The complaints coordinator must not be present at, or in sight of a meeting of, the conduct review committee where it makes its final determination in relation to the matter.
- 7.20 The conduct review committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.

PART 8 INVESTIGATIONS

What matters may a conduct reviewer or conduct review committee investigate?

- 8.1 A conduct reviewer or conduct review committee (hereafter referred to as an "investigator") may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 8.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the Mayor.



- 8.3 The general manager or the Mayor is to deal with a matter reported to them by an investigator under clause 8.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

- 8.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
- a) disclose the substance of the allegations against the subject person, and
 - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and
 - d) invite the subject person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice, and
 - e) provide the subject person the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 8.5 The subject person may within 14 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the subject person to identify the substance of the allegation against them.
- 8.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the subject person in relation to the matter referred to them.
- 8.7 Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the investigator in the amended notice.
- 8.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the Mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
 - b) in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within 28 days or



such other reasonable period specified by the investigator in the notice.

Written and oral submissions

- 8.9 Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11 Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone.
- 8.12 Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 8.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.
- 8.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

- 8.15 Investigations are to be undertaken without undue delay.
- 8.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 8.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 8.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.



8.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

Referral or resolution of a matter after the commencement of an investigation

8.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:

- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
- b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
- c) refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police.

8.21 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.

8.22 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, the Mayor, discontinue their investigation of the matter.

8.23 Where the investigator discontinues their investigation of a matter under clause 8.22, this shall finalise the consideration of the matter under these procedures.

8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

- 8.25 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 8.26 The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.27 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.28 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 8.29 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. Where as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the subject person or an affected person, they must provide the subject person or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30 Where the subject person or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 8.31 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

Final investigation reports

- 8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.
- 8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.



8.34 The investigator's final report must:

- a) make findings of fact in relation to the matter investigated, and,
- b) make a determination that the conduct investigated either,
 - i. constitutes a breach of the code of conduct, or
 - ii. does not constitute a breach of the code of conduct, and
- c) provide reasons for the determination.

8.35 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that the subject person undertake any training or other education relevant to the conduct giving rise to the breach,
- c) that the subject person be counselled for their conduct,
- d) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation,
- e) that findings of inappropriate conduct be made public,
- f) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
- g) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
- h) in the case of a breach by a councillor, that the council resolves as follows:
 - i. that the councillor be formally censured for the breach under section 440G of the Act, and
 - ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.

8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that a person or persons undertake any training or other education.

8.37 In making a recommendation under clause 8.35, the investigator may have regard to the following:

- a) the seriousness of the breach,
- b) whether the breach can be easily remedied or rectified,
- c) whether the subject person has remedied or rectified their conduct,
- d) whether the subject person has expressed contrition,
- e) whether there were any mitigating circumstances,
- f) the age, physical or mental health or special infirmity of the subject person,
- g) whether the breach is technical or trivial only,
- h) any previous breaches,



- i) whether the breach forms part of a pattern of conduct,
- j) the degree of reckless intention or negligence of the subject person,
- k) the extent to which the breach has affected other parties or the council as a whole,
- l) the harm or potential harm to the reputation of the council or local government arising from the conduct,
- m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
- n) whether an educative approach would be more appropriate than a punitive one,
- o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
- p) what action or remedy would be in the public interest.

8.38 At a minimum, the investigator's final report must contain the following information:

- a) a description of the allegations against the subject person,
- b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated,
- c) a statement of reasons as to why the conduct reviewer considered that the matter warranted investigation,
- d) a statement of reasons as to why the conduct reviewer considered that the matter was one that could not or should not be resolved by alternative means,
- e) where the matter is investigated by a conduct review committee, a statement as to why the matter was one that warranted investigation by a conduct review committee instead of a sole conduct reviewer,
- f) a description of any attempts made to resolve the matter by use of alternative means,
- g) the steps taken to investigate the matter,
- h) the facts of the matter,
- i) the investigator's findings in relation to the facts of the matter and the reasons for those findings,
- j) the investigator's determination and the reasons for that determination,
- k) any recommendations.

8.39 The investigator must provide a copy of their report to the complaints coordinator, the subject person and the complainant.

8.40 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor and this will finalise consideration of the matter under these procedures.



- 8.41 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraph (a), the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.
- 8.42 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (b) or (c), the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.
- 8.43 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (d) to (h), the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

Consideration of the final investigation report by council

- 8.44 The role of the council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).
- 8.45 The council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.
- 8.46 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Model Code.



- 8.47 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator's recommendation/s.
- 8.48 Once the subject person has completed their oral submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 8.49 The council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 8.50 Prior to imposing a sanction, the council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
 - b) seek an opinion by the Division in relation to the report.
- 8.51 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Division.
- 8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council, the subject person and the complainant.
- 8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 8.55 The council is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56 A council may by resolution impose one or more of the following sanctions on a subject person:
- a) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution,
 - b) that findings of inappropriate conduct be made public,
 - c) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
 - d) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
 - e) in the case of a breach by a councillor:



- i. that the councillor be formally censured for the breach under section 440G of the Act, and
- ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.

8.57 The council is not obliged to adopt the investigator's recommendation/s. Where the council does not adopt the investigator's recommendation/s, the council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

8.58 The council may, by resolution, impose a sanction on the subject person under clause 8.56 different to the sanction recommended by the investigator in their final report.

8.59 Where the council resolves not to adopt the investigator's recommendation/s, the complaints coordinator must notify the Division of the council's decision and the reasons for it.

PART 9 RIGHTS OF REVIEW

Failure to comply with a requirement under these procedures

9.1 Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may, at any time prior to the council's consideration of an investigator's final report, raise their concerns in writing with the Division.

Practice rulings

9.2 Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Division to make a ruling on a question of procedure (a practice ruling).

9.3 Where the Division receives a request in writing for a practice ruling, the Division may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.

9.4 Where the Division makes a practice ruling, all parties are to comply with it.

9.5 The Division may decline to make a practice ruling. Where the Division declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

Requests for review

- 9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Division.
- 9.7 A review under clause 9.6 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
 - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
 - c) that the council has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 9.9 The Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The Division will undertake a review of the matter on the papers. However, the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Division.
- 9.12 Where a person requests a review under clause 9.6, the Division may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Division.
- 9.13 The Division must notify the person who requested the review and the complaints coordinator of the outcome of the Division's review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.
- 9.14 Where the Division considers that the investigator or the council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.



9.15 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:

- a) the complaints coordinator must provide a copy of the Division's determination in relation to the matter to the general manager or the Mayor, and
- b) the general manager or Mayor must review any action taken by them to implement the sanction, and
- c) the general manager or Mayor must consider the Division's recommendation in doing so.

9.16 In the case of a sanction imposed by the council by resolution under clause 8.56, where the Division recommends that the decision to impose a sanction be reviewed:

- a) the complaints coordinator must, where practicable, arrange for the Division's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and
- b) the council must:
 - i. review its decision to impose the sanction, and
 - ii. consider the Division's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

9.17 Where having reviewed its previous decision in relation to a matter under clause 9.16 the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

PART 10 PROCEDURAL IRREGULARITIES

10.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct except as may be otherwise specifically provided under the code of conduct.

10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:

- a) the non-compliance is isolated and/or minor in nature, or
- b) reasonable steps are taken to correct the non-compliance, or
- c) reasonable steps are taken to address the consequences of the non-compliance.

PART 11 PRACTICE DIRECTIONS



- 11.1 The Division may at any time issue a practice direction in relation to the application of these procedures.
- 11.2 The Division will issue practice directions in writing, by circular to all councils.
- 11.3 All persons performing a function prescribed under these procedures must consider the Division's practice directions when performing the function.

PART 12 REPORTING ON COMPLAINTS STATISTICS

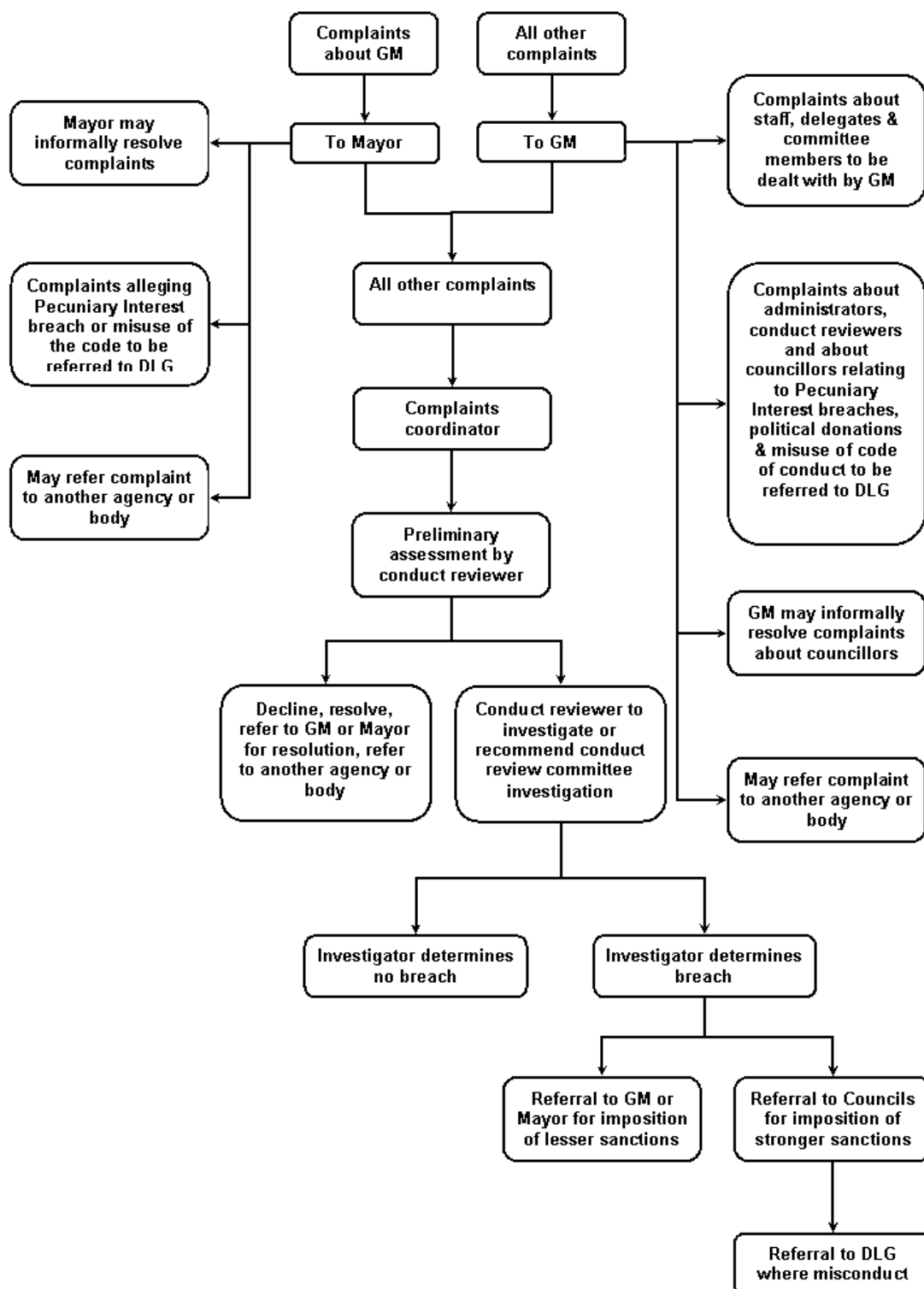
- 12.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September,
 - b) the number of code of conduct complaints referred to a conduct reviewer,
 - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
 - d) the number of code of conduct complaints investigated by a conduct reviewer,
 - e) the number of code of conduct complaints investigated by a conduct review committee,
 - f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
 - g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews, and
 - h) The total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.
- 12.2 The council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

PART 13 CONFIDENTIALITY

- 13.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.



