



PLANNING SYSTEM

Local planning

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Related	

Standard Instrument (Local Environmental Plans) Order 2006

This circular provides an overview of the Standard Instrument (Local Environmental Plans) Order 2006 and its implications for preparing local environmental plans.

Introduction

The Standard Instrument (Local Environmental Plans) Order was gazetted on 31 March 2006. The Order prescribes a standard form and content of a principal local environmental plan (LEP) for the purposes of section 33A of the *Environmental Planning and Assessment Act 1979* (the Act).

The standard instrument is part of a package of local planning reforms, which include:

- changes to the Act in 2005 aimed at reducing the number of plans and improving consistency in planning instruments
- gazettal of revised ministerial directions under section 117 of the Act
- introduction of an LEP Review Panel to provide early advice from the Department on the preparation of new LEPs and reduce the overall number of LEP amendments
- Environmental Planning and Assessment Amendment Bill 2006, which proposes further reforms aimed at improving local planning in NSW.

This Circular provides an overview of the key operational aspects of the standard instrument. Further guidance on the preparation of LEPs using the standard instrument will also be provided in practice notes issued from time-to-time by the Department.

When does the standard instrument take effect?

The standard instrument is not in itself an environmental planning instrument (EPI) under the Act. The provisions set out in the standard instrument will only have the legal force of an EPI once they are adopted as part of a council's gazetted LEP.

The standard instrument will therefore come into effect incrementally. The implementation will include the following stages.

From 31 March 2006

Following the date of gazettal, draft principal LEPs will be required to be prepared in accordance with the standard instrument and incorporate the relevant mandatory provisions before they can be publicly exhibited or recommended for gazettal.

However, the standard instrument will not be a matter for consideration under section 79C(1)(a)(ii) of the Act until such time as a council publicly exhibits a draft LEP for its area that adopts the relevant standard instrument provisions.

When a council exhibits a draft principal LEP prepared in accordance with the standard instrument

When a draft principal LEP that has been prepared in accordance with the standard instrument is placed on public exhibition under section 66 of the EP&A Act, the draft LEP (including the relevant provisions of the standard instrument) will become a matter for consideration under section 79C(1)(a)(ii) of the Act.

The public exhibition of a draft LEP under section 66 of the Act must include:

- a copy of the standard instrument
- a statement that the standard instrument substantially governs the content and operation of the draft LEP, and that any submissions made on the draft LEP should have regard to this fact.

When a new principal LEP prepared in accordance with the standard instrument is gazetted

The standard instrument provisions will only commence their full legal effect on development once a new principal LEP prepared in accordance with the standard instrument has been gazetted for the local government area.

Councils will take between two and five years to prepare a new principal LEP for their area which accords with the standard instrument.

Effect of the standard instrument

The standard instrument provides a 'template' which councils will use as the basis for preparing a new LEP for their local area within the next five years, using standard:

- zones (including standard zone objectives and mandated permitted and prohibited uses)
- definitions
- clauses
- format.

Councils can:

- prepare additional local provisions that address local planning issues and which reflect the outcomes of local and regional strategies
- add local objectives to the core zone objectives
- add additional permitted or prohibited land uses for each zone in the land use table
- decide whether or not to include optional provisions in their LEP
- specify what will be permitted as exempt and complying development
- insert local criteria or standards into certain mandatory clauses
- prepare maps that specify the lot sizes, building heights and floor space ratios appropriate for their local area
- define terms within a local provision in certain circumstances
- suggest new definitions to the Department of Planning that could be suitable for inclusion in the standard dictionary for all councils to use.

Councils can not:

- add new zones or create sub-zones
- prohibit uses that are mandated as permissible in a zone
- permit uses that are mandated as prohibited in a zone
- add local provisions that are inconsistent with the mandatory provisions
- change the standard dictionary by altering or adding to the standard definitions
- change the standard clause numbering
- change the format
- change the wording of the provisions.

All local provisions prepared by councils must be consistent with the relevant core zone objectives and mandated land uses, other mandatory provisions, and relevant State or regional planning guidance (including SEPPs, REPs, section 117 directions, metropolitan or regional strategies and other relevant policy guidance).

A certificate cannot be issued under section 65 of the Act for the exhibition of a draft LEP unless the Director-General is satisfied that the draft LEP has been prepared in accordance with the standard instrument.

Similarly, a Director-General's report on a draft LEP cannot be provided to the Minister for Planning under section 69 of the Act unless the Director-General is satisfied that the draft LEP has been prepared in accordance with the standard instrument. If a draft LEP does not accord with the standard instrument, section 68 (9) of the Act allows:

- the council and the Director-General to agree to the council making changes to the LEP and resubmitting it, or
- the Director-General to return the draft plan to the council to make the necessary changes to ensure that it does accord with the standard instrument.

New principal LEPs will include a statement that the applicable mandatory provisions of the standard instrument are adopted.

Mandatory provisions

The standard instrument identifies mandatory provisions for inclusion in new principal LEPs. These are either compulsory, (including compulsory [if applicable]), or optional.

Compulsory provisions

Compulsory provisions are those which must be included in all principal LEPs. These are generally administrative matters that are common to all LEPs or planning matters that are relevant to all councils in NSW. In many cases these provisions are already included in many existing LEPs, although not necessarily with consistent wording. Examples include definitions, zones, zone objectives, administrative clauses (such as 'name of plan' and 'consent authority') and common planning issues such as exempt and complying development and subdivision.

Compulsory [if applicable] provisions

Compulsory [if applicable] provisions are clauses that are compulsory where specified conditions exist. These generally relate to the environmental or other attributes of the local government area (e.g. 'compulsory if the LEP covers land within the coastal zone'), or where certain other provisions are included in the LEP (e.g. 'compulsory if clause 19 is adopted and land to which plan applies includes land zoned RU1, RU2, RU4 or RU6').

Councils must include the relevant Compulsory [if applicable] provision if the condition specified in parentheses applies.

Optional provisions

Optional provisions are a type of mandatory provision which councils can choose whether or not to use, but which cannot be altered. Councils cannot include local provisions in their LEP (or similar provisions in their development control plan [DCP]) that could be addressed using the optional provisions in the standard instrument.

Examples include clauses on height of buildings, floor space ratio and minimum subdivision lot size. If a council wishes to make provision for these issues in its local area it must do so by adopting the relevant optional clause in its LEP and filling in the relevant local content where applicable (e.g. specifying numerical standards for building height).

Non-mandatory provisions

The standard instrument does not currently contain any non-mandatory provisions under section 33A 2(c) of the Act.

Local provisions

Local provisions refer to any LEP content (e.g. clauses, objectives, additional permitted or prohibited land uses) that is not part of the standard instrument. Local provisions may be prepared by councils to address matters that are relevant to their local area and which are not covered by provisions in the standard instrument.

Local provisions may not deal with planning matters that are addressed by mandatory provisions (whether compulsory or optional) in the standard instrument. The inclusion of local provisions should be justified, e.g. in the context of a local or regional strategy. Matters that might be covered by local provisions include:

- issues that are the subject of State or regional planning guidance requiring councils to develop tailored provisions that are appropriate to their local area, e.g. developing flood planning provisions using the NSW Government's Floodplain Development Manual
- local environmental or hazard 'overlays' that apply in addition to zones
- defining local design objectives or neighbourhood character
- other provisions that reflect the outcomes of local strategic planning and consultation.

All local provisions must be consistent with relevant State or regional planning guidance and the mandatory provisions in the standard instrument.

Format

The standard instrument provides a consistent format for all new principal LEPs in NSW. Provisions common to each LEP will be located in the same place in all principal LEPs, making it easier to find provisions. The format is designed so that mandatory provisions can be updated simultaneously and consistently in all LEPs. Consideration may be given to further refinements to the format of the standard instrument as part of a future review.

Where an optional provision is not adopted by the council, or a compulsory [if applicable] provision does not apply, the number or other identifier of the provision shall be shown in the plan with the words 'not adopted' or similar wording.

Definitions

The standard instrument includes a dictionary of standard terms relating to land uses and other matters relevant to the interpretation of LEPs.

The definitions in the standard instrument are mandatory provisions and may not be altered or deleted. Councils cannot add local definitions to the dictionary.

Although the standard dictionary includes 241 terms, only the terms that are actually used in a council's LEP will be reproduced in that council's plan. This will mean that for most councils the dictionary that appears in their LEP will be much shorter.

Councils may propose a new definition for inclusion in the standard instrument where it can be justified that no existing standard definitions are suitable. Requests for new standard definitions will be considered by the Department of Planning and where appropriate, will be added to the standard instrument at the next review. Requests for new terms to be defined should be submitted to the Department as early as possible during the LEP preparation process, e.g. at section 54 notification stage.

Where appropriate, councils might also be permitted to define terms that are used in a local provision, however the definition would be set out within the relevant (local) clause and would only apply for the purposes of interpreting that clause.

Zones

The standard instrument includes 34 zones from which councils can select in preparing their LEPs. Councils do not need to use all the zones. Only those zones which are used in a council's LEP will appear in their gazetted plan.

Each zone has one or more core objectives for development in the zone. Core objectives may be supplemented where appropriate with local objectives prepared by the council, provided that these are consistent with the standard objectives and mandated land uses.

Councils cannot add new zones or create sub-zones. Where appropriate, LEPs may, in addition, set out 'overlay' controls as local provisions. Such provisions would consist of a map and associated heads of consideration for development) that apply in addition to the zoning of the land. They may apply to land that has particular environmental, hazard or design constraints (e.g. flood prone land, wildlife corridors, catchments) and which may be in different zones. Any local overlay provisions will apply in addition to the objectives and land use table for zones, and may not alter the mandated permissible or prohibited uses. Any overlay type provisions must be consistent with any relevant State or regional policy guidance.

Permitted and prohibited development

The gazetted standard instrument adopts a land use table format for identifying permitted and prohibited land uses, as this was preferred over a land use matrix by the majority of respondents to the exhibition of the draft standard instrument in late 2005.

Councils may choose to prepare a land use matrix for information purposes where they believe that this will aid understanding of their LEP, however this will not form part of the gazetted legal instrument.

The land use table in the standard instrument specifies certain mandated uses that are permitted or prohibited in certain zones. In addition to the mandated uses for each zone, councils will need to determine whether to permit (with or without consent) or prohibit the other land uses which are defined in the dictionary.

In supplementing the mandated land uses for each zone, councils should seek to maximise the range of appropriate uses that are permissible with or without consent. For most zones the preferred approach will be to:

- specifically list any uses that may be undertaken without consent as 'permitted without consent'
- specifically list land uses that will always be inappropriate in the zone (no matter how well designed) as 'prohibited'
- allow all other (unnamed) uses as 'permissible with consent'.

This will minimise the need to undertake spot rezonings or other ad hoc LEP amendments to permit additional acceptable uses that were not envisaged during the initial LEP preparation. An exception to this would be the environmental protection and recreation zones, where it is generally appropriate to list only the permitted uses, and for remaining development to be prohibited.

Councils must give effect to any relevant strategies, plans, policies or directions when determining permitted and prohibited land uses.

Clauses

The standard instrument sets out 36 standard clauses as mandatory provisions. Councils must include all compulsory clauses, and must also include all compulsory [if applicable] clauses where the conditions specified in parentheses apply. The standard instrument also includes a number of optional clauses, which councils may choose whether or not to include.

Some clauses allow or require councils to provide specific local details such as:

- preparing maps to show the land to which development standards, e.g. minimum lot size and building height apply
- setting out the objectives for development standards clauses and inserting the numerical standards for minimum lot size, building height, floor space ratio etc. that are to apply
- identifying additional areas where exempt and complying development cannot be carried out, if desired
- identifying the relevant public authority (with the authority's consent) for the acquisition of land that is reserved for public purposes.

Standard clauses will save councils time and resources in consultation and drafting their LEPs as they will avoid the need to resolve issues already dealt with in the standard instrument. This will also save time and resources in the exhibition, assessment of submissions and reporting to the Director-General, and the consideration of draft LEPs by the Parliamentary Counsel's Office.