Model Code Procedure Flowchart



**Policy
Register****City of Canterbury**
*City of Cultural Diversity***23-381****Title:** IHAP Policy**Category:** Strategic – Governance**Key words:** Independent Hearing and Assessment Panel**File number:** D-6-9**Policy owner:** Director Corporate Services (Governance)**Authorisation:** Adopted by Council 23 June 2011 Minute number 157**Review date:** 30 June 2018**Modification history:** Amended by Council 28 February 2013 Minute No. 35; Amended by Council 12 December 2013 Minute No. 477; Amended by Council 29 October 2015 Minute No. 400; Amended by Council 25 February 2016 Minute No. 40**Related legislation:** Environmental Planning and Assessment Act

- Contents:**
1. Purpose
 2. Objectives
 3. Scope
 4. Principles
 5. Responsibilities
 6. Policy
 7. Appendix

1. Purpose

The purpose of this policy is to support the administration and management of the Independent Hearing and Assessment Panel meetings.

2. Objectives

To address:

- a. The criteria for applications to be considered by the IHAP
- b. Applications for public address at an IHAP meeting
- c. Operations of the Panel

3. Scope

The policy applies to IHAP administration and management.

4. Principles

The Independent Hearing and Assessment Panel will:

- Review development applications
- Conduct meetings with applicants, objectors and interested parties
- Make recommendation to Council

5. Responsibilities

Corporate Services Division, Governance, Group Manager Governance.

6. Policy

6.1 IHAP Meeting matters

The IHAP will consider development proposals that meet the referral criteria established by Council (Council 25.08.2005 as amended)

- Any applications submitted by Council itself except those applications that
 - relate to the subdivision of drainage reserve land, or
 - attract no objections, comply with relevant planning controls and do not exceed \$100K in value,
- Any applications submitted by a Council officer or a Councillor
- Any application referred by the City Development Committee or Council
- In the opinion of the Director City Planning, any applications that attract significant community interest
- Applications involving 'significant' development

'Significant' developments include development proposals for:

- Construction of a building/s of four or more residential storeys;
- Industrially zoned land and involving a new or altered use of floor area of 5000 square metres or greater;
- Mixed development or multiple residential unit development involving 20 or more residential units;
- Major commercial or retail development;
- Major entertainment or sporting developments;

- Alterations to an existing heritage listed item except applications that either
 - Have no physical impact on the significant elements of a heritage item;
 - Propose no actual physical work to the heritage item or where new works do not impact on the setting of the item;
 - Are solely for the purpose of conservation, repair or maintenance works consistent with the heritage significance of the item and where no objections have been received.
 - New (as distinct from existing) developments relating to group homes, brothels and places of worship.
- 6.1.1 At the discretion of the General Manager, when Council is the applicant for a development application (DA) to be considered by IHAP, the Council officer responsible for submitting the DA will attend the IHAP meeting.

6.2 Advice to Applicants and People that have made a Submission on a Development Application before IHAP

Applicants for development applications and people who have made a submission on the DA will be notified in writing of the DA's referral to the IHAP and advised that they may make an application to address the Panel about the DA.

6.3 Public Addresses

People with a particular interest in an IHAP matter may apply to address the Panel at the meeting where the matter is being considered. An application to address the IHAP must be received at Council by 12 noon on the day of the meeting. Applicants will be advised of any conditions which may apply to their address to the Panel. If a number of applicants have similar views, they may be asked to appoint one spokesperson to address the IHAP. Written submissions to IHAP will be accepted.

To maintain IHAP's independence, permission will not be granted for speakers to address the City Development Committee on any matter already considered by IHAP. (Council 25.08.2005)

6.4 Council Consideration of DAs referred to IHAP

- 6.4.1 Additional information provided to Councillors between the IHAP meeting and the City Development Committee meeting will also be provided to IHAP members.
- 6.4.2 The City Development Committee (or Council) will provide reasons in its resolution of a DA matter on occasions when it does not support a recommendation from the Panel.
- 6.4.3 Feedback will be provided to the IHAP members on a monthly basis, following the City Development Committee meeting.

6.5 Constitution and Rules

The IHAP's Constitution and Rules are attached.

7 - APPENDIX

INDEPENDENT HEARING AND ASSESSMENT PANEL

CONSTITUTION

(adopted by Council resolutions dated 23 March 2006 and 11 May 2006)
(amended by Council resolution dated 23 June 2011)
(amended by Council resolution dated 28 February 2013)

1. Constitution

This Constitution may be cited as the Canterbury City Council Independent Hearing and Assessment Panel Constitution 2006.

2. Constitution of Panel

There is constituted within the overall operations of Canterbury City Council a body of persons known as the Canterbury City Council Independent Hearing and Assessment Panel.

3. Interpretation

3.1 In this Constitution:

“Council” means Canterbury City Council;

“General Manager” means the person for the time being occupying the position of General Manager of Council and includes, for the purpose of exercising any function conferred or imposed on the General Manager by this Constitution, any person acting in the position of General Manager or as the delegate of the General Manager as well as any officer of Council duly authorised by the General Manager for the purpose of exercising any function conferred or imposed on the General Manager by this Constitution;

“Panel” means the Canterbury City Council Independent Hearing and Assessment Panel as constituted from time to time by Council;

“prescribed” means prescribed by the Rules adopted by Council in respect of the Panel;

“Proposals” means any and all proposals in connection with certain development applications lodged with Council for its determination that conform to the criteria for a development application’s referral to the Panel (as set from time-to-time by Council) and which are to be determined by means of a Council or Standing Committee resolution:

- 3.2 In interpreting this Constitution resort shall be had to the Interpretation Act 1987 (NSW) and that Act shall be taken to apply to this Constitution as if this Constitution were a statutory rule within the meaning of that Act.
- 3.3 Except in the case of any function that is expressly required by this Constitution to be exercised by resolution of Council, any reference in this Constitution to the doing of any act or thing by Council or the making of any decision by Council is a reference to an act or thing done or decision made either by resolution of Council or pursuant to and by way of delegated authority.
- 3.4 Headings are for reference purposes only and do not form part of this Constitution.

4. Aims and objectives

The aims and objectives of constituting the Panel are as follows:

- (a) to provide increased transparency in relation to the various decisions that will or may be required to be made by Canterbury City Council, both as planning authority and consent authority, in connection with the Proposals;
- (b) to provide stakeholders with increased opportunities for involvement and participation in the assessment and consideration of the Proposals;
- (c) to provide an independent forum for open discussion of the Proposals amongst members of the Panel, the local community and the wider public.

5. Role and functions of Panel

5.1 The role and functions of the Panel are as follows:

- (a) to independently and objectively assess the Proposals, and any reports by Council officers in relation thereto;
- (b) to provide, by way of a report to Council, independent advice to Council in relation to the Proposals and such recommendations to Council in relation to the form and substance of the Proposals and any related matter as the Panel may think fit including but not limited to recommendations as to any suggested changes to the form and substance of any of the Proposals;
- (c) to hold public meetings for the purpose of providing stakeholders with opportunities to openly discuss the Proposals and to make representations, submissions and objections in relation to the Proposals;
- (d) to hear and consider any representations, submissions and objections made in relation to the Proposals;

- (e) to take into account all relevant matters for consideration in respect of the Proposals including but without limiting generality, the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Council's Development Control Plans, Local Environmental Plans, Codes and Policies; and
 - (f) to exercise such other functions as the Council by resolution determines.
- 5.2 The Panel may do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions.
- 5.3 The Panel must perform its functions within the time constraints set by Council.
- 5.4 Subject to any delegation of powers to the contrary:
 - (a) the Panel may act in an advisory capacity only;
 - (b) the Panel does not have the power to incur expenditure or to bind Council but may expend any funds budgeted by Council for use in connection with the activities of the Panel; and
 - (c) recommendations and reports of the Panel shall not have effect unless and until adopted by Council.

6. Appointment of members of Panel

- 6.1 The Panel shall consist of 5 members who shall be professional members (each of whom shall be appointed by resolution of Council) of whom:
 - (a) one shall be a legal practitioner of the Supreme Court of New South Wales,
 - (b) one shall be a person with tertiary qualifications and experience in architecture and urban design,
 - (c) one shall be a person with tertiary qualifications and experience in town planning, and
 - (d) one shall be a person with tertiary qualifications and experience in environmental science.
 - (e) one shall be a person with tertiary qualifications and experience in social planning

- 6.2 The members of the Panel shall be selected and appointed after a transparent merit-based selection and appointment process on the basis of Council's assessment of the merits of each candidate who has expressed an interest in being appointed to the Panel.
- 6.3 Each of the professional members of the Panel shall be selected and appointed on the basis of a prescribed list of essential qualifications and desirable qualifications in respect of each profession represented on the Panel.
- 6.4 The Rules may make provision for or with respect to the selection and appointment of persons as members of the Panel and, in particular, the essential and desirable qualifications to be held by the professional members of the Panel.
- 6.5 The Council identifies the members of the Panel as persons to be involved in the exercise of Council's functions under the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993 pursuant to section 441 of the Local Government Act 1993. The function/s of the Panel members may give rise to a conflict between the member's duty as a member of the Panel and the member's private interests. Panel members will be regarded as 'designated persons' for the purposes of Part 2 of Chapter 14 of the Local Government Act.

7. Certificate of appointment

Upon appointment as a member of the Panel, the General Manager shall furnish to each person so appointed:

- (a) a certificate of appointment in or to the effect of the prescribed form, and
- (b) a copy of this Constitution and the Rules adopted by Council in respect of the Panel, and a draft acceptance of appointment and declaration form to be duly executed by the person and then returned to the General Manager.

8. Acceptance of appointment and declaration

Before acting as a member of the Panel, each duly appointed member of the Panel must sign and transmit to the General Manager an instrument of acceptance of appointment and declaration of office in the prescribed form.

9. Period of tenure

- 9.1 Except as otherwise provided by or under these Rules, a member of the Panel shall hold membership of the Panel for the relevant period of tenure determined by Council in respect of the Panel.
- 9.2 Except as otherwise provided, the Panel members shall hold membership of the Panel for the term of Council. The performance and reappointment of Panel members will be subject to review at the commencement of each new term of Council.

10. Appointment and Role of chairperson

- 10.1 The Chairperson of the Panel shall be the legal practitioner from the Principal Panel
- 10.2 In the absence of the Chairperson, members of the Panel present at the meeting will elect a Chairperson
- 10.3 The Chairperson has the following role:
- 10.3.1 to chair meetings of the Panel;
 - 10.3.2 to monitor due process and ensure that the rules of natural justice (the rules of procedural fairness) are observed to the extent to which they apply as a matter of law to the deliberations and proceedings of the Panel; and
 - 10.3.3 to ensure that the Panel fully discharges its responsibilities under its terms of reference and this Constitution in a timely manner.

11. Casual vacancies etc

- 11.1 A member of the Panel vacates membership of the Panel if the member:
- (a) dies; or
 - (b) resigns his or her membership of the Panel by writing addressed to the General Manager; or
 - (c) is removed from his or her membership of the Panel by Council for any breach of the Rules adopted by Council in respect of the Panel; or
 - (d) without reasonable excuse does not attend a meeting of the Panel in compliance with a call of the Panel or is otherwise absent without prior leave of the Panel from 3 consecutive meetings of the Panel; or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) becomes physically or mentally incapacitated to such an extent that he or she is unable to continue discharging the responsibilities of being a member of the Panel; or
 - (g) ceases to hold office for any other reason or is otherwise taken by Council by resolution to have vacated membership of the Panel on any ground provided for under the rules adopted by Council in respect of the Panel.

- 11.2 The General Manager may appoint a person to act in the place of a person who is temporarily unable to perform their duties or to act pending the filling of a casual vacancy.
- 11.3 Casual vacancies in any of the membership positions appointed by resolution of Council shall be filled by Council in such manner as Council thinks fit on the advice and recommendation of the General Manager.
- 11.4 A person appointed to fill a casual vacancy shall hold office for the remainder of the predecessor's term of appointment.