It is expected that as part of the ongoing review of the standard instrument that new standard clauses may be included to address issues that would benefit from a consistent planning approach across NSW.

Maps

A number of mandatory provisions in the standard instrument (both compulsory and optional) require maps to be prepared. Examples include clauses on minimum lot sizes and land acquisition. Local provisions may also include additional maps, e.g. environmental and hazard 'overlays'.

Two or more maps may be combined into a single map where appropriate (in accordance with clause 6) to minimise the number of hard copy maps that may need to be produced. Technical requirements for LEP maps are currently being finalised.

Directions and notes

The standard instrument order includes three different types of notations which have different functions:

- notes—which do not have statutory force, but are included for interpretation purposes (e.g. a note in clause 16 identifies the relevant provisions of the Act relating to exempt development). Notes used in the standard

instrument will be replicated in councils' gazetted LEPs

- directions—which relate to the form and content of LEPs. Councils must give effect to any relevant directions when preparing their LEPs. Unlike notes, the directions used in the standard instrument will not be replicated in councils' gazetted LEPs
- bracketed words in italics—which are to be replaced by the appropriate local provision wherever they appear, e.g. inserting the name of the local government area.

What happens when mandatory provisions are amended

When the order is amended to make changes to the mandatory provisions of the standard instrument, then any LEP (or draft plan) that adopts those provisions will be automatically amended to reflect the changes (section 33A (4) of the Act). When this happens existing plans on the NSW legislation website, www.legislation.nsw.gov.au will be updated.

Standard clause numbering in the standard instrument will ensure that any amendment by the Minister will not affect the numbering scheme in council's LEP. The Minister's order that amends the standard instrument may make provision of a savings or transitional nature as a result of the amendment of the standard instrument.

Reviewing and updating the standard instrument

An annual review process will be established to ensure that the standard instrument is regularly reviewed and remains up-to-date and relevant.

New provisions will be added over time in response to planning issues that affect many or all councils in NSW. These may be developed to implement State policies or regional strategies, or may reflect issues identified by councils as they prepare their LEPs. Existing provisions may be amended in response to changes in State policy, or as the result of court cases or issues raised by councils or other stakeholders.

Appropriate savings or transitional provisions may apply where proposed changes may have impacts on the operation of existing LEPs.

How does the standard instrument apply to LEPs that are already underway

All draft principal LEPs are now to be prepared in accordance with the relevant provisions of the standard instrument before the Director-General certifies the draft plan for public exhibition or recommends a draft LEP for gazettal.

However, the savings and transitional provisions, set out in Schedule 6 of the Act, allow for a reasonable approach to be taken where councils are already a long way down-the-track of preparing a new principal LEP.

A draft LEP that is not in accordance with the standard instrument may be permitted to proceed where the Director-General is satisfied that:

- significant council resources have already been expended in the preparation of the draft instrument before the standard instrument was made, or
- the draft instrument makes a necessary amendment of a principal LEP which was made before the standard instrument order, or
- the draft instrument makes a necessary amendment to a LEP which was made under the circumstances referred to in first dot point above.

In all cases the Director General will need to be satisfied that satisfactory arrangements have been made for the making of a replacement instrument in accordance with the standard instrument.

Further information

More information, including the standard instrument for LEPs, is available from the Department's website, www.planning.nsw.gov.au.

Further enquiries can also be directed to the Department of Planning regional office nearest to you.

Authorised by:

Alice Spizzo

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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STANDARD CONTRACT OF EMPLOYMENT FOR SENIOR STAFF (OTHER THAN GENERAL MANAGERS) IN FORCE FROM 1 SEPTEMBER 2006 AND PUBLICATION OF INTERACTIVE VERSIONS OF THE STANDARD CONTRACTS

Councils were recently notified by Circular No 06-37 regarding my approval of the Standard Contract of Employment for General Managers of Local Councils in New South Wales.

I have by Order under section 338(4) of the *Local Government Act 1993* now approved the Standard Contract of Employment for Senior Staff (other than General Managers) of Local Councils in New South Wales to be in force from **1 September 2006**. This contract represents the standard documentation that general managers must use when appointing senior staff.

Please refer to Circular 06-37 for the background to development of the standard contracts.

The new requirements ensure consistency and certainty in employment relationships at the management level in local government and reflect community expectations by providing greater transparency and accountability. They also ensure appropriate flexibility by allowing certain contractual matters to be left to the parties to negotiate, namely:

- duration of the contract (within legislative limits)
- structure and level of the remuneration package and
- performance-based requirements.

The Local Government and Shires Associations of NSW (LGSA), in consultation with Local Government Managers Australia (LGMA), and with the assistance of the Department, will issue guidelines on remuneration packaging and developing performance management systems and agreements in the near future.

Industry groups including the LGSA, LGMA, the Development and Environmental Professionals' Association, the Local Government Engineers' Association of NSW and the United Services Union can provide advice to their members about performance and remuneration matters and other contractual conditions.

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Parties may also seek and be guided by their own legal and financial advice before entering contracts.

The new standard contract requirements will not affect existing employment contracts. Any renewals of appointments must be under the standard contract in force (see sections 338(8) and 338(9) of the Act).

Contracts now available as interactive publications

I am pleased to announce the release of the standard contracts of employment for general managers and other senior staff as interactive publications. This will now allow users to download the documents from the Department's website at www.dlg.nsw.gov.au, complete certain fields electronically where appropriate and print the completed contracts ready for signing.



Garry Payne
Director General



Standard Contract of Employment

General Managers of Local Councils in New South Wales



Acknowledgements

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We also wish to thank the Local Government Engineers Association and the Development and Environmental Professionals Association for their comments during our drafting process.

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All offices are wheelchair accessible.

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Contract of Employment

This Contract of Employment is made on

Date _____

between

Name of Council _____

[Referred to in this contract as "Council"]

Address _____

and

Name of Employee _____

[Referred to in this contract as "the employee"]

Address _____

1 Position

The position to which this contract applies is that of General Manager.

Note: A person who has held civic office in relation to Council must not be appointed to any paid position on the staff of Council within 6 months after ceasing to hold the office: section 354 of the Act.

2 Term

Subject to the terms and conditions in this contract, Council will employ the employee for a term of:

[Length of term] _____

Note: The term of this contract must not be less than 12 months or more than 5 years (including any option for renewal): section 338 of the Act.

commencing on [date] _____

and terminating on [date] _____

3 Definitions

3.1 In this contract, unless otherwise stated or indicated:

the Act means the *Local Government Act 1993*.

Code of conduct means the document within the meaning of section 440 of the Act adopted by Council and which incorporates the provisions of the model code.

Commencement date means the date that this contract commences as specified in clause 2.

Confidential information means any and all confidential information, data, reports, operations, dealings, records, materials, plans, statistics, finances or other agreements and things (other than that which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of Council or any undertaking from time to time carried out by Council.

Director-General means the Director-General of the New South Wales Department of Local Government.

Equal employment opportunity management plan means the document a council must prepare under Part 4 of Chapter 11 of the Act.

Minister means the New South Wales Minister for Local Government.

Model code means the Model Code of Conduct for Local Councils in NSW prescribed by the Regulation.

Month means a calendar month.

Performance agreement means the agreement referred to in clause 7.

Performance criteria means the criteria to which a performance review is to have regard.

Performance review means a review of the employee's performance conducted in accordance with the procedures under clause 7.

the position means the position referred to in clause 1.

the Regulation means the *Local Government (General) Regulation 2005*.

Senior executive office holder (New South Wales Public Service) means the holder of a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002*.

Statutory and Other Officers Remuneration Tribunal means the Statutory and Other Officers Tribunal constituted under the *Statutory and Other Officers Remuneration Act 1975*.

Termination date means the date that this contract terminates as specified in clause 2.

3.2 Expressions in this contract corresponding with expressions that are defined in the Act have those meanings.

4 Contract operation and application

- 4.1 This contract constitutes a contract of employment for the purposes of section 338 of the Act, and governs the employment of the employee while in the position.
- 4.2 A reference in this contract to any Act or regulation, or any provision of any Act or regulation, includes a reference to subsequent amendments of that Act, regulation or provision.
- 4.3 A reference to a Schedule to this contract refers to a Schedule as may be varied in accordance with this contract, and applies whether or not the Schedule has been physically attached to this contract.
- 4.4 Where the mayor or any other person is lawfully authorised to act as Council or Council's delegate for the purpose of this contract, this contract will be construed as if:
- (a) any reference to Council includes a reference to that authorised person, and
 - (b) any reference to a requirement for Council's approval includes a reference to a requirement for that authorised person's written approval.
- 4.5 Any staff entitlement under a lawful policy of Council as adopted by Council from time to time and that is set out in Schedule A will apply to the employee unless this contract makes express provision to the contrary. Schedule A may be varied from time to time by agreement between the employee and Council, such agreement not to be unreasonably withheld.

Note: Only those policies that create entitlements are to be set out in Schedule A. Schedule A policies are distinct from those which create a duty or function as referred to in subclause 6.1.4 and which are not required to be set out in Schedule A.

- 4.6 Subject to clauses 7 and 13, the terms of this contract, as varied from time to time in accordance with this contract, represent the entire terms of all agreements between the employee and Council and replace all other representations, understandings or arrangements made between the employee and Council that relate to the employment of the employee in the position.

Note: The contract authorises the making of agreements that are linked to the contract. Clause 7 requires the parties to sign a performance agreement. Clause 13 allows either party to require the other to sign a confidentiality agreement for the purpose of protecting intellectual property.

5 Renewal of appointment

- 5.1 At least 9 months before the termination date (or 6 months if the term of employment is for less than 3 years) the employee will apply to Council in writing if seeking re-appointment to the position.
- 5.2 At least 6 months before the termination date (or 3 months if the term of employment is for less than 3 years) Council will respond to the employee's application referred to in subclause 5.1 by notifying the employee in writing of its decision to either offer the employee a new contract of employment (and on what terms) or decline the employee's application for re-appointment.
- 5.3 At least 3 months before the termination date (or 1 month if the term of employment is for less than 3 years) the employee will notify Council in writing of the employee's decision to either accept or decline any offer made by Council under subclause 5.2.
- 5.4 In the event the employee accepts an offer by Council to enter into a new contract of employment, a new contract of employment will be signed.

6 Duties and functions

- 6.1 The employee will:
- 6.1.1 to the best of their ability, meet the performance criteria set out in the performance agreement as varied from time to time,
- 6.1.2 carry out the duties and functions imposed by the Act and Regulation, or any other Act and associated regulations, which include but are not limited to:
- (a) the efficient and effective operation of Council's organisation,
 - (b) implementing, without undue delay, the decisions of Council,
 - (c) exercising such of the functions of Council as are delegated by Council to the employee,
 - (d) appointing staff in accordance with an organisation structure and resources approved by Council,
 - (e) directing and dismissing staff,
 - (f) implementing Council's equal employment opportunity management plan,
 - (g) consulting with Council prior to the appointment or dismissal of senior staff,
 - (h) reporting to Council, at least once annually, on the contractual conditions of senior staff,

- (i) giving immediate notice to Council on becoming bankrupt or making a composition, arrangement or assignment for the benefit of the employee's creditors and providing Council, within the time specified by Council with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment,
- (j) subject to subclause 6.2.3, providing advice and recommendations to Council or the mayor if directed to do so,
- (k) not engaging, for remuneration, in private employment or contract work outside the service of Council without the approval of Council,
- (l) not approving, where appropriate, any member of Council staff from engaging, for remuneration, in private employment or contract work outside the service of Council that relates to the business of Council or that might conflict with the staff member's Council duties,
- (m) acting honestly and exercising a reasonable degree of care and diligence in carrying out the employee's duties and functions,
- (n) complying with the provisions of the code of conduct,
- (o) preparing and submitting written returns of interest and disclosing pecuniary interests in accordance with the Act and the Regulation,

Note: Sections 335, 337, 339, 341, 352, 353, 439, 440 and 445 of the Act.