12. Remuneration

- 12.1 The Council shall pay remuneration to a member of the Panel for each day on which the member:
- (a) attends a meeting of the Panel in respect of some or all of the subject-matter pertaining to the Panel's deliberations and exercise of its functions;
 - (b) carries out a site inspection in accordance with a resolution of the Panel; or
 - (c) undertakes any other business of the Panel in the due discharge of its responsibilities in compliance with a resolution of the Panel,
 - (d) such remuneration being in accordance with the amounts or scale determined from time to time by Council.
- 12.2 The rate of remuneration may be different in respect of the professional "non-Chairperson" members of the Panel or it may be uniform.
- 12.3 The Chairperson shall be entitled to be paid an additional amount of remuneration (as determined by Council from time to time) in respect of:
- (a) each meeting of the Panel which he or she chairs and produces official minutes for; and
 - (b) each meeting of Council or any committee of Council which the Chairperson is requested to attend in connection with business of the Panel.

13. Dissolution of the Panel

The Panel may be dissolved only by Council resolution.

14. Amendment of Constitution

This Constitution may be amended by resolution of Council from time to time.

INDEPENDENT HEARING AND ASSESSMENT PANEL

OPERATIONAL RULES

(adopted by Council resolutions dated 23 March 2006 and 11 May 2006)
(amended by Council resolutions dated 14 February 2008 and 23 June 2011)
(amended by Council resolution 28 February 2013)

1. Citation

These Rules may be cited as the Canterbury City Council Independent Hearing and Assessment Panel Operational Rules 2006.

2. Object

The object of these Rules is to provide for the proper and orderly conduct of the workings and meetings of the Independent Hearing and Assessment Panel.

3. Interpretation

3.1 In these Rules:

“Chairperson” means the Chairperson of the Panel

“Constitution” means the Canterbury City Council Independent Hearing and Assessment Panel Constitution 2006 as in force from time to time;

“Council” means Canterbury City Council;

“General Manager” means the person for the time being occupying the position of General Manager of Council and includes, for the purpose of exercising any function conferred or imposed on the General Manager by these Rules, any person acting in the position of General Manager or as the delegate of the General Manager as well as any officer of Council duly authorised by the General Manager for the purpose of exercising any function conferred or imposed on the General Manager by these Rules;

“member”, in relation to the Panel, includes a person who has been appointed to act in the place of a member;

“Panel” means the Canterbury City Council Independent Hearing and Assessment Panel as constituted from time to time by Council.

3.2 In interpreting these Rules resort shall be had to the Interpretation Act 1987 (NSW) and that Act shall be taken to apply to these Rules as if these Rules were a statutory rule within the meaning of that Act.

3.3 Except in the case of any function that is expressly required by these Rules to be exercised by resolution of Council, any reference in these Rules to the doing of any act or thing by Council or the making of any decision by Council is a reference to an act or thing done or decision made either by resolution of Council or pursuant to and by way of delegated authority.

3.4 A reference to an Annexure is a reference to an Annexure to these Rules.

3.5 An Annexure forms part of these Rules.

3.6 Headings are for reference purposes only and do not form part of these Rules.

4. Selection and appointment of members

Annexure 1 has effect with respect to the selection and appointment of persons as members of the Panel.

5. Chairperson

The Chairperson:

- (a) shall preside at all meetings of the Panel at which the Chairperson is present; and
- (b) may be required by Council to attend any meeting of Council or any committee of Council in connection with business of the Panel.

6. Deputy Chairperson

The deputy Chairperson of the Panel shall be as determined by the Panel.

7. Secretary and administrative support

- 7.1 An officer of Council appointed by the General Manager may be present at any meeting of the Panel but will not perform the role of Panel secretary; such role to be performed by the Panel Chairperson
- 7.2 In addition, the General Manager may, if in the opinion of the General Manager it is necessary or advisable so to do, provide other administrative support to the Panel whether by way of the provision of staff or otherwise.

8. Panel meetings

- 8.1 The Panel shall meet from time to time to the extent necessary to enable it to properly perform its functions in a timely manner.
- 8.2 The Chairperson or the General Manager may make a call of all of the members of the Panel to attend a meeting of the Panel. Notice of any such call shall be sent to each member of the Panel in the manner and time otherwise provided for in these Rules. Any member of the Panel who, without reasonable excuse, does not attend the meeting in compliance with the call may be taken by Council by resolution to have vacated his or her membership of the Panel.
- 8.3 The Panel may hold both meetings open for attendance by members of the public ("public meetings") and meetings at which the public are not entitled to attend ("non-public meetings").
- 8.4 Public meetings are meetings for the purpose of public consultation. Non public meetings are for the purpose of enabling the Panel to convene in private for the express purpose of deciding upon its findings, conclusions and recommendations and formulating its advice and recommendations.
- 8.5 The Panel must give advance notice to the public of the times and places of its public meetings. The notice is to be given in a manner determined by the Panel with the object of bringing the matters notified to the attention of as many people as possible with an interest in the matters to be considered at the public meeting.

8.6 Where, at any public meeting, there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons with a view to discharging its responsibilities in a timely manner.

8.7 Presentations to the Panel by applicants and objectors shall be restricted to five minutes with a two minute extension at the discretion of the Chairperson. The Chairperson also has the discretion to extend the period if considered appropriate.

9. Quorum

The quorum for a meeting of the Panel shall be a simple majority of the members of the Panel who hold office as such for the time being and are not otherwise disqualified from voting for whatever reason.

10. Presence at committee meetings

A member of the Panel cannot participate in a meeting of the Panel unless personally present at the meeting.

11. Panel Membership

Alternate panel members to participate in at least two meetings per year

12. Chairing of meetings

12.1 In the absence of the Chairperson, the deputy Chairperson shall preside at meetings of the Panel.

12.2 In the absence of the Chairperson and the deputy Chairperson, where appropriate a member of the Panel elected to chair the meeting by the members present presides at a meeting of the Panel.

13. Voting and voting entitlements

13.1 Each member of the Panel is entitled to one vote, with no proxies being accepted.

13.2 However, the person presiding at a meeting of the Panel has, in the event of an equality of votes, a second or casting vote.

13.3 Except in the case of an election, voting at a meeting of the Panel is to be by open means (such as on the voices or by show of hands).

13.4 A member of the Panel who is present at a meeting of the Panel but who fails to vote on a motion put to the meeting is taken to have voted against the motion.

14. Disclosure and presence in meetings

14.1 A member of the Panel who has a pecuniary or non-pecuniary interest in any matter with which the Panel is concerned and who is present at a meeting of the Panel at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.

14.2 The member must not be present at, or in sight of, the meeting of the Panel:

- (a) at any time during which the matter is being considered or discussed by the Panel, or

- (b) at any time during which the Panel is voting on any question in relation to the matter.

15. Conduct of business

- 15.1 The Panel shall conduct its business in accordance with its terms of reference, the Constitution and these Rules.
- 15.2 Subject to the Constitution and these Rules, proceedings of any meeting of the Panel shall be conducted without adherence to formal rules of debate and with as little formality and technicality as a proper consideration of the matters before the meeting permits.

16. Admission of non-members to debate

- 16.1 The Panel may allow a non-member to attend a meeting of the Panel and participate in the discussion of a particular item of business before the Panel on conditions decided by the Panel.
- 16.2 A non-member shall not be entitled to move or second a motion at a meeting nor vote on any matter before the Panel.

17. Decisions

A decision supported by a simple majority of the votes at a meeting of the Panel at which a quorum is present is a decision of the Panel.

18. Reporting to Council

- 18.1 The Panel shall submit its advice and recommendations on any matter relating to the exercise of its functions to Council for its consideration by means and in the form of a report signed by the Chairperson and addressed to the General Manager.
- 18.2 Upon receipt of the report, the General Manager shall, without undue delay, submit the details of the Panel Chairperson's report to Council together with the report prepared by Council officers in relation to the matter.

19. Records

- 19.1 The Panel must ensure that appropriate records are kept of its proceedings and in particular but without limiting generality, must ensure that the minutes of the proceedings of the Panel record the vote of each Panel member on each item dealt with.
- 19.2 When additional information is sought by the panel, upon submission of that information, the application will be referred back to the Panel for final consideration prior to determination by the City Development Committee or Council.
- 19.3 The Panel will only defer an application for further information, if such information is fundamental to the Panel's determination of the proposal.

Applications that are deferred by the Panel for further information must be resubmitted to its next meeting. If the additional information has not been provided to Council prior to the closing time for reports to the IHAP meeting, IHAP will make a recommendation to Council based on the information it has before it.

19.4 The Panel members must prepare an annual report to the General Manager including an assessment of the operation of the Panel.

19.5 The Panel must record minutes of any addresses made to the Panel by participants in Panel hearings. The minutes shall, insofar as they refer to participant addresses, constitute a précis only of any address made to the Panel.

20. Committees and working parties etc

20.1 The Panel may form committees and working parties as and when the need arises.

20.2 The Panel may co-opt or otherwise consult with persons who in the opinion of the Panel have special expertise in some matter that is relevant to the Panel's deliberations and exercise of its functions.

21. Public hearings

Where a public hearing is required by law to be held in respect of some or all of the subject-matter pertaining to the Panel's deliberations and exercise of its functions, the members of the Panel shall attend the public hearing as official observers and may, with leave of the person presiding at the public hearing, and if so permitted, ask questions of persons appearing before the public hearing and may otherwise act in an advisory capacity to the person presiding at the public hearing.

22. Amendment of Rules

These Rules may be amended by Council from time to time."

Annexure 1

PROVISIONS WITH RESPECT TO THE SELECTION AND APPOINTMENT
OF PERSONS AS MEMBERS OF THE PANEL**Part 1 – Essential and Desirable Qualifications in respect of Professional Members**

The following are the essential and desirable qualifications to be held by the various professional members of the Independent Hearing and Assessment Panel:

LAW

Essential qualifications:

- Admitted as a legal practitioner of the Supreme Court of New South Wales (and the holder of a current practising certificate from either the Law Society of New South Wales or the Bar Association of New South Wales).
- Solid knowledge of the workings of local government and the legislation controlling and regulating local government.
- Experience in Land and Environment Court matters.
- Strong commitment to multidisciplinary team work.

Desirable qualifications:

- In the case of a solicitor, specialist accreditation in Local Government and Planning from the Law Society of New South Wales.
- A proven record of excellence in the legal practice of local government and environmental planning law.
- Experience in chairing meetings.

ARCHITECTURE AND URBAN DESIGN

Essential qualifications:

- Tertiary qualifications and experience in architecture and urban design.
- Solid experience in an urban design background.
- Ability to apply contemporary and innovative urban design principles to achieve high quality urban built form outcomes.
- Proven track record of success in managing projects in the field of urban design and in implementing quality urbanism and a sustainable built environment.
- Superior graphic communication skills.
- Strong commitment to multidisciplinary team work.

Desirable qualifications:

- Knowledge of heritage planning issues and tools.
- Experience in the preparation of master plans, structure plans or urban design frameworks.
- Knowledge and awareness of issues facing the Canterbury City area.

TOWN PLANNING

Essential qualifications:

- Tertiary qualifications and experience in town planning.
- Demonstrated level of experience as a town planner in either local government or private professional practice.
- Strong commitment to multidisciplinary team work.

Desirable qualifications:

- Experience in the local government sector.
- Qualifications in environmental issues.
- Knowledge and awareness of issues facing the Canterbury City area.

ENVIRONMENTAL SCIENCE

Essential qualifications:

- Tertiary qualifications and experience in environmental science.
- Strong commitment to connecting the natural sciences with other disciplines.
- Strong commitment to multidisciplinary team work.

Desirable qualifications:

- Postgraduate qualifications in environmental management or a related field.
- Experience in dealing with sustainability as an issue in the local government arena.
- Experience in dealing with councils and local government issues.
- Knowledge and awareness of issues facing the Canterbury City area.

SOCIAL PLANNING

Essential qualifications:

- Tertiary qualifications and experience in social planning.
- Strong commitment to connecting the social sciences with other disciplines.
- Strong commitment to multidisciplinary team work.

Desirable qualifications:

- Postgraduate qualifications in social planning or a related field.
- Experience in dealing with sustainability of local communities and community development as issues in the local government arena.
- Experience in dealing with councils and local government issues.
- Knowledge and awareness of issues facing the Canterbury City area.

Part 2 – Selection and Appointment

The provisions contained in this Part of the Annexure shall apply in relation to the selection and appointment of persons to serve as the professional members of the Independent Hearing and Assessment Panel:

1. Council shall appoint a selection panel known as the IHAP Selection Assessment Panel made up of not less than 3 Councillors appointed by Council, the General Manager, and one other senior staff member of Council appointed by the General Manager.
2. The Selection Panel shall meet for the purpose of reviewing and shortlisting applicants for membership positions on the Independent Hearing and Assessment Panel.
3. Applicants are to be assessed having regard to the Selection Panel's assessment of the extent to which each applicant meets the relevantly applicable essential and desirable qualifications set out above.
4. The Selection Panel shall make its recommendations to Council through the General Manager.
5. Applicants are to be appointed by Council resolution on merit on the basis of their respective qualifications, experience, skill and expertise having regard to the relevantly applicable essential and desirable qualifications.

Guidance for merged councils on planning functions

May 2016



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May 2016

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This document provides guidance to councils to maintain efficient land use planning functions as they implement mergers.



1.1 Purpose

This document provides guidance to councils to maintain efficient land use planning functions as they implement mergers. The document complements other NSW Government guidance material for merging councils including Preparing for Change: **Guidance for Councils**.

The Government’s decision to consider council mergers has come from a long process of consultation on local government reform designed to ensure that the sector will be fit for the future challenges that it will face.

The NSW Government has identified 30 priorities to respond to the challenges of growing the economy, delivering infrastructure, protecting the vulnerable, and improving health, education and public services across NSW. Achievement of these priorities is backed by the delivery of housing and jobs by investing in better public transport and roads, schools and hospitals, and renewed sports and cultural infrastructure. Councils have an important role to play in the delivery of these priorities, particularly through their roles in managing planning and land use decisions, as well as the sector’s own investments in infrastructure and service delivery.

Maintaining a seamless an approach to council planning and development processes while amalgamations are being implemented is critical to achieving these priorities.

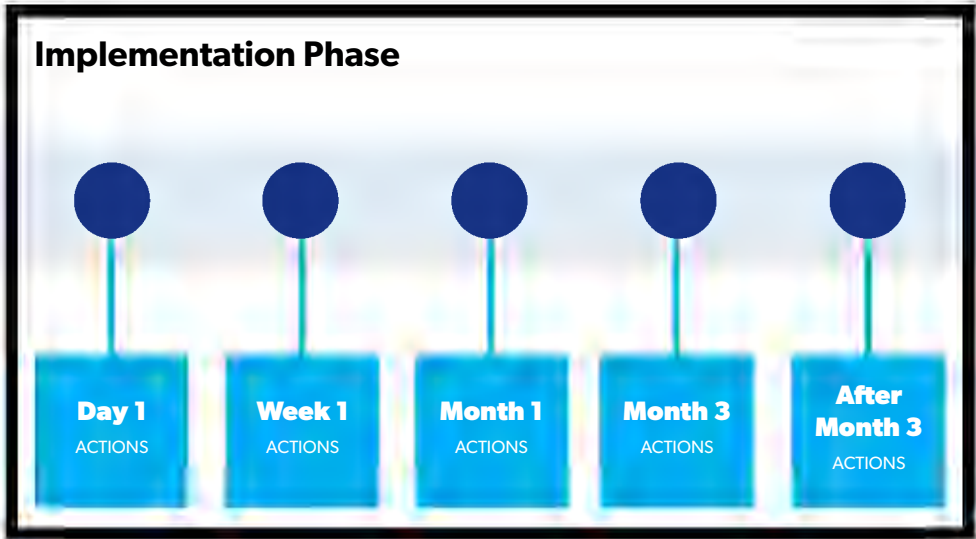
1.2 Structure and timing

This document provides councils with outcomes and actions to guide the implementation of a successful merger. The document is divided into three parts:

- **PART 1 Introduction** – role, function and structure of the document.
- **PART 2 Outcomes** – outcomes to achieve when integrating planning functions.
- **PART 3 Priority Actions** – guidance and actions based on issues of housing priorities, e-Planning, assessment systems and processes, strategic planning, local planning controls and contributions.

The timing of the actions covers both the preparation and implementation phase and is identified in Figure 1.

Figure 1 Timing of actions



A detailed matrix showing the actions and the recommended timeframe to achieve is attached to this document.

1.3 Principles

The NSW Government's **Preparing for Change: Guidance for Councils** provided principles on the Government's expectation on how both the preparation and implementation phases of potential mergers will be conducted. The principles have been tailored to guide merging councils' land use planning functions with a focus on community engagement.

Principle	Description
Service	Maintaining the ability for people to lodge, review and have applications for planning matters to be considered from the first day of a new council
Opportunity	Using the mergers to strengthen planning systems, particularly the opportunities to give communities access to planning matters through the use of web technology such as the NSW Planning Portal, online applications and alternate decision making forums such as IHAPs
Cohesion	Recognising and building on the strengths of councils to create greater strategic capacity to face the challenges of the future, particularly the opportunity for a stronger approach to strategic planning
Engagement	Creating a culture of engagement, where council is outward facing in its dealings with the community, other government sectors and business interests
Integrity	Instilling confidence and trust in the planning processes and decision making of councils by creating rigorous and transparent systems
Respect	Creating an open facing council that uses its planning system and processes to recognise the many varied views and opinions seeking a better outcome for neighbourhoods and places

1.4 Giving the mergers legal effect

The legal mechanism giving effect to the mergers is a Proclamation issued by the Governor under the *Local Government Act 1993*. Two proclamations were published on 12 May 2016:

- *The Local Government (Council Amalgamations) Proclamation 2016* amalgamated 39 local government areas and created 17 new local government areas. The councils of the amalgamated areas were dissolved, and administrators appointed to exercise the functions of the 17 new councils; and
- *The Local Government (City of Parramatta and Cumberland) Proclamation 2016* declares the boundaries of the The Hills Shire and Hornsby, and amalgamated the City of Auburn, City of Holroyd and City of Parramatta. Two new local government areas have been created: the City of Parramatta and Cumberland Council, with administrators being appointed to exercise the functions of the two new councils.

Further merger proclamations are pending with proposals for the merger of other council areas.

The proclamations deal with the creation of the new councils and ensures all relevant staff, assets, rights, liabilities and responsibilities to former councils are transferred to the new councils. Its key purpose is to ensure that new councils can commence operations on day one with minimal disruption to their delivery of services.

Under the proclamations, the previous decisions and actions of former councils are recognised as decisions and actions that the new council can rely on. As an example, if a former council took a development application and exhibited it, the new council can determine the application. Councils should not be re-tracing the statutory decision making steps of a former council and re-exhibiting applications (as an example). References in certain plans, controls, consents or delegations to the former council are to be treated as references to the new council.

Recognising that the mergers will in some cases require the sharing of information, databases, systems and expertise across new council boundaries, the proclamations give staff from councils the framework to work together. The establishment of formal and informal committees, as well as the ongoing assistance of government agencies, such as the Department of Planning and Environment, will be important resources to guide collaboration. Councils can ask for advice and direction from the Government, including the Department, should there be disputes while the councils are under administration.

Part Two: Outcomes

New councils should finalise and implement robust internal measures to ensure that processes are in place to meet the challenges of the future. Amalgamations will be successful where the new council has a clear strategic purpose, rigorous systems and processes, including strong financial positions and an outward facing culture.

Table 1 Outcomes to achieve when integrating planning functions

Outcome	Description
Seamless service delivery	<p>Residents, businesses and community groups will expect the new council to be 'open for business' from its very first day.</p> <p>The primary focus of the new council must be on service continuity and the delivery of the housing and employment opportunities necessary to secure the sustainable future of their community.</p>
A positive workplace culture	<p>An open and engaged workforce will include staff focused on service delivery, working collaboratively to resolve complex challenges and committed to building the capacity of their communities for the future.</p> <p>Opportunities to be part of the development and implementation of new planning systems, or to be at the forefront of setting a new strategic agenda for the council will be important for staff.</p>
Strong governance, financial management and administration	<p>Creating strong councils that are fit for the future challenges they face requires a commitment to strategic administration that goes beyond simply meeting the requirements of legislation.</p> <p>Community confidence in a planning system requires a commitment to quality processes and staff capacity. Councils are expected to manage complex assessment processes, drive strategic planning and guide communities to a resilient and sustainable future. These challenges require an outward facing approach to engagement and governance.</p>
Integrated vision and priorities	<p>A new council identity requires a new vision to support positive change and provide a shared sense of direction guiding communities to a resilient and sustainable future. Integrating community aspirations on how local areas can grow and develop will empower councils to prioritise land use planning outcomes to achieve this shared vision.</p>
Informed community and stakeholders	<p>Community confidence in the planning system requires transparent, evidence based decision making and readily available planning information. The amalgamation process provides an opportunity for councils to foster new ways of engagement and participation with the community.</p>
Clear local planning environment	<p>Communities will expect councils to maintain existing development rights and opportunities, ensure developments contribute positively to a sustainable future and the transition of centres and corridors are managed in an open and engaged manner.</p> <p>The mergers provide the opportunity to consider options for greater transparency and efficiency in assessment processes such as Independent Hearing and Assessment Panels.</p>

Part Three: Priority Actions

New councils should finalise and implement robust internal measures to ensure that processes are in place to meet the challenges of the future. As councils implement mergers they will be considering how the planning systems of councils that they succeed operate, looking across the broad range of functions and responsibilities. The following provides advice to councils on the practical implications and opportunities presented by amalgamation.

In preparing this advice two different merger scenarios have been considered:

- Scenario one – Councils created as a result of the merger of two or more local government areas; and
- Scenario two – Councils created as a result of both the amalgamation and alteration of local government area boundaries (for example, as a result of the *Local Government (City of Parramatta and Cumberland) Proclamation 2016*).

3.1 Housing and jobs

In September 2015 the NSW Government announced 30 Priorities, including 12 Premier's Priorities to grow the economy, deliver infrastructure and improve health, education and other services across NSW. A link to the Government's delivery Priorities is here: <https://www.nsw.gov.au/making-it-happen>

The Premier's Faster Housing Approvals Priority sets a target of *90% of housing approvals within an average of 40 days*. The target includes both development approval and complying development certificates. Achieving the target will require a ready supply of appropriately zoned land requiring ongoing rezonings to create capacity.

Faster housing approvals will strengthen confidence in the housing industry, provide certainty to the housing market and bring new housing online sooner. This will make it easier for people to find or build homes to suit their lifestyles and help grow the economy, including additional employment opportunities for builders and tradespeople. A pipeline of housing activity also provides a robust economy assisting with another of the Premier's priorities of creating 150,000 new jobs by 2019.

These priorities provide a great opportunity for the Department to work with local councils and industry stakeholders to help deliver faster housing approvals and provide housing capacity.

Maintaining the momentum and the confidence of the community and businesses in the planning system will be an important part of achieving the housing targets set by the Government. The Department and councils need to work together during the amalgamation process to remove impediments to the effective operation of planning systems.

Specific housing priorities for consideration are shown in Table 2

Table 2 Housing priority implementation actions

Issue	Action
Progress planning proposals, gateway applications and planning agreements	Councils need to continue to progress planning proposals with strategic merit, planning agreements and gateway applications that are consistent with the established strategic and community vision of the former councils. It is important to maintain a pipeline of appropriately zoned for housing and employment opportunities.
Ongoing assessment of major development applications	All development applications, including those regionally significant proposals submitted to Joint Regional Planning Panels, are to continue to be assessed consistent with the local environmental and development control plans in place for the former councils.
High quality service levels	Planning processes must continue to meet high service levels. Particular processes that need attention at the earliest opportunity include building certification, and the management of development contributions including negotiation of planning agreements.

3.2 Strategic planning and engagement

Strong councils can more effectively represent local communities with greater opportunities for strategic regional planning, leading to better amenity and economic development outcomes. Strategic planning should continue through the implementation of a merger. This will ensure that local, district, regional and State housing and employment outcomes are not adversely impacted.