- 6.1.3 carry out the duties and functions set out in Schedule B as varied from time to time by agreement between the employee and Council, such agreement not to be unreasonably withheld,

Note: Schedule B may include additional duties and functions, for example, those related to special projects.

- 6.1.4 carry out the duties and functions set out in the policies of Council as adopted by Council from time to time during the term of this contract,
- 6.1.5 observe and carry out all lawful directions given by Council, in relation to the performance of the employee's duties and functions under this contract,
- 6.1.6 work such reasonable hours as are necessary to carry out the duties and functions of the position and the employee's obligations under this contract,
- 6.1.7 obtain the approval of the Council for any absences from the business of Council,
- 6.1.8 promote ethical work practices and maintain a culture of integrity and professionalism where Council staff members treat each other, members of the public, customers and service providers with respect and fairness,

- 6.1.9 facilitate Council staff awareness of the procedures for making protected disclosures and of the protection provided by the *Protected Disclosures Act 1994*,
 - 6.1.10 take all reasonable steps to ensure that actions and policies of Council accord with the strategic intent of Council,
 - 6.1.11 take all reasonable steps to maximise compliance with relevant legislative requirements,
 - 6.1.12 maintain effective corporate and human resource planning,
 - 6.1.13 maintain the Council staff performance management system,
 - 6.1.14 maintain satisfactory operation of Council's internal controls, reporting systems (including protected disclosures), grievance procedures, the documentation of decision-making and sound financial management,
 - 6.1.15 develop procedures to ensure the code of conduct is periodically reviewed so that it is in accordance with the Act and Regulation and adequately reflects specific organisational values and requirements,
 - 6.1.16 promote and facilitate compliance with the code of conduct ensuring that each councillor and Council staff member is familiar with its provisions, and
 - 6.1.17 report to Council on any overseas travel taken by the employee or any Council staff member where that travel is funded in whole or in part by Council.
- 6.2 Council:
- 6.2.1 will provide adequate resources to enable the employee to carry out the duties and functions specified in subclause 6.1 and Schedule B,
 - 6.2.2 will provide the employee with reasonable opportunities to participate in professional development initiatives relevant to the duties and functions under this contract subject to the operational needs of Council, and
 - 6.2.3 will not direct the employee as to the content of any advice or recommendation made by the employee.

Note: section 352 of the Act.

7 Performance agreement and review

- 7.1 Within 3 months after the commencement date, the employee and Council will sign a performance agreement setting out agreed performance criteria.
- 7.2 In the event that the employee and Council are unable to agree on the performance criteria, Council will determine such performance criteria that are reasonable and consistent with the employee's duties and functions under clause 6 and in Schedule B.
- 7.3 The performance agreement may be varied from time to time during the term of this contract by agreement between the employee and Council, such agreement not to be unreasonably withheld.
- 7.4 Within 2 months after signing or varying the performance agreement, the employee will prepare and submit to Council an action plan which sets out how the performance criteria are to be met.
- 7.5 Council will ensure that the employee's performance is reviewed (and, where appropriate, the performance agreement varied) at least annually. Any such review is to have regard to the performance criteria.

Note: Council may review the employee's performance every 6 months or more frequently if necessary.

- 7.6 The employee will give Council 21 days' written notice that an annual performance review in accordance with subclause 7.5 is due.
- 7.7 Council will give the employee at least 10 days notice in writing that any performance review is to be conducted.
- 7.8 The structure and process of the performance review is at the discretion of Council following consultation with the employee.
- 7.9 The employee may prepare and submit to Council an assessment of the employee's own performance prior to a performance review.
- 7.10 Within 6 weeks from the conclusion of a performance review, Council will prepare and send to the employee a written statement that sets out:
- (a) Council's conclusions about the employee's performance during the performance review period,

- (b) any proposal by Council to vary the performance criteria as a consequence of a performance review, and
- (c) any directions or recommendations made by Council to the employee in relation to the employee's future performance of the duties of the position.

- 7.11 The employee and Council will, as soon as possible after the employee receives the written statement referred to in subclause 7.10, attempt to come to agreement on any proposal by Council to vary the performance criteria and on any recommendations by Council as to the future performance of the duties of the position by the employee.
- 7.12 Subject to the employee being available and willing to attend a performance review, Council undertakes that if a performance review is not held in accordance with this clause, this will not operate to the prejudice of the employee unless the employee is responsible for the failure to hold the performance review.

8 Remuneration

- 8.1 Council will provide the employee with the total remuneration package set out in Schedule C.
- 8.2 The total remuneration package includes salary, compulsory employer superannuation contributions and other benefits including any fringe benefits tax payable on such benefits.

Note: Compulsory employer superannuation contributions are those contributions required under the *Superannuation Guarantee Charge Act 1992 of the Commonwealth and any contributions required to be paid for an employee under a superannuation arrangement entered into by Council for that employee. See Schedule C.*

- 8.3 Council may, on only one occasion during each year of this contract, approve an increase in the total remuneration package where the employee's performance has been assessed in accordance with a performance review as being of a better than satisfactory standard.
- 8.4 Any increase in remuneration approved under subclause 8.3 will not be paid as a lump sum.
- 8.5 On each anniversary of the commencement date, the total remuneration package will be increased by a percentage amount that is equivalent to the latest percentage amount increase in remuneration for senior executive office holders as determined by the Statutory and Other Officers Remuneration Tribunal.

Note: When making determinations referred to in subclause 8.5, the Tribunal takes into account key national economic indicators and movements in public sector remuneration across Australia, market conditions, the Consumer Price Index and wages growth as measured by the Wage Cost Index. Tribunal determinations are published in the Government Gazette and are available at www.remtribunals.nsw.gov.au. The Premier's Department issues periodic Memoranda summarising the Tribunals determinations. These Memoranda are available at www.premiers.nsw.gov.au.

- 8.6 The structure of the total remuneration package may be varied from time to time during the term of this contract by agreement between the employee and Council, such agreement not to be unreasonably withheld.
- 8.7 The total remuneration package, as varied from time to time, remunerates the employee for all work undertaken by the employee while in the position. No other remuneration, benefit, overtime or allowances other than those to which the employee may be entitled under this contract will be paid to the employee during the term of this contract.

9 Leave

9.1 General

- 9.1.1 Council will pay remuneration calculated in accordance with Schedule C to the employee proceeding on paid leave under this clause.
- 9.1.2 On the termination of this contract, and if the employee is not re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure, the Council will pay:
- (a) to the employee in the case of annual leave, or
 - (b) to the employee or new employer council in the case of long service leave,
- accrued but unused leave entitlements calculated at the monetary value of the total remuneration package as specified in Schedule C.
- 9.1.3 If the employee is re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure within 3 months after the termination of this contract, the employee will be taken to have continuing service with Council for the purpose of determining the employee's entitlement to annual leave, long service leave and sick leave.

- 9.1.4 Any leave accrued with Council standing to the credit of the employee immediately prior to entering into this contract will be taken to be leave for the purposes of this contract.

9.2 Annual leave

The employee is entitled to 4 weeks paid annual leave during each year of employment under this contract to be taken as agreed between the employee and Council.

9.3 Long service leave

- 9.3.1 The employee's entitlement to long service leave is to be calculated by the same method that applies to a non-senior member of Council staff.
- 9.3.2 Long service leave is transferable between councils in New South Wales in the same manner that applies to a non-senior member of Council staff.

9.4 Sick leave

- 9.4.1 The employee is entitled to 3 weeks paid sick leave during each year of employment under this contract provided that:
- (a) Council is satisfied that the sickness is such that it justifies time off, and
 - (b) satisfactory proof of illness to justify payment is provided to Council for absences in excess of two days.
- 9.4.2 Sick leave will accumulate from year to year of employment under this contract so that any balance of leave not taken in any one year may be taken in a subsequent year.
- 9.4.3 Council may require the employee to attend a doctor nominated by Council at Council's cost.
- 9.4.4 Accrued but unused sick leave will not be paid out on the termination of this contract.

9.5 Parental leave

- 9.5.1 Parental leave includes supporting parent's leave, maternity leave, paternity leave and adoption leave.

9.5.2 The employee is entitled to the same parental leave that a non-senior member of Council staff would be entitled.

9.6 Carer's leave

The employee is entitled to the same carer's leave that a non-senior member of Council staff would be entitled.

9.7 Concessional leave

The employee is entitled to the same concessional leave that a non-senior member of Council staff would be entitled.

9.8 Special leave

Council may grant special leave, with or without pay, to the employee for a period as determined by Council to cover any specific matter approved by Council.

10 Termination

10.1 General

On termination of this contract for any reason the employee will immediately return to Council all property of Council in the employee's possession including intellectual property and confidential information and will not keep or make any copies of such property and information.

10.2 Termination date

The employment of the employee under this contract terminates on the termination date.

10.3 Termination by either the employee or Council

This contract may be terminated before the termination date by way of any of the following:

10.3.1 written agreement between the employee and Council,

10.3.2 the employee giving 4 weeks' written notice to Council,

- 10.3.3 Council giving 4 weeks' written notice to the employee, or alternatively by termination payment under subclause 11.1, where:
- (a) the employee has been incapacitated for a period of not less than 12 weeks and the employee's entitlement to sick leave has been exhausted, and
 - (b) the duration of the employee's incapacity remains indefinite or is likely to be for a period that would make it unreasonable for the contract to be continued,
- 10.3.4 Council giving 13 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.2 where Council:
- (a) has conducted a performance review, and
 - (b) concluded that the employee has not substantially met the performance criteria or the terms of the performance agreement,
- 10.3.5 Council giving 38 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.3.

10.4 Summary dismissal

- 10.4.1 Council may terminate this contract at any time and without notice if the employee commits any act that would entitle an employer to summarily dismiss the employee. Such acts include but are not limited to:
- (a) serious or persistent breach of any of the terms of this contract,
 - (b) serious and willful disobedience of any reasonable and lawful instruction or direction given by Council,
 - (c) serious and willful misconduct, dishonesty, insubordination or neglect in the discharge of the employee's duties and functions under this contract,
 - (d) failure to comply with any law or Council policy concerning sexual harassment or racial or religious vilification,
 - (e) commission of a crime, resulting in conviction and sentencing (whether or not by way of periodic detention), which affects the employee's ability to perform the employee's duties and functions satisfactorily, or in the opinion of Council brings Council into disrepute,
 - (f) absence from the business of Council without Council approval for a period of 3 or more consecutive business days.
- 10.4.2 This contract is terminated immediately without notice if the employee 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.

11 Termination payments

- 11.1 On termination of this contract under subclause 10.3.3, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 4 weeks' remuneration calculated in accordance with Schedule C.
- 11.2 On termination of this contract under subclause 10.3.4, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 13 weeks' remuneration calculated in accordance with Schedule C.
- 11.3 On termination of this contract under subclause 10.3.5, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 38 weeks' remuneration calculated in accordance with Schedule C, or the remuneration which the employee would have received if the employee had been employed by Council to the termination date, whichever is the lesser.
- 11.4 On termination of this contract under subclause 10.3.1, 10.3.2, 10.4.1 or 10.4.2, Council will pay the employee remuneration up to and including the date of termination calculated in accordance with Schedule C and any other payment to which the employee is entitled under this contract.

12 Expenses and credit cards

In addition to any duties or entitlements that may be set out in any relevant policies of Council as adopted by Council from time to time, the employee will:

- 12.1 keep such records of expenses, travel and motor vehicle use as required by Council from time to time,
- 12.2 be reimbursed by Council for expenses properly incurred on Council business, subject to Council's prior approval to this expense being incurred,
- 12.3 only use any credit card provided by Council for expenses incurred on Council business, and
- 12.4 return any credit card provided by Council on request from Council.