All councils should undertake local strategic planning to underpin Community Strategic Plans and to inform Local Environmental Plans and Development Control Plans. This includes town centre plans, urban activation plans, precinct planning and planning for urban release areas.

Local strategic planning will also need to continue to reflect relevant State, regional or district planning including *A Plan for Growing Sydney*. The newly established Greater Sydney Commission is tasked with driving the implementation of *A Plan for Growing Sydney*, and will work with councils to ensure that growth is aligned with infrastructure and delivered in the right places at the right time. District Plans, along with council local strategic plans will be crucial in achieving these goals.

Table 3 shows the implementation focus of strategic planning and engagement for councils as they implement a merger.

Table 3 Strategic planning and engagement implementation actions

Issue	Action
Ongoing engagement	An immediate priority will be to maintain networks and engagement with community and external stakeholders
Stocktake strategic planning work	Undertake a stocktake of former councils' current strategic planning work including: <ul style="list-style-type: none"> • Evidence gathering; • Committees and stakeholders (including PCGs, consultative groups, implementation committees, working groups); and • Status of any strategies in draft form. These should be finalised wherever possible in discussion with the Department.
Broader strategic environment	Councils should be scanning the broader strategic environment to: <ul style="list-style-type: none"> • look for opportunities to combine strategic planning; and • assess whether the merger has changed strategic priorities (e.g. centres hierarchy or corridors).
Harmonise strategic planning efforts	Councils should work to harmonise strategic planning efforts to: <ul style="list-style-type: none"> • identify engagement responsibilities (e.g. representation in strategic planning processes); • continue community engagement based on endorsed programs or processes for engagement; and • revise the forward program for the development (and finalisation) of strategies.

3.3 e-Planning

The creation of new councils provides the opportunity to embed e-Planning concepts and principles in the planning process.

e-Planning improves access to the NSW planning system for all, making it more transparent and easier to use. The focus of e-Planning is transforming the traditional paper-based and face-to-face interactions to an online environment where people can access planning services from anywhere, at any time, as well as digitising planning content to assist with evidence-based planning. This delivers consistency and time and cost savings.

Merged councils have an opportunity to embed e-Planning technologies into assessment and planning functions, and to get more involved in initiatives such as the NSW Planning Portal. Councils are encouraged to make early contact with the Department on the capabilities of the NSW Planning Portal before finalising software decisions.

Specific e-Planning implementation focus areas for consideration are shown in Table 4.

Table 4 e-Planning implementation actions

Issue	Action
Opportunities for integration with the NSW Planning Portal	<p>Merged councils have a real opportunity to embed e-Planning technologies into assessment and planning functions, without having to invest millions of rate payers dollars by utilising the investments made by the NSW Government in online planning systems. This is particularly relevant where former councils have different hardware and software systems.</p> <p>The NSW Planning Portal has been purposefully designed to provide a broad range of ePlanning tools and transactional services which are specifically aimed at reducing the burden on councils through sizeable investments in new technology or the provision of data to the NSW Government.</p> <p>As the primary stakeholder, it is important that councils engage in new e-Planning initiatives (such as Online lodgement through the NSW Planning Portal) to assist in delivering key functions and outcomes to communities.</p>
Council e-Planning systems	<p>Consider the implications of accepting and assessing development applications from day one, identifying e-planning capabilities, platforms, systems and potential challenges to overcome.</p> <p>In the long term, councils should consider the opportunities presented by the NSW Planning Portal to:</p> <ul style="list-style-type: none"> • implement online lodgement (for development applications and complying development certificates) through the use of standardised forms, fees and documentation accompanying applications; • track the progress of development applications; • Investigate what developments can be undertaken as exempt or complying development.
Data quality	<p>The quality of data is critical to an efficiently functioning e-Planning environment. Exercising a high standard of quality control over data is an important consideration during the merging of data. Initial work to 'cleanse' data before integration will help with system operation and to streamline reporting functions.</p> <p>Councils should consider how they can utilise the services provided by the NSW Planning Portal including application tracking, application lodgement and investigation tools.</p>
Software Systems	<p>Councils will need to understand how a merger will impact on existing software systems including property information systems, finance modules, document record management systems and geographic information systems (GIS). There may be an opportunity to upgrade or replace existing software systems to utilise the incoming data streams from the NSW Planning Portal. There may also be opportunities to improve planning and assessment processes.</p>
IT hardware	<p>Councils will need to understand how a merger will impact on existing IT hardware platforms including the capacity of servers, failover and bandwidth requirements. There may be an opportunity to upgrade staff resources to improve planning and assessment processes.</p>

3.4 Assessment systems and processes

The development application and assessment process is the point where the majority of people come face to face with the planning system. Whether as an applicant or resident, it is important that councils are able to maintain service delivery, rigour and integrity in the assessment process.

The merger process provides councils with an opportunity to support continuous improvement of the assessment and certification process. This can enhance the efficiency and transparency of the assessment and decision making processes, and increase the focus on achieving reduced assessment times.

Development application systems and processes

Proclamations that created the new local government areas provides the legal basis to allow the staff of merged councils to continue to assess and determine development applications under delegation and rely on all the procedural steps taken by a former council. However, it will be necessary for the new council to consider who will make the final decision on the application and how the decision will be registered, as existing delegations may no longer be appropriate. Applications determined under incorrect delegations could be subject to potential challenge.

In the case of new development applications, proponents will be expecting to lodge applications on day one. The new council will need to ensure it has processes in place to receive, notify, assess and determine these applications.

The availability of council databases, development registers and information to enable the assessment of development applications will need to be an early priority. New councils need to establish cooperative access arrangements for databases and information sharing, particularly for scenario two councils.

Table 5 shows the implementation focus of assessment systems and processes for councils as they implement a merger.

Table 5 Assessment systems and process implementation actions	
Issue	Action
Understand applications in progress	As an early priority councils need to be aware of what applications are in the system. Creating back ups or ensuring access to records will be useful should records not be accessible as information systems are combined.
Continuing to assess applications	Following the establishment of the new council existing applications are to be processed within statutory timeframes. Some issues that should be confirmed by new councils: <ul style="list-style-type: none">Who is the assessment officer for the application, to assist the applicant.Processes to receive comments, particularly for external agencies; andWho will be determining the application and the form of the assessment reports required.

Table 5 Assessment systems and process implementation actions

Issue	Action
Receiving new applications	<p>Councils are expected to receive applications from the very first day of their establishment. This raises a number of issues requiring early priority:</p> <ul style="list-style-type: none"> • Where will applications be lodged? Councils can give clear advice (via their websites and customer service signage) on the best location to lodge applications. Councils should be able to receive applications at all its sites. • Access to the databases of the former councils should be organised. This may be external 'log ins' (remote access) or other arrangement for access. In the case of scenario two councils, the access to databases will likely require service level agreements to be negotiated. • Confirm the processes for receipt of fees, organisation of referrals and consultation and allocation to an assessment officer. It would be expected that existing procedures would be able to be utilised unless decisions about transfers of staff or information have not been finalised. • Appropriate forms and templates to allow DAs to be taken showing the new council name. • An understanding of the new DA numbering system to be used. This will in part depend on software systems, although councils need to be careful that DA numbers of the new council are not confused with the former council(s).
Establishing who has delegation to determine applications	<p>The proclamation establishing the new council preserves all existing delegations of former councils. However, as new council structures are developed, these delegations will need to be updated and confirmed.</p> <p>Councils can use the opportunity of preparing new delegations to establish clear protocols on when it is appropriate for delegations to make decisions on behalf of council and how those decisions are reported. This is also an opportunity to ensure routine matters are delegated to relevant staff.</p>
Membership of panels and committees	<p>Each joint regional planning panel (JRPP) has 5 members: 3 State members appointed by the Minister for Planning and the 2 nominees of the council within whose local government area the land to which the particular matter relates is situated.</p> <p>The proclamations amalgamating local government areas "save" an existing 'Panel' where a development application has been formally referred to a JRPP meeting for determination. This allows the two council nominees to continue to sit on the Panel for those matters (where the meeting date has been set and agenda papers sent out).</p> <p>For all other JRPP matters the nominees of the former councils cease to be nominees and the new council will need to "re-nominate" 2 new members. As a matter of urgency councils should use the <i>JRPP Operational Procedures (September 2012)</i> to decide:</p> <ul style="list-style-type: none"> • Who to nominate to represent the council on the panel; • Appropriate remuneration for council members; and • Who to appoint as alternates of members nominated by the council (to act in the absence of a member). <p>A similar approach should be considered for any established IHAPs and other committees.</p>

Table 5 Assessment systems and process implementation actions

Issue	Action
Consider establishing an Independent Hearing and Assessment Panel (IHAP)	<p>Introduction of an IHAP provides the opportunity to create transparency in decision making for local planning matters.</p> <p>An IHAP, usually consisting of at least 3 members, can undertake the determination roles undertaken by a council until a new council is in place. This provides the opportunity for the Administrator to focus on the management and establishment of the new governance and operation of the council. It also provides the opportunity to ensure decisions are carried by qualified and independent persons. The <i>JRPP Operational Procedures (September 2012)</i> provides useful guidance on the qualifications and expertise of IHAP members.</p> <p>Once elections are held for the new councils in September 2017, continuation of IHAPs provides the opportunity for councillors to concentrate on strategic policy matters for the local government area.</p>
Managing information and databases	<p>Readily accessible databases will be needed to enable development applications to be taken from the very first day of the new council. For scenario one councils, it should be possible for existing databases to continue to operate. Councils need to ensure their systems can talk to each other, or appropriate links made to allow applications to be taken at any office.</p> <p>For scenario two councils where council areas are being redistributed, councils will need to work cooperatively to ensure access to data and records are available at the earliest possible opportunity. If these extra connections cannot be made from day one, councils should look to establish service level agreements ensuring the new councils can access the data to enable them to take and assess development applications.</p>

Table 5 Assessment systems and process implementation actions

Issue	Action
Harmonising assessment systems	<p>When new councils have established service delivery models that provide 'business as usual' processes, the opportunity to work on harmonisation of assessment systems should become a medium term priority.</p> <p>Consideration of how to harmonise assessment processes will need to assess the compatibility of the various systems being used by the former councils. New councils can also use the opportunity to examine how the different systems may operate and 'cherry pick' the best approaches.</p> <p>Issues that will need examination include:</p> <ul style="list-style-type: none"> • Access to data and information on land details, zoning and the application of planning controls. The opportunities afforded by e-Planning technologies should be considered; • The process chain for the assessment of a typical development application. This covers the receipt, registration, referral, consultation and allocation of applications; • Methods and processes to provide reports on assessment of applications. These include reports to Australian Bureau of Statistics or the Department; and • The tools of assessment such as standard conditions, templates for letters and reports, and consultation methods.
Looking for Best Practice assessment	<p>With mature and robust systems in place new councils can look to drive best practice in their assessment processes. Some of the issues to consider:</p> <ul style="list-style-type: none"> • Reviewing and 'pressure testing' procedures, looking to document and understand the process to ensure consistency and measurability; • Incorporating e-planning technologies to provide DA tracking, electronic lodgement and customised processing of assessments; • Adopting e-planning and interactive building applications to assist applicants and certifiers to 'self serve'; and • Identify and build staff skills and capabilities in assessment and engagement.

Certification processes

The post development approval certification process is an important function for councils in assuring building works are safe, meet appropriate building or subdivision standards and comply with development approvals.

In undertaking certification assessments, councils will be able to rely on the decisions of the former councils under the provisions of the Proclamation. As an example, the appointment of a former council as a principal certifying authority will be deemed to be the appointment of the new council to that role and it will be able to rely on the certification and inspection processes already done. This does not alleviate the council from its responsibilities to undertake due diligence on any action it takes, but does give statutory certainty.

Table 6 below shows the implementation focus of certification processes for new councils as they implement a merger.