13 Intellectual property

- 13.1 Any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract is the sole property of Council and Council will unless otherwise agreed have the exclusive right to use, adapt, patent and otherwise register it.
- 13.2 The employee will immediately disclose to Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee after the commencement date to enable Council to ascertain whether it was discovered, developed or produced wholly outside and wholly unconnected with the course of employment under this contract.
- 13.3 To protect disclosures made in accordance with subclause 13.2, Council or the employee may require a confidentiality agreement to be signed prior to, during or immediately after discussion of the intellectual property being considered.

Note: IP Australia, the Commonwealth Government intellectual property agency, has developed a Confidentiality Agreement Generator for the purpose of preparing intellectual property confidentiality agreements. It is available at www.ipaustralia.gov.au/smartstart/cag.htm.

- 13.4 The employee assigns to Council by way of future assignment all copyright, design, design right and other property rights (if any) in respect to any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract.
- 13.5 At the request and expense of Council the employee will complete all necessary deeds and documents and take all action necessary to vest in Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract and obtain for Council the full benefit of all patent, trademark, copyright and other forms of protection throughout the world.

14 Confidential Information

The employee will not divulge any confidential information about Council either during or after the term of their employment under this contract.

15 Waiver

The failure of either the employee or Council to enforce at any time any provision of this contract or any right under this contract or to exercise any election in this contract will in no way be considered to be a waiver of such provision, right or election and will not affect the validity of this contract.

16 Inconsistency and severance

- 16.1 Each provision of this contract will be read and construed independently of the other provisions so that if one or more are held to be invalid for any reason, then the remaining provisions will be held to be valid.
- 16.2 If a provision of this contract is found to be void or unenforceable but would be valid if some part were deleted, the provision will apply with such modification as may be necessary to make it valid and effective.

17 Dispute resolution

- 17.1 In relation to any matter under this contract that may be in dispute, either the employee or Council may:
- (a) give written notice to each other of the particulars of any matter in dispute, and
 - (b) within 14 days of receiving a notice specified in subclause 17.1(a), a meeting will be convened between Council (along with any nominated representative of Council) and the employee (along with any nominated representative of the employee) in an attempt to resolve the dispute.
- 17.2 The employee and Council will attempt to resolve the dispute at the workplace level.
- 17.3 Upon failure to resolve the dispute at the workplace level, the employee and Council will:
- (a) refer the dispute to an independent mediator as agreed by the employee and Council, or otherwise as appointed by the Director-General,
 - (b) agree to participate in any mediation process in good faith, with such mediation to operate in a manner as agreed by the employee and Council, and
 - (c) acknowledge the right of either the employee or Council to appoint, in writing, another person to act on their behalf in relation to any mediation process.
- 17.4 The cost of the mediation service will be met by Council.

- 17.5 The employee and Council will each be responsible for meeting the cost of any advisor or nominated representative used by them.

18 Service of notices and communications

- 18.1 Any communication, including notices, relating to this contract will be in writing and served on the employee or Council at their last known residential or business address in accordance with subclause 18.2.
- 18.2. Any written communication including notices relating to this contract is taken to be served:
- (a) when delivered or served in person, immediately,
 - (b) where served by express post at an address within New South Wales in the Express Post Network, on the next business day after it is posted,
 - (c) where served by post otherwise in the ordinary course of postage, as set down in Australia Post's delivery standards, and
 - (d) where sent by facsimile, within standard business hours otherwise on the next business day after it is sent.

19 Variations

- 19.1 Where this contract provides that its terms may be varied, that variation will be by agreement in writing signed by the employee and Council.

Note: See clauses 4.5, 6.1.3, 7.3, 8.6 and 19.2.

- 19.2 Where the Director-General approves an amended or substitution standard form of contract for the employment of the general manager of a council, the provisions of this contract may be varied by agreement between the employee and Council to the extent that they are consistent with the provisions of that amended or substitution standard form of contract.

Note: See section 338 of the Act.

20 Other terms and conditions

- 20.1 The employee and Council acknowledge that they have sought or had the opportunity to seek their own legal and financial advice prior to entering this contract.
- 20.2 In accordance with section 731 of the Act, nothing in this contract gives rise to any action, liability, claim or demand against the Minister, the Director-General or any person acting under their direction.

21 Signed by the employee and Council

COUNCIL:

The Seal of

.....
[Council name]

.....
[Seal]

affixed by authority of a resolution of Council.

Signed by Council

Date

Name of signatory
in full *[printed]*

Office held *[printed]*

Signed by Witness

Name of Witness
in full *[printed]*

THE EMPLOYEE:

Signed by the
employee

Date

Name of employee
in full *[printed]*

Signed by Witness

Name of Witness
in full *[printed]*

Schedule A – Council policies

Note: **This Schedule may be varied during the term of this contract in accordance with subclauses 4.5 and 19.1 of this contract.**

This Schedule operates on and from

Date _____

For the purposes of subclause 4.5 of this contract, the following policies apply to the employee:

Signed by Council _____

Signed by the employee _____

Schedule B – Duties and functions

Note: **This Schedule may be varied during the term of this contract in accordance with subclauses 6.1.3 and 19.1 of this contract.**

This Schedule operates on and from

Date

In addition to the duties and functions specified in clause 6 of this contract, the employee will carry out the following duties and functions

Signed by Council

Signed by the employee

Schedule C – Remuneration

Note: This Schedule may be varied during the term of this contract in accordance with clauses 8 and 9 of this contract.

This Schedule operates on and from

Date _____

The Annual Total Remuneration Package is as follows:

\$ _____

The Total Remuneration Package is comprised of:

ANNUAL RENUMERATION	\$

The employee agrees and acknowledges that deductions under subclause 8.2 of this contract are made principally for the benefit of the employee and that the Council relies on that statement in providing the non-cash benefits requested by the employee.

In the case of an employee who is a member of a defined benefit division of the Local Government Superannuation Scheme (or equivalent) compulsory employer superannuation contributions are the long term or "notional" employer contribution, as advised by the Actuary for the Local Government Superannuation Scheme from time to time.

The employee's superable salary will be the amount of the total remuneration package less the amount of compulsory superannuation contributions.

Signed by Council _____

Signed by the employee _____



Standard Contract of Employment

Senior Staff (other than General Managers) of Local Councils in New South Wales



Acknowledgements

The Department of Local Government acknowledges the cooperation and contributions of the Local Government and Shires Associations of NSW, Local Government Managers Australia, and the WA Department of Local Government and Regional Development which have assisted in the preparation of this document.

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Contract of Employment

This Contract of Employment is made on

Date _____

between

Name of
General Manager _____

[Referred to in this contract as "the employer"]

Note: The general manager may appoint or dismiss senior staff only after consultation with the council: section 337 of the Act. See subclause 4.2 of this contract.

Name of Council _____

[Referred to in this contract as "Council"]

Address _____

and

Name of Employee _____

[Referred to in this contract as "the employee"]

Address _____

1 Position

The senior staff position to which this contract applies is

[Title of the position]

Note: A senior staff position must be determined in accordance with section 332 of the Act.

A person who has held civic office in relation to Council must not be appointed to any paid position on the staff of Council within 6 months after ceasing to hold the office: section 354 of the Act.

2 Term

Subject to the terms and conditions in this contract, the employee is appointed for a term of:

[Length of term] _____

Note: The term of this contract must not be less than 12 months or more than 5 years (including any option for renewal): section 338 of the Act.

commencing on *[date]* _____

and terminating on *[date]* _____

3 Definitions

3.1 In this contract, unless otherwise stated or indicated:

the Act means the *Local Government Act 1993*.

Code of conduct means the document within the meaning of section 440 of the Act adopted by Council and which incorporates the provisions of the model code.

Commencement date means the date that this contract commences as specified in clause 2.

Confidential information means any and all confidential information, data, reports, operations, dealings, records, materials, plans, statistics, finances or other agreements and things (other than that which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of Council or any undertaking from time to time carried out by Council.

Director-General means the Director-General of the New South Wales Department of Local Government.

Equal employment opportunity management plan means the document a council must prepare under Part 4 of Chapter 11 of the Act.

Minister means the New South Wales Minister for Local Government.

Model code means the Model Code of Conduct for Local Councils in NSW prescribed by the Regulation.

Month means a calendar month.

Performance agreement means the agreement referred to in clause 7.

Performance criteria means the criteria to which a performance review is to have regard.

Performance review means a review of the employee's performance conducted in accordance with the procedures under clause 7.

the position means the position referred to in clause 1.

the Regulation means the *Local Government (General) Regulation 2005*.

Senior executive office holder (New South Wales Public Service) means the holder of a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002*.

Statutory and Other Officers Remuneration Tribunal means the Statutory and Other Officers Tribunal constituted under the *Statutory and Other Officers Remuneration Act 1975*.

Termination date means the date that this contract terminates as specified in clause 2.

3.2 Expressions in this contract corresponding with expressions that are defined in the Act have those meanings.

4 Contract operation and application

- 4.1 This contract constitutes a contract of employment for the purposes of section 338 of the Act, and governs the employment of the employee while in the position.
- 4.2 The general manager acts for and on behalf of Council as the employer of the employee under this contract.
- 4.3 Where the employer lawfully authorises a person to act as his or her delegate and carry out any of the employer's duties, obligations or actions required to be carried out under this contract, this contract will be construed as if any relevant reference to the employer includes a reference to that delegate.
- 4.4 A reference in this contract to any Act or regulation, or any provision of any Act or regulation, includes a reference to subsequent amendments of that Act, regulation or provision.
- 4.5 A reference to a Schedule to this contract refers to a Schedule as may be varied in accordance with this contract, and applies whether or not the Schedule has been physically attached to this contract.
- 4.6 Any staff entitlement set out in a lawful policy of Council as adopted by Council from time to time and that is set out in Schedule A will apply to the employee unless this contract makes express provision to the contrary. Schedule A may be varied from time to time by agreement between the employee and employer, such agreement not to be unreasonably withheld.

Note: Only those policies that create entitlements are to be set out in Schedule A. Schedule A policies are distinct from those which create a duty or function as referred to in subclause 6.1.4 and which are not required to be set out in Schedule A.

- 4.7 Subject to clauses 7 and 13, the terms of this contract, as varied from time to time in accordance with this contract, represent the entire terms of all agreements between the employee and the employer and replace all other representations, understandings or arrangements made between the employee and the employer that relate to the employment of the employee in the position.

Note: The contract authorises the making of agreements that are linked to the contract. Clause 7 requires the parties to sign a performance agreement. Clause 13 allows either party to require the other to sign a confidentiality agreement for the purpose of protecting intellectual property.

5 Renewal of appointment

- 5.1 At least 9 months before the termination date (or 6 months if the term of employment is for less than 3 years) the employee will apply to the employer in writing if seeking re-appointment to the position.
- 5.2 At least 6 months before the termination date (or 3 months if the term of employment is for less than 3 years) the employer will respond to the employee's application referred to in subclause 5.1 by notifying the employee in writing of its decision to either offer the employee a new contract of employment (and on what terms) or decline the employee's application for re-appointment.
- 5.3 At least 3 months before the termination date (or 1 month if the term of employment is for less than 3 years) the employee will notify the employer in writing of the employee's decision to either accept or decline any offer made by Council under subclause 5.2.
- 5.4 In the event the employee accepts an offer by the employer to enter into a new contract of employment, a new contract of employment will be signed.

6 Duties and functions

- 6.1 The employee will:
- 6.1.1 to the best of their ability, meet the performance criteria set out in the performance agreement as varied from time to time,
- 6.1.2 carry out the duties and functions imposed by the Act and Regulation, or any other Act and associated regulations, which include but are not limited to:
- (a) giving immediate notice to the employer on becoming bankrupt or making a composition, arrangement or assignment for the benefit of the employee's creditors and providing the employer, within the time specified by the employer with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment,
 - (b) not engaging, for remuneration, in private employment or contract work outside the service of Council without the approval of the employer,
 - (c) acting honestly and exercising a reasonable degree of care and diligence in carrying out the employee's duties and functions,
 - (d) complying with the provisions of the code of conduct,
 - (e) preparing and submitting written returns of interest and disclosing pecuniary interests in accordance with the Act and the Regulation,

Note: Sections 341, 353, 439, 440 and 445 of the Act.

- 6.1.3 carry out the duties and functions set out in Schedule B as varied from time to time by agreement between the employee and the employer, such agreement not to be unreasonably withheld,

Note: Schedule B may include additional duties and functions, for example, those related to special projects.

- 6.1.4 carry out the duties and functions set out in the policies of Council as adopted by Council from time to time during the term of this contract,

- 6.1.5 observe and carry out all lawful directions given by the employer, in relation to the performance of the employee's duties and functions under this contract,

- 6.1.6 work such reasonable hours as are necessary to carry out the duties and functions of the position and the employees obligations under this contract,

- 6.1.7 obtain the approval of the employer for any absences from the business of Council,

- 6.1.8 where appropriate, facilitate Council staff awareness of the procedures for making protected disclosures and of the protection provided by the *Protected Disclosures Act 1994*, and

- 6.1.9 report to the employer on any overseas travel taken by the employee where that travel is funded in whole or in part by Council.

- 6.2 the employer:

- 6.2.1 will allocate available resources to enable the employee to carry out the duties and functions specified in subclause 6.1 and Schedule B,

- 6.2.2 will provide the employee with reasonable opportunities to participate in professional development initiatives relevant to the duties and functions under this contract subject to the operational needs of Council, and

- 6.2.3 will take all necessary steps to ensure that the employee is not subject to direction by Council or a councillor as to the content of any advice or recommendation made by the employee.

Note: section 352 of the Act.

7 Performance agreement and review

- 7.1 Within 3 months after the commencement date, the employee and the employer will sign a performance agreement setting out agreed performance criteria.
- 7.2 In the event that the employee and the employer are unable to agree on the performance criteria, the employer will determine such performance criteria that are reasonable and consistent with the employee's duties and functions under clause 6 and in Schedule B.
- 7.3 The performance agreement may be varied from time to time during the term of this contract by agreement between the employee and the employer, such agreement not to be unreasonably withheld.
- 7.4 Within 2 months after signing or varying the performance agreement, the employee will prepare and submit to the employer an action plan which sets out how the performance criteria are to be met.
- 7.5 the employer will ensure that the employee's performance is reviewed (and, where appropriate, the performance agreement varied) at least annually. Any such review is to have regard to the performance criteria.

Note: The employer may review the employee's performance every 6 months or more frequently if necessary.

- 7.6 the employer will give the employee at least 10 days notice in writing that any performance review is to be conducted.
- 7.7 The structure and process of the performance review is at the discretion of the employer following consultation with the employee.
- 7.8 The employee may prepare and submit to the employer an assessment of the employee's own performance prior to a performance review.
- 7.9 Within 6 weeks from the conclusion of a performance review, the employer will prepare and send to the employee a written statement that sets out:
- (a) the employer's conclusions about the employee's performance during the performance review period,
 - (b) any proposal by the employer to vary the performance criteria as a consequence of a performance review, and
 - (c) any directions or recommendations made by the employer to the employee in relation to the employee's future performance of the duties of the position.

- 7.10 The employee and the employer will, as soon as possible after the employee receives the written statement referred to in subclause 7.9, attempt to come to agreement on any proposal by the employer to vary the performance criteria and on any recommendations by the employer as to the future performance of the duties of the position by the employee.
- 7.11 Subject to the employee being available and willing to attend a performance review, the employer undertakes that if a performance review is not held in accordance with this clause, this will not operate to the prejudice of the employee unless the employee is responsible for the failure to hold the performance review.

8 Remuneration

- 8.1 The total remuneration package for the employee is set out in Schedule C.
- 8.2 The total remuneration package includes salary, compulsory employer superannuation contributions and other benefits including any fringe benefits tax payable on such benefits.

Note: Compulsory employer superannuation contributions are those contributions required under the *Superannuation Guarantee Charge Act 1992* of the Commonwealth and any contributions required to be paid for an employee under a superannuation arrangement entered into by Council for that employee. See Schedule C.

- 8.3 The employer may, on only one occasion during each year of this contract, approve an increase in the total remuneration package where the employee's performance has been assessed in accordance with a performance review as being of a better than satisfactory standard.
- 8.4 Any increase in remuneration approved under subclause 8.3 will not be paid as a lump sum.
- 8.5 On each anniversary of the commencement date, the total remuneration package will be increased by a percentage amount that is equivalent to the latest percentage amount increase in remuneration for senior executive office holders as determined by the Statutory and Other Officers Remuneration Tribunal.

Note: When making determinations referred to in subclause 8.5, the Tribunal takes into account key national economic indicators and movements in public sector remuneration across Australia, market conditions, the Consumer Price Index and wages growth as measured by the Wage Cost Index. Tribunal determinations are published in the Government Gazette and are available at www.remtribunals.nsw.gov.au. The Premier's Department issues periodic Memoranda summarising the Tribunals determinations. These Memoranda are available at www.premiers.nsw.gov.au.

- 8.6 The structure of the total remuneration package may be varied from time to time during the term of this contract by agreement between the employee and the employer, such agreement not to be unreasonably withheld.
- 8.7 The total remuneration package, as varied from time to time, remunerates the employee for all work undertaken by the employee while in the position. No other remuneration, benefit, overtime or allowances other than those to which the employee may be entitled under this contract will be paid to the employee during the term of this contract.

9 Leave

9.1 General

9.1.1 Paid leave under this clause will be calculated in accordance with Schedule C.

9.1.2 On the termination of this contract, and if the employee is not re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure,

- (a) the employee in the case of annual leave, or
- (b) the employee or new employer council in the case of long service leave,

will be paid accrued but unused leave entitlements calculated at the monetary value of the total remuneration package as specified in Schedule C.

9.1.3 If the employee is re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure within 3 months after the termination of this contract, the employee will be taken to have continuing service with Council for the purpose of determining the employee's entitlement to annual leave, long service leave and sick leave.

9.1.4 Any leave accrued with Council standing to the credit of the employee immediately prior to entering into this contract will be taken to be leave for the purposes of this contract.

9.2 Annual leave

The employee is entitled to 4 weeks' paid annual leave during each year of employment under this contract to be taken as agreed between the employee and the employer.

9.3 Long service leave

- 9.3.1 The employee's entitlement to long service leave is to be calculated by the same method that applies to a non-senior member of Council staff.
- 9.3.2 Long service leave is transferable between councils in New South Wales in the same manner that applies to a non-senior member of Council staff.

9.4 Sick leave

- 9.4.1 The employee is entitled to 3 weeks' paid sick leave during each year of employment under this contract provided that:
- (a) the employer is satisfied that the sickness is such that it justifies time off, and
 - (b) satisfactory proof of illness to justify payment is provided to the employer for absences in excess of two days.
- 9.4.2 Sick leave will accumulate from year to year of employment under this contract so that any balance of leave not taken in any one year may be taken in a subsequent year.
- 9.4.3 the employer may require the employee to attend a doctor nominated by the employer at Council's cost.
- 9.4.4 Accrued but unused sick leave will not be paid out on the termination of this contract.

9.5 Parental leave

- 9.5.1 Parental leave includes supporting parent's leave, maternity leave, paternity leave and adoption leave.
- 9.5.2 The employee is entitled to the same parental leave that a non-senior member of Council staff would be entitled.

9.6 Carer's leave

The employee is entitled to the same carer's leave that a non-senior member of Council staff would be entitled.

9.7 Concessional leave

The employee is entitled to the same concessional leave that a non-senior member of Council staff would be entitled.

9.8 Special leave

The employer may grant special leave, with or without pay, to the employee for a period as determined by the employer to cover any specific matter approved by the employer.

10 Termination

10.1 General

On termination of this contract for any reason the employee will immediately return to the employer all property of Council in the employee's possession including intellectual property and confidential information and will not keep or make any copies of such property and information.

10.2 Termination date

The employment of the employee under this contract terminates on the termination date.

10.3 Termination by either the employee or Council

This contract may be terminated before the termination date by way of any of the following:

10.3.1 written agreement between the employee and the employer,

10.3.2 the employee giving 4 weeks' written notice to the employer,

10.3.3 the employer giving 4 weeks' written notice to the employee, or alternatively by termination payment under subclause 11.1, where:

- (a) the employee has been incapacitated for a period of not less than 12 weeks and the employee's entitlement to sick leave has been exhausted, and
- (b) the duration of the employee's incapacity remains indefinite or is likely to be for a period that would make it unreasonable for the contract to be continued,

- 10.3.4 the employer giving 13 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.2 where the employer:
- (a) has conducted a performance review, and
 - (b) concluded that the employee has not substantially met the performance criteria or the terms of the performance agreement,
- 10.3.5 the employer giving 38 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.3.

10.4 Summary dismissal

- 10.4.1 The employer may terminate this contract at any time and without notice if the employee commits any act that would entitle an employer to summarily dismiss the employee. Such acts include but are not limited to:
- (a) serious or persistent breach of any of the terms of this contract,
 - (b) serious and willful disobedience of any reasonable and lawful instruction or direction given by the employer,
 - (c) serious and willful misconduct, dishonesty, insubordination or neglect in the discharge of the employee's duties and functions under this contract,
 - (d) failure to comply with any law or Council policy concerning sexual harassment or racial or religious vilification,
 - (e) commission of a crime, resulting in conviction and sentencing (whether or not by way of periodic detention), which affects the employee's ability to perform the employee's duties and functions satisfactorily, or in the opinion of the employer brings Council into disrepute,
 - (f) absence from the business of Council without the employer's approval for a period of 3 or more consecutive business days.
- 10.4.2 This contract is terminated immediately without notice if the employee 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.

11 Termination payments

- 11.1 On termination of this contract under subclause 10.3.3, where written notice has not been given, the employee will be paid a monetary amount equivalent to 4 weeks' remuneration calculated in accordance with Schedule C.

- 11.2 On termination of this contract under subclause 10.3.4, where written notice has not been given, the employee will be paid a monetary amount equivalent to 13 weeks' remuneration calculated in accordance with Schedule C.
- 11.3 On termination of this contract under subclause 10.3.5, where written notice has not been given, the employee will be paid a monetary amount equivalent to 38 weeks' remuneration calculated in accordance with Schedule C, or the remuneration which the employee would have received if the employee had been employed to the termination date, whichever is the lesser.
- 11.4 On termination of this contract under subclause 10.3.1, 10.3.2, 10.4.1 or 10.4.2, the employee will be paid remuneration up to and including the date of termination calculated in accordance with Schedule C and any other payment to which the employee is entitled under this contract.

12 Expenses and credit cards

In addition to any duties or entitlements that may be set out in any relevant policies of Council as adopted by Council from time to time, the employee will:

- 12.1 keep such records of expenses, travel and motor vehicle use as required by the employer from time to time,
- 12.2 be reimbursed for expenses properly incurred on Council business, subject to the employer's prior approval to this expense being incurred,
- 12.3 only use any Council credit card for expenses incurred on Council business, and
- 12.4 return any Council credit card on request from the employer.

13 Intellectual property

- 13.1 Any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract is the sole property of Council and Council will unless otherwise agreed have the exclusive right to use, adapt, patent and otherwise register it.
- 13.2 The employee will immediately disclose to the employer any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee after the commencement date to enable the employer to ascertain whether it was discovered, developed or produced wholly outside and wholly unconnected with the course of employment under this contract.
- 13.3 To protect disclosures made in accordance with subclause 13.2, the employer or the employee may require a confidentiality agreement to be signed prior to, during or immediately after discussion of the intellectual property being considered.

Note: IP Australia, the Commonwealth Government intellectual property agency, has developed a Confidentiality Agreement Generator for the purpose of preparing intellectual property confidentiality agreements. It is available at www.ipaustralia.gov.au/smartstart/cag.htm.