Table 6 Certification process implementation actions

Issue	Action
Access to databases and information	<p>Councils will need to ensure access to databases and information on the status of development and certification activities, including any certificates issued by private accredited certifiers.</p> <p>In the case of scenario one councils, ensuring the availability of access across the new council should be sufficient as an immediate priority and until harmonisations for databases occur.</p> <p>In the case of scenario two councils, service level agreements on access to databases and registers should be negotiated, or options for 'external log in' access arranged as an immediate priority. This should be an early focus of the new councils.</p>
Understand applications and inspections in progress	<p>Proponents who have contracted councils to undertake certification services will expect continued availability of council certifiers.</p> <p>In scenario one councils, the ability to provide seamless service delivery can be maintained by keeping the assigned staff on projects.</p> <p>In scenario two councils, it will be necessary to understand the service delivery obligations on councils and for the new council to ensure it has enough appropriately accredited and qualified staff with access to appropriate databases to continue to provide services. In the medium term, as transfers of staff are resolved, councils will be able to allocate appropriately accredited staff.</p> <p>Where new staff are allocated certification functions it will be important that they are able to access data and registers on:</p> <ul style="list-style-type: none"> • development consents and requirements; • certificates issued for the site (construction or compliance certificates); • the status of any critical stage inspections; and • any enforcement action, notices or orders issued for the site.

Table 6 Certification process implementation actions

Issue	Action
Appropriate accreditations	<p>Building certifiers, even if working for councils, need to have an accreditation from the Building Professionals Board (BPB). These accreditations are issued to the person based on their employment with a council. Under the proclamation these employment arrangements will typically be transferred to the new council, although informing the BPB would be appropriate.</p> <p>New councils must ensure the accreditation of staff is of an appropriate level to be able to certify the likely development to occur in the area.</p> <p>With the interaction of certifiers and hazardous construction sites, new councils will also be required to use the opportunities to update appropriate workplace health and safety procedures and systems.</p>
Harmonisation of certification processes	<p>The consideration and issue of certificates is based on an application process. Aligned to the work to harmonise assessment processes councils should also look to harmonise the application and assessment processes for certificates. This is a medium to longer term priority.</p>

Enforcement, appeals and legal action

From time to time councils are required to take legal action to enforce the requirements of an approval, correct/respond to unauthorised work or defend a planning decision. The Proclamation identifies that any approval, order or notice given or made by a former council continues to have effect as if it had been given or made by the new council.

The new council needs to be aware of the actions that it will be taking responsibility for, including being able to review and assess the information and evidence taken to commence any action. Where the enforcement action has not yet progressed to legal proceedings, new councils should ensure they are aware of the preceding notices and orders that may have been issued.

Table 7 below shows the implementation focus for new councils.

Table 7 Enforcement, appeals and legal action implementation actions

Issue	Action
Understand the enforcement or legal action underway	<p>New councils need to identify and document the enforcement and legal proceedings that former councils have on hand, including:</p> <ul style="list-style-type: none"> Any notices of intention to issue an order; Any orders issued and for which compliance is outstanding; Legal actions commenced in the Courts (either Local Court or the Land and Environment Court); and Any appeals lodged against council determinations. <p>Scenario two councils need to consider whether proceedings have been transferred to a new council or remain with the “altered council” under the terms of the relevant proclamation. The provisions of the Proclamation provide for a new council and an altered council to reach agreement on the transfer of specified assets, rights and liabilities. Proceedings in relation to such assets, rights or liabilities (if transferred to the new council) can be treated as proceedings against the new council.</p>
Ensure council commitments to actions are clear	<p>Should a new council decide not to continue with legal action it should take the appropriate steps to discontinue any proceedings as early as possible. If council is prepared to continue with legal action it should ensure that appropriate resources and commitments of staff are identified.</p>

Planning and building certificates

Councils will continue to be required to issue planning and building certificates during the implementation of a merger. These are important certificates relied upon by the community when making decisions on house purchases and considering new development applications. It’s important for councils to continue to deliver seamless customer service through the provision of advice on relevant planning documents. Particular attention should be paid to whether staff from pre-merger councils are able to give advice on areas in newly merged councils where they may have had little previous experience.

Table 8 below shows the implementation focus for new councils as they implement a merger.

Table 8 Planning and building certificates	
Issue	Action
Continue to process priority applications for planning and building certificates	<p>An immediate priority will be to continue the assessment of priority planning and building certificates:</p> <ul style="list-style-type: none">For scenario one and scenario two councils, include wording on the certificate to note that it has been issued by the new councilFor scenario two councils, develop service level agreements with adjoining councils to ensure accurate information to issue the certificate.
Review templates for planning and building certificates	<p>Within the first week of the new council the templates for planning and building certificates should be updated. This will allow those councils with automated systems to recommence the issue of certificates within the first 8 working days of the new council.</p>
Incorporate planning and building certificate functions into the work to harmonise systems	<p>As part of the work to harmonise application processes and planning controls councils should include the processes and procedures for the issue of planning and building certificates.</p>

3.5 Local planning controls

Local planning controls contained in Local Environmental Plans (LEPs) and Development Control Plans (DCPs) are the primary tool used to control development and set out how land is to be used.

It's important for councils to continue to deliver seamless customer service through the issuing of certificates such as planning certificates, building certificates and any outstanding orders. New councils are also expected to continue to operate principal controls and progress amendments consistent with local, regional and State strategic planning. New councils will also be required to continue to receive and assess amendments to planning controls that have strategic merit in accordance with the Gateway process.

For new planning proposals the Department will continue to use the Gateway process to also authorise the Council's use of its delegation. Until elected councils are in place the Department won't be authorising council delegations unless the planning proposal is for:

- Minor mapping alterations, errors or anomalies;
- Changes to heritage sites already supported by Office of Environment and Heritage;
- Rezoning consistent with an endorsed strategy of the (pre-merger) council; or
- Other matters of local significance as identified by the Department of Planning and Environment.

The harmonisation of local planning controls, integrated with updated community strategic plans and community engagement will be important longer term actions for new councils. This process provides an opportunity for greater use of e-Planning systems, the simplification of planning controls, and to implement updated strategic planning priorities.

Table 9 shows the implementation focus of local planning controls for councils as they implement a merger.

Table 9 Local planning controls implementation actions	
Issue	Action
Understand planning proposals in progress	New councils should identify and document the status of any major planning proposals in progress, including any proposals that are under assessment, on exhibition, or have been on exhibition.
Continue to receive and assess and obtain Gateway approvals for new planning proposals	<p>New councils are expected to receive and assess planning proposals that have strategic merit from the very first day of their establishment. New applications will be assessed consistent with the established strategic and community vision of the former councils.</p> <p>Issues that will need examination to ensure seamless service delivery in the assessment of new planning proposals include:</p> <ul style="list-style-type: none">• The process chain for the assessment of planning proposals including a consistent approach to pre-lodgement meetings, lodgement requirements, application fees, and consultation and notification requirements, and• Access to data and information on land details, zoning, planning controls, and the ability to produce up to date mapping.

Table 9 Local planning controls implementation actions

Issue	Action
Establishing who has delegation to finalise LEPs	<p>The proclamation establishing new councils confirms existing delegations to finalise LEPs can still be exercised, as will the authorisations already issued to councils to finalise planning proposals. It is however important to understand and update the delegations within councils on who can use the delegations to finalise plans. Council also must advise the Department of any change to council delegates.</p>
Analyse differences in local planning controls	<p>New councils should analyse the differences in planning rules and outcomes that exist between amalgamated areas, looking for inconsistencies and opportunities to harmonise controls. This is especially necessary where in a specific land use zone one LEP (pre-amalgamation) permits the identical use.</p> <p>Councils are also required to consider the current classifications of community land and ensure that the transfer processes from old to new correctly identify council land as either community or operational.</p>
Prepare planning proposal to harmonise LEPs	<p>After the September 2017 elections councils will need to be ready to present planning proposals to the newly elected council to harmonise comprehensive local environmental plans. This will not necessarily need to involve a new comprehensive LEP as an existing LEP can be expanded to become the principal instrument for the area. Things to consider when harmonising LEPs include:</p> <ul style="list-style-type: none"> • There is no need to amend LEPs immediately if no inconsistencies exist as planning controls can continue to operate under existing statutory arrangements; • The creation of new council wide local environmental plans is not required until a newly elected council is in place to work with the community; • There is an opportunity in Sydney to use the harmonisation of planning controls to implement District Plans.
Prepare new DCP	<p>In the longer term, new councils need to prepare an amalgamated development control plan that brings together the different DCPs from the individual councils. A new DCP must be developed so that only one plan applies to any site in the council area.</p> <p>This provides an opportunity for a new council to simplify and develop controls that can be used in an e-Planning environment so that clauses:</p> <ul style="list-style-type: none"> • Define the spatial area they apply to; or • Define the types of development they apply to. <p>This approach allows systems to be developed where users can ask what planning controls are applicable based on where they propose development and what type of development it is.</p>

3.6 Contributions

Contributions processes provide an important source of revenue for councils to construct infrastructure that responds to the demands of new housing and employment. Councils need to devote time and effort to ensure both seamless service delivery of contributions processes as well as a comprehensive understanding of the financial and legal responsibilities of the new council.

The complexity of contributions processes already in place and the nature of the merger will define the new council's response to the management of contributions processes.

By collecting contributions, councils take on the legal and financial responsibility to properly account for the funds and to ensure they are spent on the infrastructure for which they were identified. Councils do have the flexibility to manage their contributions finances to best deliver infrastructure by borrowing from one contributions account to pay another account, or by using contributions to recoup the costs of infrastructure already delivered. Understanding the nature of the contributions processes, both the plans and agreements in place, as well as the council's accounts will be an important first step for newly merged councils.

Table 10 shows the implementation focus for merged councils.

Table 10 Contributions implementation actions

Issue	Action
Due diligence of contributions plans	Determine the different contributions plans in place to understand the nature and extent of contributions.
Financial accounts of contributions plans identified and audited	Understand the infrastructure commitments identified in the contributions plans (found in the works schedules) Audit the current funds held in the contributions plan accounts to determine the amounts held, the amounts being spent and the future obligations on the accounts
Determine Borrowing and pooling of contributions Funds	Determine any pooling of funds or the recoupment of infrastructure costs already provided. Similarly, understand the funding commitments from other sources (such as the council's consolidated fund).
Timeframes for infrastructure delivery using contributions plans	Understanding the contributions plans, works schedules, financial accounts and borrowing/recoupment allows the expected delivery schedule to be understood. This will be important when preparing the council's forward expenditure and coming years budget.
Continue to deliver infrastructure works	Focus on the delivery of infrastructure identified in the works schedules of contributions plans. This infrastructure provides much needed services to areas where development is occurring, as well as enabling economic activity.
Continue to assess planning agreements	Continue to assess planning agreement proposals along with planning proposals and development applications. The proclamation will enable councils to reply on previous procedural steps such as consultation.
Harmonisation of contributions plans	In the medium term councils should be looking to review and refresh their contributions plans to align to new strategic plans (such as regional, district or local plans) as well as new Community Strategic Plans.

Scenario two councils, where council areas are being re-distributed and also amalgamated, will have additional matters to consider when it comes to dealing with contributions issues, particularly where contributions plans may be split by boundary changes or infrastructure crosses council boundaries. Under the *Local Government (City of Parramatta and Cumberland) Proclamation 2016* an existing condition of development consent that requires a monetary contribution to the new council is taken to be a condition under section 94C (1) of the *Environmental Planning and Assessment Act 1979* and can be apportioned in accordance with an agreement between the relevant councils.

Managing the ongoing financial commitments, as well as community expectations of infrastructure, will require the new councils to work closely together. A forum should be created to discuss how the flow of funds and infrastructure commitments from contributions plans should be managed. The Department will be able to assist in mediating and resolving any disputes.

Table 11 below shows the additional contributions implementation focus for scenario two councils.

Councils should be taking care to ensure their actions on contributions are based on legal and financial advice. This will ensure any changes to contributions plans, infrastructure spending or budget allocations is consistent with both statutory and financial obligations.