- 13.4 The employee assigns to Council by way of future assignment all copyright, design, design right and other property rights (if any) in respect to any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract.
- 13.5 At the request of the employer and expense of Council the employee will complete all necessary deeds and documents and take all action necessary to vest in Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract and obtain for Council the full benefit of all patent, trademark, copyright and other forms of protection throughout the world.

14 Confidential Information

The employee will not divulge any confidential information about Council either during or after the term of their employment under this contract.

15 Waiver

The failure of either the employee or the employer to enforce at any time any provision of this contract or any right under this contract or to exercise any election in this contract will in no way be considered to be a waiver of such provision, right or election and will not affect the validity of this contract.

16 Inconsistency and severance

- 16.1 Each provision of this contract will be read and construed independently of the other provisions so that if one or more are held to be invalid for any reason, then the remaining provisions will be held to be valid.
- 16.2 If a provision of this document is found to be void or unenforceable but would be valid if some part were deleted, the provision will apply with such modification as may be necessary to make it valid and effective.

17 Dispute resolution

- 17.1 In relation to any matter under this contract that may be in dispute, either the employee or the employer may:
- (a) give written notice to each other of the particulars of any matter in dispute, and
 - (b) within 14 days of receiving a notice specified in subclause 17.1(a), a meeting will be convened between the employer (along with any nominated representative of the employer) and the employee (along with any nominated representative of the employee) in an attempt to resolve the dispute.
- 17.2 The employee and the employer will attempt to resolve the dispute at the workplace level.
- 17.3 Upon failure to resolve the dispute at the workplace level, the employee and the employer will:
- (a) refer the dispute to an independent mediator as agreed by the employee and the employer, or otherwise as appointed by the Director-General,
 - (b) agree to participate in any mediation process in good faith, with such mediation to operate in a manner as agreed by the employee and the employer, and
 - (c) acknowledge the right of either the employee or the employer to appoint, in writing, another person to act on their behalf in relation to any mediation process.
- 17.4 The cost of the mediation service will be met by Council.

- 17.5 The employee will be responsible for meeting the cost of any advisor or nominated representative used by the employee.

18 Service of notices and communications

- 18.1 Any communication, including notices, relating to this contract will be in writing and served on the employee or the employer at their last known residential or business address in accordance with subclause 18.2.
- 18.2 Any written communication including notices relating to this contract is taken to be served:
- (a) when delivered or served in person, immediately,
 - (b) where served by express post at an address within New South Wales in the Express Post Network, on the next business day after it is posted,
 - (c) where served by post otherwise in the ordinary course of postage, as set down in Australia Post's delivery standards, and
 - (d) where sent by facsimile, within standard business hours otherwise on the next business day after it is sent.

19 Variations

- 19.1 Where this contract provides that its terms may be varied, that variation will be by agreement in writing signed by the employee and the employer.

Note: See clauses 4.5, 6.1.3, 7.3, 8.6 and 19.2.

- 19.2 Where the Director-General approves an amended or substitution standard form of contract for the employment of a senior staff member (other than the general manager) of a council, the provisions of this contract may be varied by agreement between the employee and the employer to the extent that they are consistent with the provisions of that amended or substitution standard form of contract.

Note: See section 338 of the Act.

20 Other terms and conditions

- 20.1 The employee and the employer acknowledge that they have sought or had the opportunity to seek their own legal and financial advice prior to entering this contract.
- 20.2 In accordance with section 731 of the Act, nothing in this contract gives rise to any action, liability, claim or demand against the Minister, the Director-General or any person acting under their direction.

21 Signed by the employee and employer

THE EMPLOYER:

Note: See subclause 4.2.

Signed by the
General Manager _____

Date _____

Name of
General Manager
in full *[printed]* _____

Signed by Witness _____

Name of Witness
in full *[printed]* _____

THE EMPLOYEE:

Signed by the
employee _____

Date _____

Name of employee
in full *[printed]* _____

Signed by Witness _____

Name of Witness
in full *[printed]* _____

Schedule A – Council policies

Note: This Schedule may be varied during the term of this contract in accordance with subclauses 4.6 and 19.1 of this contract.

This Schedule operates on and from

Date

.....

For the purposes of subclause 4.6 of this contract, the following policies apply to the employee:

Signed by the employer

.....

Signed by the employee

.....

Schedule B – Duties and functions

Note: This Schedule may be varied during the term of this contract in accordance with subclauses 6.1.3 and 19.1 of this contract.

This Schedule operates on and from

Date _____

In addition to the duties and functions specified in clause 6 of this contract, the employee will carry out the following duties and functions

Signed by the employer _____

Signed by the employee _____

Schedule C – Remuneration

Note: This Schedule may be varied during the term of this contract in accordance with clauses 8 and 19 of this contract.

This Schedule operates on and from

Date _____

The Annual Total Remuneration Package is as follows:

\$ _____

The Total Remuneration Package is comprised of:

ANNUAL RENUMERATION	\$

The employee agrees and acknowledges that deductions under subclause 8.2 of this contract are made principally for the benefit of the employee and that the Council relies on that statement in providing the non-cash benefits requested by the employee.

In the case of an employee who is a member of a defined benefit division of the Local Government Superannuation Scheme (or equivalent) compulsory employer superannuation contributions are the long term or "notional" employer contribution, as advised by the Actuary for the Local Government Superannuation Scheme from time to time.

The employee's superable salary will be the amount of the total remuneration package less the amount of compulsory superannuation contributions.

Signed by the employer _____

Signed by the employee _____

Ref. no	PN 08–001
Issued	30 January 2008
Revised	

Height and floor space ratio

The purpose of this practice note is to provide guidance on the building height and floor space ratio provisions in the standard instrument and how they are to be applied in the preparation of principal local environmental plans.

Introduction

Development standards for height and floor space ratios (FSR) are valuable planning tools for implementing strategic planning objectives and providing certainty to the community and land owners about the acceptable bulk and scale of development.

Height and FSR controls are used to help establish the primary building envelopes for new development and the gross floor areas available for retail, commercial and residential activities in centres. It is important that a consistent approach to the identification and application of height and FSR controls is utilised so that these controls are clearly understood by development and community interests alike.

Standard instrument provisions

Clause 4.3 – Height of buildings

- This clause allows councils to set maximum building heights for development on the Height of Buildings Map.
- Different maximum heights may be applied for different zones and for different locations within the same zone.

Clause 4.4 – Floor space ratio

- This clause allows councils to specify maximum FSRs on a Floor Space Ratio Map.
- Different maximum FSRs may be applied for different locations within the same zone.
- The clause also allows for a table to be used in conjunction with a map so that separate FSRs may be set out depending on the mix of land uses or the dimensions of the site.

Clause 4.5 – Calculation of FSR and site area

- This clause provides a method of calculating FSR in a consistent manner by defining FSR and by setting out rules for the calculation of site area for the purpose of applying permitted FSRs.
- Clause 4.5 should be adopted if clause 4.4 is adopted.
- Attachment B contains examples of how to calculate FSR and site area in various circumstances in accordance with this clause.

Definitions

- Building height.
- Gross floor area.

Requirements for LEP preparation

General requirements

Councils adopting clauses 4.3 and 4.4 must insert appropriate objectives into the clause and prepare the accompanying maps.

Height of Buildings Map and the Floor Space Ratio Map are to be prepared in accordance with *Standard technical requirements for LEP maps* (NSW Department of Planning 2007). Heights are to be shown in metres.

Councils are not able to include definitions of FSR or methods of calculating site area for the purpose of applying FSRs that are inconsistent with clause 4.5.

Height and FSR controls to be set out in LEPS

Although these clauses are optional in the standard instrument it is the Department's policy that building height and FSR controls be applied to strategic centres and set out within local environmental plans (LEPs) rather than development control plans (DCPs). This is to

provide certainty with respect to these key development standards and to ensure that any variations comply with the provisions of clause 4.5 – Variation to development standards.

DCPs may however include additional built form provisions such as building setbacks, storey controls and details of three-dimensional building envelopes. These should not exceed the maximum height and FSR controls that are set in the LEP.

Heights and FSRs to be identified for strategic centres

Height and FSR controls should be adopted for all strategic centres nominated in the Metropolitan Strategy, a subregional strategy or a regional strategy, i.e. Global Sydney, regional cities, specialised centres and major centres under the Metropolitan Strategy and subregional strategies and regional cities and major regional centres nominated under a regional strategy.

In addition councils are encouraged to consider applying height and FSR controls in smaller local centres (i.e. towns, villages and neighbourhoods), where increased densities are planned or where density controls will have a substantial impact on the economic value of land.

Similarly councils should consider applying height and FSR controls where there is development pressure for taller buildings in sensitive locations, such as those centres along the coast, where there is the potential for significant environmental impacts.

In determining which local centres should have height and FSR controls imposed, councils should work with their regional office of the Department of Planning.

Defining the extent of centres

Where height and FSR controls are required within centres in the Metropolitan Region they should be applied for:

- all business zones in the relevant centre radius
- the R3 Medium Density Residential zone and R4 High Density Residential zone in the designated centre radius or adjoining a business zone within the centre
- the R1 General Residential zone in the designated centre radius or adjoining a business zone within the centre where medium or high density development is to be permitted or significant housing growth is planned.

For major regional centres nominated under a regional strategy, councils should work with their regional office in the Department of Planning to define the extent of each centre. As a general rule, this would include the main business zones of the centre as well as any residential zones where significant housing growth is planned.

Height and FSR controls in other areas

In areas where a regional or subregional strategy does not apply, councils should work with their regional office in the Department of Planning to consider whether they should apply height and FSR controls in centres.

Councils are also encouraged to consider the merit of applying height and FSR controls in other areas particularly where urban growth is planned such as the R3 Medium Density Residential and R4 High Density Residential zones.

Variations to these requirements

The Department recognises that there may be cases where the application of height and FSR controls outlined above may not be practical and in such instances councils should contact their regional office in the Department of Planning to discuss whether a departure is justified.

Other issues and considerations

In general, if councils wish to adopt a building height development standard then a FSR development standard should also be applied, and vice versa. There may be exceptions to this, such as in rural or open space areas, where in some cases a height control may be appropriate but FSR is not relevant.

Standard technical requirements for LEP maps (NSW Department of Planning 2007) details the requirements for development standard maps and includes a section on complex development standards.

Further information

A copy of this practice note, the standard instrument for LEPs, the Metropolitan Strategy, and regional and subregional strategies can be accessed on the Department of Planning's website www.planning.nsw.gov.au.

Authorised by:

Sam Haddad
Director General
NSW Department of Planning

Important note

This note 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 note.

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2008
www.planning.nsw.gov.au
DOP 08_004

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ATTACHMENT A. FREQUENTLY ASKED QUESTIONS

Q: Do maximum heights and FSRs have to be identified for the whole local government area?

A: No. Heights and FSRs are only required in strategic centres and other areas as identified in this practice note.

Q: Can different FSRs be set depending on the mix of land uses on the one site or the site area?

A: Yes, although this approach will usually be suitable only in centres and redevelopment areas. A table may be added to clause 4.4 to set out more detailed FSR standards in these cases. The table should refer to an area identified on the FSR Map (see complex mapping standards in the LEP mapping requirements).

Q: Can storeys be used on the Height of Buildings Map instead of metres?

A: No. Heights should be shown in metres on the Height of Buildings Map. The maximum number of storeys in a building can still be specified as a development control (within the overall maximum building height in metres) as this can be useful for achieving certain design outcomes. However this should be addressed in the DCP.

Q: Can wall or ceiling heights be specified in the LEP as an alternative?

A: If wall or ceiling heights are to be specified these should be addressed in the DCP.