Table 11 Additional contributions implementation actions for scenario two councils	
Issue	Action
Development consents and contributions	Councils can continue to grant development consents subject to conditions imposing contributions in accordance with plans that include items of infrastructure that are (following the proclamation) located in a different LGA. For example, those plans might be treated as cross boundary plans under section 94C of the EP&A Act and accordingly, a condition of development consent requiring a contribution should provide for apportionment between the relevant councils.
Audit contributions accounts	<p>An immediate priority will be to ensure contributions accounts are audited to identify:</p> <ul style="list-style-type: none"> • Funds collected to date; • Outstanding contributions; • Any pooling, borrowing or recoupment; and • Expected infrastructure delivery. <p>This is the opportunity to ensure there are clear accounts for each plan, allowing understanding of the specific balances for infrastructure. This audit should also provide the commitments and contributions from planning agreements.</p> <p>The audit will allow the new councils to understand their respective contributions balances and commitments, while laying a platform for the negotiation of cross-boundary contributions.</p>
Receipt of development contributions	<p>Councils can collect contributions in accordance with conditions of consents granted by a former council (or accredited certifier). Where there are disputes over the receipt and allocation of the contributions, the Department is able to assist in negotiations.</p> <p>Councils should be creating separate accounts to receipt funds for infrastructure that has a cross-boundary component to assist the negotiation of cross-boundary contributions.</p>
Understand infrastructure delivery program	Former councils will have factored in certain assumptions about borrowings, expected recovery of contributions and the like when preparing their 10 year Asset Management Plan as part of their Integrated Planning and Reporting process. While reprioritisation of the program of infrastructure delivery is best done by an elected council, a new council may need to reprioritise short term infrastructure spending if the amalgamation of areas has created altered priorities.
Continued consideration of planning agreements	Draft planning agreements may have been prepared by a former council and be ready for consideration following public exhibition. Understanding the commitments and obligations created by the execution of the agreement should also include consideration of any cross boundary infrastructure. Again, this will require liaison between the new and altered councils before any decision on a draft agreement is finalised.

Matrix of priority actions

Issue	Day 1	Week 1	Month 1	Month 3	Month 3+
Housing					
Progress planning proposals, gateway applications and planning agreements	•	•	•	•	•
Ongoing assessment of major development applications	•	•	•	•	•
High quality service levels	•	•	•	•	•
Strategic planning and engagement					
Ongoing engagement	•	•	•	•	•
Stocktake strategic planning work			•	•	
Broader strategic environment			•	•	•
Harmonise strategic planning efforts				•	•
e-Planning					
Opportunities for integration with NSW Planning Portal				•	•
Council e-Planning systems	•	•		•	•
Data quality	•	•	•	•	
Software systems	•	•	•	•	•
IT hardware	•	•	•	•	•
Development application systems and processes					
Understand applications in progress	•	•			
Continue to assess applications	•	•	•	•	•
Receiving new applications	•	•	•	•	•
Establishing who has delegation to determine applications	•	•			
Membership of panels and committees		•			
Consider establishing an Independent Hearing and Assessment Panel				•	•
Managing information and databases	•	•	•		
Harmonising assessment systems			•	•	•
Looking for Best Practice assessment			•	•	•

Issue	Day 1	Week 1	Month 1	Month 3	Month 3+
Certification Processes					
Access to databases and information	•	•	•		
Understand applications and inspections in progress	•	•			
Appropriate accreditations			•		
Harmonisation of certification processes			•	•	•
Enforcement, appeals and legal action					
Understand the enforcement or legal action underway	•	•			
Ensure council commitments to actions are clear		•	•		
Local planning controls					
Understand planning proposals in progress	•				
Continue to receive, assess and obtain Gateway approvals for new planning proposals	•	•	•	•	•
Establishing who has delegation to finalise LEPs		•	•		
Analyse differences in local planning controls				•	•
Prepare planning proposal to harmonise LEPs					•
Prepare new DCP					•
Contributions					
Due diligence of contributions plans	•	•			
Financial accounts of contributions plans identified and audited		•	•		
Determine borrowing and pooling of contributions Funds			•	•	
Timeframes for infrastructure delivery using contributions plans				•	•
Continue to deliver infrastructure works	•	•	•	•	•
Continued to assess planning agreements	•	•	•	•	•
Harmonisation of contributions plans				•	•
Development consents and contributions	•	•	•	•	•
Audit contributions accounts	•	•	•		
Receipt of development contributions	•	•	•	•	•
Understand infrastructure delivery program			•	•	•
Continued consideration of planning agreements	•	•	•	•	•

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*For more information about local planning matters visit:
planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning*

Planning circular

PLANNING SYSTEM

Plan-making reviews and delegations

Circular	PS 16-005
Issued	30 August 2016
Related	PS-12-006

Delegation of plan making decisions

The purpose of this circular is to update councils and the public about delegations of plan making functions under Part 3 of the Environmental Planning and Assessment Act 1979 to implement the Rezoning Review process.

Introduction

This circular replaces Planning Circular PS 12-006 and provides updates and advice in relation to delegations for the making of local environmental plans (LEPs).

The Minister for Planning and the Greater Sydney Commission have delegated certain decision making powers under the local environmental plans (LEPs) making process to the Department of Planning and Environment, Regional Planning Panels, Sydney Planning Panels (once they are established), the Planning Assessment Commission (the Commission) and local councils.

The new delegations for plan making decisions have been prepared to implement the Rezoning Review process. Details regarding this review process is described in Planning Circular PS 16-004, and in updated versions of the Department's *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Existing delegations

The following plan making delegations have previously been issued.

Local councils:

- Plan making powers under section 59 of the EP&A Act.

Secretary and senior officers of the Department of Planning and Environment:

- Directing the Secretary (or any other person or body prescribed by the regulations) to be the relevant planning authority under section 54(2) of the EP&A Act;
- Making a Gateway determination under section 56(2) of the EP&A Act;
- Arranging for the review of a planning proposal the Planning Assessment Commission or a joint regional planning panel under section 56(5) of the

EP&A Act;

- Altering a Gateway determination under section 56(7) of the EP&A Act;
- Determining that a planning proposal not proceed, at the request of the relevant planning authority, under section 58(4) of the EP&A Act;
- Plan making powers under section 59 of the EP&A Act; and
- Forming an opinion under section 73A(1)(c) of the EP&A Act that a LEP amendment does not warrant compliance with the plan making requirements under Division 4 of the EP&A Act.

New delegations

The following delegations have been issued to implement the Rezoning Review process.

Joint Regional Planning Panels:

- Direct itself to be the relevant planning authority under section 54(2) of the EP&A Act, for a proposal that has been subject to a Rezoning Review

Sydney Planning Panels:

- Will have the same delegation as Joint Regional Planning Panels once established.

Greater Sydney Commission

The *Greater Sydney Commission Act 2015* (the GSC Act) when it commenced on 27 January 2016 transferred certain plan making powers under Part 3 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) from the Minister to the Greater Sydney Commission and made provision for the establishment of Sydney Planning Panels to replace Joint Regional Planning Panels in the Greater Sydney Region.

The GSC Act amended section 24(2)(b) of the EP&A Act to provide that LEPs may be made by the Minister, or for the Greater Sydney Region, by the Greater Sydney Commission.

Savings and transitional provisions in Part 11 of Schedule 7 to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) save existing Ministerial delegations to local councils, senior staff of the Department of Planning and Environment and the Commission relating to the LEP making processes for the Greater Sydney Region. Accordingly, a reference to the Minister in the instrument of any delegation immediately in force before 27 January 2016 is taken to be a reference to the Greater Sydney Commission.

Further details regarding these operational and transitional arrangements are provided in the Department's fact sheet "Commencement of the *Greater Sydney Commission Act 2015* and what it means for councils". This fact sheet is available online at gsc.nsw.gov.au.

Department of Planning and Environment

A broad range of decision and plan making functions have been delegated to the Department of Planning and Environment by the Minister for Planning and Greater Sydney Commission to ensure the timely delivery of LEPs.

Within the Department, the regional offices generally manage the plan making process for draft LEPs, including the issuing of Gateway determinations under section 56 of the Act, the issuing of an authorisation to local councils to exercise plan making functions, altering Gateway determinations and making LEPs.

By working closely with councils, the Department's regional teams are able to bring a much stronger local perspective to the process of plan making in regional areas.

Under the Department's delegations, the regional teams issued 85% of Gateway determinations in 2014-2015. The remaining 15% of decisions were made by another delegate within the Department outside of the regional teams. The types of issues that require referral to the Executive are:

- if the proposal to rezone land or change planning controls is not supported, or a condition is being sought to impose a significant change to the proposal; or
- if the proposal is contentious because it is not consistent with strategic planning for the area, or has been the subject of community discussion.

Approximately 65% of all LEPs made in 2014-2015 that were not made by a local Council under delegation were finalised by the Department's regional teams. Plan making functions are to be exercised by regions where:

- the matter is of a minor nature or local level of significance; and
- the matter is consistent with the position of the relevant Council or any relevant Department Strategy.

The Secretary has also been delegated the function to direct the Secretary of the Department to be the relevant planning authority. Further information and

guidance regarding the matters that the Secretary, as delegate of the Minister or GSC, will consider when determining to direct the Secretary to be the relevant planning authority is described in LEP Planning Circular PN09-004.

Planning Panels

Joint Regional Planning Panels and, once established, the Sydney Planning Panels (Planning Panels) will determine rezoning review requests for all matters outside of the City of Sydney. Sydney Planning Panels, once operational, will undertake all rezoning reviews that relate to matters within the Greater Sydney Region but outside of the City of Sydney.

To implement the new Rezoning Review process the Minister for Planning has delegated the authority for a Joint Regional Planning Panel to direct itself to be a relevant planning authority. This would be undertaken where a proposal had been subject to a rezoning review and a council had not accepted this role.

It is intended that the GSC will issue the same delegated authority to Sydney Planning Panels, once established.

Planning Panels have not been delegated functions to issue or alter a Gateway determination or make a LEP. Planning Panels will continue to provide advice to the Minister or GSC (or delegate) regarding the suitability for issuing and altering a Gateway determination and making a LEP through the plan making process.

Further information and guidance regarding the rezoning review and Gateway review processes is described in Planning Circular PS 16-004

Planning Assessment Commission

The Planning Assessment Commission (Commission) will determine rezoning review requests for all matters within the City of Sydney.

Similar to the Planning Panels, the Commission has not been delegated functions to issue or alter a Gateway determination or make a LEP. The Commission will continue to provide advice to the Minister (or delegate) the suitability for issuing and altering a Gateway determination and making a LEP through the plan making process for all matters within the Greater Sydney Region.

Further information and guidance regarding the rezoning review and Gateway review processes is described in Planning Circular PS 16-004.

Local councils

Plan making functions remain delegated to local councils to ensure local government involvement in the plan making process. Approximately 68% of all LEPs made in 2014-2015 were finalised by local councils.

The information below provides guidance

regarding the issuing of delegations to local councils and procedural requirements. This information was previously outlined under Planning Circular PS 12-006.

Issue of delegations to local councils

The delegations operate in respect of a draft LEP on receipt by council of a written authorisation to exercise delegation (the authorisation). The authorisation will be issued to councils as part of a Gateway determination.

A council must have formally accepted the delegation before the Department will issue an authorisation in respect of any individual draft LEP.

If a council chooses to accept the delegation, it may sub-delegate the function to an officer within council (usually the general manager or planning director) who will exercise the delegation. If a council chooses to sub-delegate the function, the council should advise the Department at the same time it accepts the delegation. When submitting a planning proposal to the gateway a council should advise the Department whether the council or an officer will be exercising the delegated function.

Section 381 of the *Local Government Act 1993* requires that such functions cannot be delegated to:

- a) the general manager, except with the approval of the council, or
- b) an employee of the council, except with the approval of the council and the general manager.

Councils must comply with the conditions of the Authorisation in exercising their delegation. This includes obtaining the agreement of the Department's Secretary for any unresolved Section 117 Directions. If a condition of the Authorisation cannot be complied with council must not exercise the delegation and must advise the Department immediately.