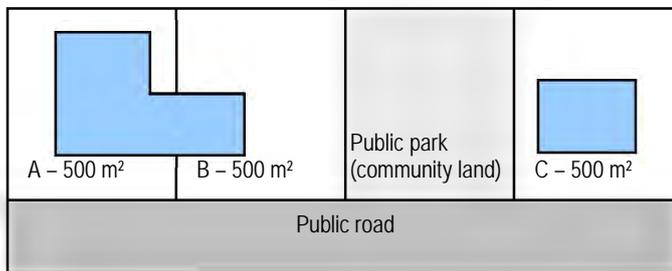
ATTACHMENT B. CALCULATION OF FLOOR SPACE RATIO AND SITE AREA – EXPLANATION OF KEY PROVISIONS

The following is an explanation of some of the key provisions relating to the calculation of floor space ratio (FSR) and site area in accordance with clause 4.5 in the standard instrument for principal local environmental plans.

1. Only lots that share a common boundary to be included in site area

Where a proposed development will be carried out on two or more lots, only those lots that share a common boundary may be aggregated as part of a site area for applying a FSR. If a development application (DA) relates to two or more lots that do not share a common boundary (or which are separated by a public place or community land), then separate calculations must occur for the purposes of applying FSR development standards to the land.

Figure 1. Floor space ratio for all land — 3:1



Example 1: Two new buildings are proposed to be erected over three lots in Figure 1: Lots A, B and C. Only Lots A and B may be aggregated to form a single site area for the purposes of applying a FSR. A separate calculation must occur for Lot C, as it does not share a common boundary with the other lots. The community land must be excluded.

To comply with the FSR development standard for the site, the maximum gross floor area (GFA) for the proposed development would be determined as follows:

Calculation 1: Max. GFA (Lots A + B) = [site area (Lot A) + site area (Lot B)] x FSR
 = [500 m² + 500 m²] x 3:1
 = [1000 m²] x 3:1
 = 3000 m²

Calculation 2: Max. GFA (Lot C) = site area (Lot C) x FSR
 = 500 m² x 3:1
 = 1500 m²

Up to 3000 m² of floor area could potentially be constructed on the combined sites A and B without exceeding the FSR standard, and up to 1500 m² on site C. However the Max GFA cannot be aggregated between Lots (A + B) and Lot C to facilitate compliance with the FSR standard:

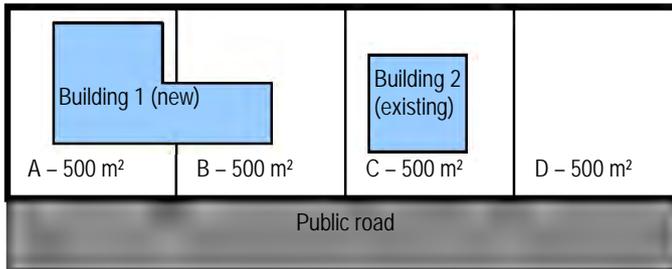
	Maximum GFA to comply with FSR	Proposal that complies with FSR	Proposal that does not comply with FSR
Lots A + B	3000 m²	2800 m² ✓	2600 m² ✓
Lot C	1500 m²	1400 m² ✓	1600 m² ✗
(Total)	(4500 m²)	(4200 m²)	(4200 m²)

In the second calculation example, the development does not comply with the FSR for Lot C.

2. Only significant development to be included

Only lots on which significant development is proposed may be included in site area.

Figure 2. Floor space ratio for all land — 3:1



Example 2: The site area for a development application (DA) is identified as Lots A, B, C and D (see Figure 2). The application proposes:

- a new building on Lots A and B (Building 1)
- a complete refurbishment of an existing building on Lot C (Building 2, existing GFA of 1000 m²)
- no works proposed on Lot D, which is within the same ownership.

Only Lots A, B and C may be included in the site area for the purposes of applying a FSR because they are the only lots on which significant development is proposed. The maximum permissible GFA would be as follows:

$$\begin{aligned}
 \text{Calculation 1: Max GFA (sites A + B + C)} &= [\text{site area (Lot A) + site area (Lot B) + site area (Lot C)}] \times \text{FSR} \\
 &= [1500 \text{ m}^2] \times 3:1 \\
 &= 4500 \text{ m}^2
 \end{aligned}$$

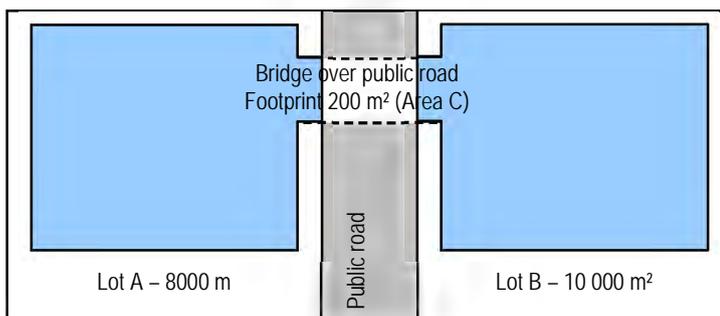
The existing floor area of Building 2 (1000 m²) which is to be retained and substantially refurbished, must be taken into account as required under subclause (8). Therefore the maximum additional GFA that may be created by the proposed development will be (4500 m² – 1000 m²) = 3500 m².

3. Certain public land to be considered separately

Where development is proposed on, above, or below community land or a public place, there must be a separate calculation of FSR for that area of land.

The effect of this provision will need to be taken into account by councils when setting FSRs that will apply to community land or public places (within the meaning of the *Local Government Act 1993*).

Figure 3. Floor space ratio for all land — 3:1



Example 3: An application is lodged for a shopping centre to be built on Lots A and B which are separated by a public road (see Figure 3). The two parts of the shopping centre are to be joined by a 2 storey bridge over the public road, which will be completely enclosed and lined with shops. The footprint for the area of the bridge that is over the public road is 200 m² (Area C). The effect of subclause (7) is that any area of land that is on, above, or under community land or a public place must be subject to a separate FSR calculation. The site area for the purposes of applying a FSR is the area which will be ‘occupied or physically affected by the proposed development’ — in this case the footprint of the proposed bridge. Therefore, for the area of proposed development that is over the public road, the maximum GFA permitted without exceeding the FSR for the land would be:

Calculation 1: Max. GFA (Area C) = [area occupied or physically affected by the proposed development] x FSR
 = [200 m²] x 3:1
 = 600 m²

As the proposal is for a two storey bridge, with a GFA of 400 m², the proposal meets the FSR standard applying to the land. However, the additional 200 m² that could potentially be built without exceeding the FSR development standard cannot be ‘transferred’ to either Lot A or Lot B – those Lots must be subject to separate FSR calculations.

As Lots A and B do not share a common boundary once the land that is a public place or community land (i.e. the public road) is excluded, they must be subject to two separate FSR calculations, and potential GFA cannot be ‘transferred’ between the sites, i.e.:

Calculation 2: Max. GFA (Lot A) = [site area (Lot A)] x FSR
 = [8000 m²] x 3:1
 = 24 000 m²

Calculation 3: Max. GFA (Lot B) = [site area (Lot B)] x FSR
 = [10 000 m²] x 3:1
 = 30 000 m²

Therefore a maximum of 24 000 m² can be built on Lot A, a maximum of 30 000 m² on Lot B, and a maximum of 600 m² can be built on Area C. The GFA may not be aggregated across the three sites for the purposes of complying with the FSR development standard.

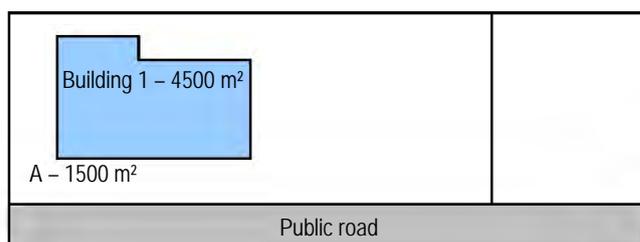
	Maximum GFA to comply with FSR	Proposal that complies with FSR	Proposal that does not comply with FSR
Lot A	24 000 m ²	22 000 m ² ✓	18 000 m ² ✓
Lot B	30 000 m ²	30 000 m ² ✓	34 400 m ² ✗
Area C	600 m ²	600 m ² ✓	200 m ² ✓
(Total)	(54 600 m ²)	(52 600 m ²)	(52 600 m ²)

In the second proposal, the development does not comply with the FSR for Lot B.

4. Covenants to prevent ‘double-dipping’

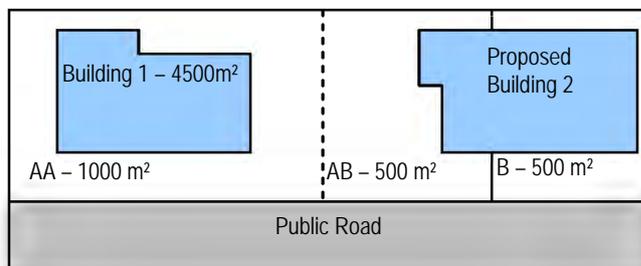
Covenants may be used by a consent authority to prevent a site area being used more than once to facilitate the creation of GFA on certain land (‘double-dipping’).

Figure 4A. Floor space ratio - 3:1



Example 4: In the above example in Figure 4A, Building 1 is approved on Lot A, which achieves the maximum permitted FSR for Lot A by containing 4500 m² of GFA. As the permissible FSR for that lot has been exhausted, the consent authority may decide to require as a condition of consent that a covenant be registered for Lot A which would prevent the use of any part of that site area in applying FSR to another site at a later date (see below).

Figure 4B. Floor space ratio — 3:1



If Lot A in Figure 4A were to be later subdivided (into Lots AA and AB) and Lot AB is bought by the owner of a lot next door, the covenant that is registered on Lot AB may prevent the site area of that Lot being used toward the calculating the permitted additional floor area for any new development. In this case, if an application were lodged to construct Building 2 on Lots AB and B, only the area of Lot B would be able to be included in the site area for the purpose of applying a FSR (see subclause [10]). To comply with the applicable FSR of 3:1, Building 2 would therefore be able to include a maximum of 1500 m² of GFA.

Councils should keep an up-to-date and accessible record of any such covenants that are imposed in relation to FSRs.



PLANNING SYSTEM

State environmental planning policies

Circular	PS 08–003
Issued	9 May 2008
Related	Circular B1 issued 17 March 1989

Variations to development standards

The purpose of this circular is to remind councils to complete quarterly returns on variations to development standards using State Environmental Planning Policy No. 1—Development Standards or similar provision under the Standard Instrument for principal local environmental plans, where the Director-General's concurrence may be assumed.

This circular also notifies councils of arrangements where the Director-General's concurrence may be assumed for exceptions to development standards under environmental planning instruments that adopt clause 4.6 (or the former clause 24) of the Standard Instrument, or any similar clause providing for exceptions to development standards.

Monitoring variations to development standards

Introduction

The Department's Circular B1, issued on 17 March 1989, requested that councils monitor the use of the Director-General's assumed concurrence under State Environmental Planning Policy No. 1—Development Standards (SEPP 1) on a quarterly basis.

This reporting requirement remains effective.

Monitoring of variations to development standards is important in that it enables the Department and councils to obtain an overview of the manner in which the established development standards are being varied and whether the assumed concurrence is being used as intended. This enables councils and the Department to determine whether development standards are appropriate, or whether changes are required. It also establishes a central record of value to all councils.

Variations to development standards under clause 4.6 of the Standard Instrument for principal local environmental plans (or similar provision) should be reported in the same manner as those required under SEPP 1.

Reporting on the use of variations to development standards

Councils are therefore reminded to keep accurate records of the use of SEPP 1, or clause 4.6 of the

Standard Instrument (or similar provision) from 1 April 2008. An updated reporting form is attached.

The quarterly report from 1 April to 30 June 2008 should use this format and is to be forwarded to the Department by 31 July 2008. Subsequent reports should be submitted on a quarterly basis from then on (ending September, December, March and June). Quarterly reports are to be emailed to developmentstandards@planning.nsw.gov.au within four weeks of the end of the quarter.