LEPs to be routinely delegated to local councils

The following types of draft LEPs will continue to be delegated to councils to prepare and make following a Gateway determination that the planning proposal can proceed:

- mapping alterations
- section 73A matters (eg amending references to documents/agencies, minor errors and anomalies)
- reclassifications of land where the Governor's approval is not required
- heritage LEPs related to specific local heritage items supported by an Office of Environment and Heritage endorsed study
- spot rezoning consistent with an endorsed strategy and/or surrounding zones, and
- other matters of local significance

as determined by the Gateway.

Matters that will be routinely delegated to a Council under administration are confirmed on the Department's website planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/

When submitting a planning proposal, councils will be required to identify whether they wish to exercise the authorisation for each planning proposal.

Drafting and notifying delegated LEPs for local councils

Under section 59(1) of the Act the Department requests the Office of the Parliamentary Counsel (PCO) to draft the legal instrument to give effect to a planning proposal. However, when an authorisation to finalise the LEP has been issued, Council will deliver its instructions directly to PCO. The council will concurrently copy the instructions to the Department for monitoring and reporting only. Council will then deal directly with PCO to negotiate and agree the final wording of the instrument, prior to making the LEP.

When a plan is made, the Department currently requests PCO to 'notify' the plan on the NSW Legislation webpage. The day the plan is notified on that webpage is the day the LEP becomes effective. This process will continue. When a council has made an LEP it will be forwarded to the Department. The Department will request notification through PCO and will record the dates of making by the council and notification on the NSW Legislation web page.

Reporting requirements for local councils

Councils will be required to report to the Department on processing times for delegated LEPs (e.g. exhibition dates, dates of council resolution and/or delegated decisions to proceed with the planning proposal after exhibition, request for drafting, making of plan, and forwarding to Department to arrange notification).

A template for the reporting of this information has been prepared and is provided on the Department's website at planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/Resources. Councils will be required to submit this completed template with each LEP at the time a request is made to the Department to notify the plan. Councils are also required to provide written advice to the relevant regional office of the dates as they occur to ensure that the Department's publicly accessible LEP Tracking System remains up to date.

Further information

A guide to preparing local environmental plans provides advice on the various stages in the plan making process including details plan-making functions to councils.

A guide to preparing planning proposals, issued under section 55(3) of the Act, provides advice on the preparation and content of planning proposals.

Copies of the *Environmental Planning and Assessment Act 1979*, *Greater Sydney Commission Act 2015*, and *Environmental Planning and Assessment Regulation 2000* are available online at legislation.nsw.gov.au.

Copies of *A guide to preparing local environmental plans* and *A guide to preparing planning proposals* are available on the Department's website planning.nsw.gov.au.

The Department's fact sheet, "Commencement of the *Greater Sydney Commission Act 2015* and what it means for councils is available on the Greater Sydney Commission's website gsc.nsw.gov.au

The Department has developed a number of template documents to assist councils preparing delegated LEPs. Councils will be able to access these templates and use them to ensure that the key statutory requirements of the plan-making process have been complied with. These templates are available for download from the Department's website at planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/The-Gateway-Process

For further information please contact the Department of Planning & Environment's information centre on 1300 305 695.

Department of Planning & Environment circulars are available from planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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File number: C-84-3

Policy owner: Director Corporate Services (Human Resources)

Authorisation: Adopted by General Manager 1 July 2005

Review date: December 2016

Modification history: Amended 30 April 2007; Amended March 2011; Amended 5 November 2013; Reviewed February 2016;

Related legislation: Local Government Act 1993
Local Government State Award 2010

Related policies: Code of Conduct

Related forms: Other Business or Employment Declaration

Contents:

1. Purpose
2. Objectives
3. Scope
4. Definitions
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1. Purpose

The purpose of this policy is to specify the requirements of staff considering or engaged in business or employment other than their work for Council.

2. Objectives

The objectives of this policy are to:

- Advise staff of the appropriate conduct and their obligations in relation to other business or employment;
- Ensure staff are aware of the appropriate use of council resources;
- Protect confidential council information.

3. Scope

This policy applies to all staff considering or engaged in business or employment other than their work for Council.

4. Definitions

Managers includes all employees who are responsible for the direct supervision of staff. This may include Team Leaders, Coordinators, Children's Centres Directors and Senior Managers.

5. Responsibilities

Human Resources Responsibilities

- Maintaining an electronic record of Other Business or Employment Declaration Forms
- Sending Other Business or Employment Declaration Forms to the General Manager for review and approval.
- Filing Other Business and Employment Declaration Forms on employee personnel files.

Managers Responsibilities

- Reviewing and assessing an employee's Other Business and Employment Declaration Form for potential conflicts of interest in accordance with our Code of Conduct.
- Providing guidance to staff as to whether a particular circumstance of other business or employment constitutes a real or perceived conflict of interest,
- Notifying staff that their Other Business or Employment Declaration Form has not been approved or that specific action or notification is required.

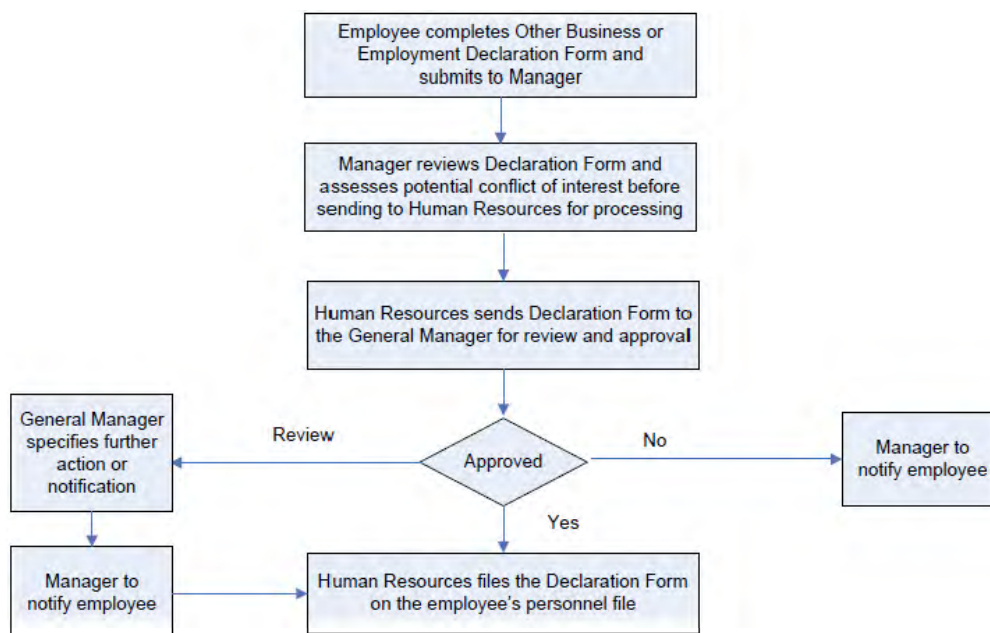
General Manager's Responsibilities

- Reviewing and approving other business or employment engaged in by members of staff.

Employee Responsibilities

- Advising their supervisor of their engagement in all other remunerated business or employment.
- Completing an Other Business or Employment Declaration Form and seeking the approval from the General Manager.

6. Procedures



Variation

Council reserves the right to vary, review or revoke this policy.



Other Business or Employment Declaration

Employee Information

Name: _____

Position: _____

Team: _____

Section: _____ Division: _____

Other Business or Employment Details

Name of Business or Employer: _____

Position: _____

Nature of work: _____

Anticipated hours per week: _____ Signed: _____

Review by Manager

Name: _____ Signed: _____

Comments: _____

_____ Date: _____

General Manager Approval

Signed: _____ Date: _____

Comments: _____



Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 17-006
Issued	15 December 2017
Related	Revokes PS-08-003 (May 2008), PS08-014 (November 2008), PS11-018 (August 2011), Circular B1 (March 1989)

Variations to development standards

This circular is to advise councils of arrangements for when councils may assume the Secretary's concurrence to vary development standards, and clarify requirements around reporting and record keeping where that concurrence has been assumed. This circular is primarily resulting from an audit of councils' use of *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1) and Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP).

Overview of the amendments

This circular replaces Planning Circulars B1, PS08-003, PS08-014 and PS11-018 (the previous circulars) and issues revised assumed concurrence, governance and reporting requirements.

An audit of various councils revealed that some inconsistencies have arisen in the use of the existing assumed concurrence provisions. The concurrence provisions make it clear that council must take into account the Secretary's considerations when assuming concurrence.

Councils are notified that only a full council can assume the Secretary's concurrence where the variation to a numerical standard is greater than 10%, or the variation is to a non-numerical standard. The determination of such applications cannot be made by individual council officers unless the Secretary has agreed to vary this requirement for a specific council. In all other circumstances, individual council officers may assume the Secretary's concurrence.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, council is notified, in accordance with the attached written notification, that it may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP and clause 6 of SEPP 1.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures, established in the previous circulars, continue to apply and must be

adhered to by councils when considering applications utilising clause 4.6 of the SILEP or SEPP 1:

- Applications for variations to development standards cannot be considered without a written application objecting to the applicable development standard and addressing the matters required to be addressed in the relevant instrument.
- A publicly available online register is to be established, and its currency maintained, of all variations to development standards approved by council or its delegates. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved, either by council or its delegates, must be submitted to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie March, June, September and December). Such report must be on the form provided by the Department.
- A report of all variations approved under delegation by staff must be provided to a full council meeting at least once each quarter.

The Department will continue to carry out random audits to ensure the above monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy. Should ongoing non-compliance be identified with one or more councils, the Department will consider revoking the ability to assume the Secretary's concurrence, either broadly or for a specific non-compliant council.

Audit outcomes

An audit of various councils was undertaken. The audit report can be viewed at www.planning.nsw.gov.au

Further Information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at: www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**Written notification of assumed concurrence**

I, the Secretary of the Department of Planning and Environment, under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, hereby give written notification of my assumed concurrence to councils for exceptions to development standards in respect of all applications made under:

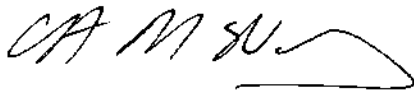
- (a) Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP); or
- (b) Clause 6 of the *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1)

This assumed concurrence is subject to the following matters:

- (1) Council may assume my concurrence in respect of an application to vary a development standard relating to the minimum lot size for the erection of a dwelling on land zoned RU1, RU2, RU3, RU4, RU6, R5, E2, E3 or E4 (or equivalent zone) only if that allotment has an area equal to or greater than 90% of the minimum area specified in the development standard.
- (2) Prior to assuming my concurrence Council must have consideration of the matters set out in subclause 4.6(5) of the SILEP or clause 8 of SEPP 1.
- (3) When assuming my concurrence in the following circumstances, only a full council (rather than individual council officers) can determine applications:
 - a. Where the variation of a development standard is greater than 10%, or
 - b. Where the development standard being varied is non-numerical.
- (4) Any existing variations which have been granted in writing by me will continue to have effect in accordance with their terms.

Dated:

27-11-17



Carolyn McNally
Secretary, Department of Planning and Environment

Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 18-003
Issued	21 February 2018
Related	Revokes PS17-006 (December 2017)

Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied), and clarify requirements around reporting and record keeping where that concurrence has been assumed.

Overview of assumed concurrence

This circular replaces Planning Circular PS 17-006 and issues revised assumed concurrence, governance and reporting requirements for consent authorities.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

However the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning and Environment to a previous notice will continue to have effect under the attached notice.

Assumed concurrence conditions

Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition
- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living

- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 23I, to be renumbered 4.8 from 1 March 2018).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong will be required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 23I, to be renumbered section 4.8 from 1 March 2018).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it will apply to panels established after 1 March 2018.

Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect), or clause 6 of SEPP 1.

The notice takes effect on the day that it is published on the Department of Planning's website (i.e. the date of issue of this circular) and applies to pending development applications.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

Further information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at:

www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:


- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none"> – Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition – Zone R5 Large Lot Residential – Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living – a land use zone that is equivalent to one of the above land use zones <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none"> – development that contravenes a numerical development standard by more than 10% – development that contravenes a non-numerical development standard <p>Note. Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17-006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018



Carolyn McNally
Secretary, Department of Planning and Environment