The Department will integrate reporting on variations to development standards into the 2009–10 Local Development Performance Monitoring requirements.

Notification of assumed concurrence

Introduction

This notification is to inform councils that arrangements for the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts clause 4.6 (or the former clause 24) of the Standard Instrument or a similar clause providing for exceptions to development standards.

Local environmental plans that adopt the Standard Instrument will repeal the application of SEPP 1 for the land to which the plan applies. The Director-General has decided to notify councils that they may assume the Director-General's concurrence under environmental planning

instruments that adopt clause 4.6 (or the former clause 24) of the Standard Instrument, or similar clause, which provide for exceptions to development standards.

Notification of assumed concurrence of the Director-General under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument

- (1) Under clause 64 of the Environmental Planning and Assessment Regulation 2000, council is notified that it may assume the Director-General's concurrence for exceptions to development standards, subject to paragraphs (2) and (3), in respect of all applications made under:
 - (a) clause 4.6 (or the former clause 24, or any future amended version of this clause) of the Standard Instrument (Local Environmental Plans) Order 2006, or
 - (b) any other clause that is based on a substantially similar format and has a substantially similar effect to the clause described in (1)(a),
 where such a clause is adopted in an environmental planning instrument to provide for exceptions to development standards.
- (2) Council may assume the Director-General's 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:
 - (a) only one allotment does not comply with the minimum area, and
 - (b) that allotment has an area equal to or greater than 90% of the minimum area specified in the development standard.
- (3) This notification may be varied or revoked by further written notice provided by the Director-General.

Notification does not apply to SEPP 1

To avoid any doubt, this notification does not vary existing notifications to councils for assumed concurrence of the Director-General in respect of applications under SEPP 1.

Further information

Links to SEPP 1 and the Standard Instrument can be found on the Department of Planning's website at: <http://www.planning.nsw.gov.au>.

If you have further enquiries, please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

Sam Haddad
Director-General

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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PLANNING SYSTEM

State environmental planning policies

Circular	PS 08-014
Issued	14 November 2008
Related	PS 08-003 May 2008

Reporting variations to development Standards

The purpose of this circular is to remind councils of their responsibilities to complete quarterly returns on variations to development standards under delegations using State Environmental Planning Policy No. 1 - Development Standards or similar provisions under the Standard Instrument. The returns for the past two quarters – 1 April to 30 June 2008 and 1 July to 30 September 2008 – are to be forwarded to the Department by no later than 4 weeks from the date of this circular.

Introduction

Circular PS 08-003 reminded councils of their responsibilities to monitor the use of the Director-General's assumed concurrence under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) or under clause 4.6 of the Standard Instrument (or similar provision) on a quarterly basis.

Councils were reminded of the need to keep accurate records of the use of SEPP 1, or the relevant provision of the Standard Instrument and to report quarterly from the April to June 2008 quarter.

Reports due 4 weeks from date of this Circular

Despite the previous circular, a number of councils have not submitted their responses to the Department for the period 1 April to 30 June, which were due on 31 July 2008.

Councils are now advised that they are to forward their reporting of the use of SEPP 1 or clause 4.6 of the Standard Instrument (or similar provision) for the periods 1 April to 30 June and 1 July to 30 September **within 4 weeks from the date of this circular**. Where a council has not exercised its concurrence in a particular quarter, then a nil return is to be forwarded.

Quarterly reports are to be emailed to developmentstandards@planning.nsw.gov.au

If a council does not respond to this request by 15 December 2008, then the Director-General will commence the process of revocation of the concurrence.

Councils are to then report quarterly within one month of the end of the quarter. Failure to do so will trigger a review into the need to revoke of the concurrence.

Further Requirements

In response to the findings of the recent ICAC investigation into corruption allegations affecting Wollongong City Council, councils are required to adopt the following four measures:

- 1) Establish a register of development applications determined with variations in standards under SEPP 1;
- 2) Require all development applications where there has been a variation greater than 10% in standards under SEPP 1 to be determined by full council (rather than general manager or nominated staff member);
- 3) Provide a report to each council meeting on the development applications determined where there had been a variation in standards under SEPP 1;
- 4) Make the register of development applications determined with variations in standards under SEPP 1 available to the public on the council's website.

Further information

The Department will also be undertaking a number of random audits in 2009 on SEPP 1 decisions based on the data received this year.

Links to SEPP 1 and the Standard Instrument can be found on the Department of Planning's website at: <http://www.planning.nsw.gov.au>

If you have further enquiries, please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem

Authorised by:

Sam Haddad,
Director-General
NSW Department of Planning

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LEP practice note

PLANNING SYSTEM

Local Planning

Ref No.	PN 11-001
Issued	10 March 2011 (supersedes and replaces PN 06-001)
Related	LEP PN 08-001; 09-003; 09-005; 11-002; 11-003; PS 09-011; PS 11-011

Preparing LEPs using the Standard Instrument: standard clauses

The purpose of this practice note is to advise councils on the use of the clauses in the Standard Instrument when preparing local environmental plans (LEPs).

Introduction

This Practice Note addresses the clauses in the *Standard Instrument—Principal Local Environmental Plan* (the Standard Instrument). It provides guidance on how to use the mandatory (compulsory and optional) clauses and where and how a council may introduce local content, either into a mandatory clause or through a separate local clause.

The *Standard Instrument (Local Environmental Plans) Order 2006* (the SI Order) prescribes the form and content of a Standard Instrument for the purposes of section 33A of the *Environmental Planning and Assessment Act 1979*.

Clauses 1 to 7 of the SI Order set up the legal framework for a Standard Instrument, which is set out at the end of the SI Order.

Mandated clauses

The SI Order identifies 42 mandatory clauses for inclusion in new principal Standard Instrument LEPs. The clauses are identified as either compulsory or optional.

Compulsory clauses

There are two types of compulsory clauses, labelled either 'compulsory' or 'compulsory [if applicable].'

The first type, labelled 'compulsory' are to be adopted by every council in the State, without amendment or alteration. The numbering of compulsory clauses cannot be changed.

There are some mandatory clauses (either compulsory or optional) where a council may add some specific local criteria. (See the following section of this PN: 'When a council can add local content to a standard clause').

The second type of compulsory clause, labeled 'compulsory [if applicable],' are compulsory where specified conditions exist.

These generally relate to environmental or other attributes specific to certain areas of the State or in the local government area, e.g. in the coastal zone. If such specific circumstances apply, then those relevant clauses must be adopted without any amendment or alteration.

If not adopted, the number and name of the clause should appear with the words 'not applicable.'

The compulsory clauses in the Standard Instrument are:

- 1.1 Name of plan
- 1.1AA Commencement
- 1.2 Aims of Plan
- 1.3 Land to which Plan applies
- 1.4 Definitions
- 1.5 Notes
- 1.6 Consent authority
- 1.7 Maps
- 1.8 Repeal of planning instruments applying to land
- 1.9 Application of SEPPs
- 2.1 Land use zones
- 2.2 Zoning of land to which Plan applies
- 2.3 Zone objectives and Land Use Table
- 2.4 Unzoned land

- 2.5 Additional permitted uses for particular land
- 2.6 Subdivision—consent requirements
- 2.7 Demolition requires development consent
- 3.1 Exempt development
- 3.2 Complying development
- 3.3 Environmentally sensitive areas excluded
- 4.6 Exceptions to development standards
- 5.1 Relevant acquisition authority
- 5.2 Classification and reclassification of public land
- 5.4 Controls relating to miscellaneous permissible uses
- 5.8 Conversion of fire alarms
- 5.9 Preservation of trees or vegetation
- 5.9AA Trees or vegetation not prescribed by development control plan
- 5.10 Heritage conservation
- 5.11 Bush fire hazard reduction
- 5.12 Infrastructure development and use of existing buildings of the Crown

The compulsory [if applicable] clauses are:

- 4.2 Rural subdivision [compulsory if clause 4.1 adopted, and land to which Plan applies includes land zoned RU1, RU2, RU4 or RU6]
- 5.5 Development within the coastal zone [compulsory if land to which Plan applies includes land in the coastal zone]
- 5.7 Development below mean high water mark [compulsory if land to which Plan applies contains tidal waters]
- 5.13 Eco-tourist facilities [compulsory if eco-tourist facilities permitted with consent].

Optional clauses

Optional clauses are those that a council may elect to include in its principal Standard Instrument LEP, e.g. the clause on temporary use of land. However, if a council wishes to have a clause on this matter, then the standard clause *must* be used. Councils should not add local clauses that can be addressed using the optional clauses.

If not adopted, the number and name of the clause should appear with the words 'not adopted,' or words to the same effect.

The optional clauses are:

- 2.8 Temporary use of land
- 4.1 Minimum subdivision lot size
- 4.1AA Minimum subdivision lot size for community title schemes
- 4.3 Height of buildings
- 4.4 Floor space ratio
- 4.5 Calculation of floor space ratio and site area
- 5.3 Development near zone boundaries

- 5.6 Architectural roof features
- 5.9 Preservation of trees or vegetation - subclause 9 only is optional

Clauses 4.1, 4.3 and 4.4 on development standards will require councils to insert local objectives and relevant standards (see 'Principal development standards' below).

When a council can add local content to a standard clause

Generally a local subclause should not be added to a standard mandated clause.

There are, however, a number of specific standard clauses where a council can, in accordance with a direction, add the type of local content specified. These are:

- 1.1 Name of plan
- 1.1AA Commencement
- 1.2 Aims of plan
- 1.6 Consent authority
- 1.7 Maps
- 1.8 Repeal of planning instruments applying to land
- 1.9 Application of SEPPs
- 2.3 Zone objectives and Land Use Table
- 2.8 Temporary use of land
- 3.3 Environmentally sensitive areas excluded
- 4.1 Minimum subdivision lot size
- 4.1AA Minimum subdivision lot size for community title schemes
- 4.3 Height of buildings
- 4.4 Floor space ratio
- 4.6 Exceptions to development standards
- 5.1 Relevant acquisition authority
- 5.3 Development near zone boundaries
- 5.4 Controls relating to miscellaneous permissible uses
- 5.6 Architectural roof features
- 5.10 Heritage conservation.

Councils can include local provisions

Councils can add local clauses that address specific local circumstances where justified. These could be as a result of relevant planning components of council's local strategic planning, or required under a section 117 direction, or regional or metropolitan strategy.

Any such local clauses are not to be inconsistent with and should not undermine the effect of: the mandated clauses in the Standard Instrument; the permissibility or otherwise of a land use as detailed in the Land Use Table; or any other relevant State and regional policies, strategies, directions etc.

To assist relevant planning authorities in preparing Standard Instrument LEPs, the

Department provides model local provisions that cover a range of common requirements. These are available on the Department's website.

Principal development standards

The Standard Instrument includes development standards for minimum subdivision lot sizes, height of buildings, and floor space ratio as optional clauses. If a council wishes to have such development standards in its LGA, then they *must* be included in the principal LEP and *not* through some other mechanism, such as a development control plan.

Councils are to:

- provide the local objectives for these development standards (for height of buildings and floor space ratio), and
- set out the numerical standards on the relevant maps accompanying the particular clause.

These standards may or may not apply to the whole zone, depending on how the map is drawn.

A council may wish to identify different standards in the one zone, e.g. in a rural area it may be appropriate to identify different lot sizes for different types of land within the primary production zone.

Development standard clauses include:

- 4.1 Minimum subdivision lot size
- 4.1AA Minimum subdivision lot size for community title schemes
- 4.3 Height of buildings
- 4.4 Floor space ratio.

Clauses that replace/amend SEPPs

The following State Environmental Planning Policies (SEPPs) are either fully or partially incorporated into the Standard Instrument:

- SEPP 1—Development Standards
- SEPP 4—Development without Consent and Miscellaneous Exempt and Complying Development (clause 6 and Parts 3 and 4)
- SEPP 60—Exempt and Complying Development.

Additional instruments (or provisions of instruments) may be added if the relevant instrument or provision is covered by the Plan. These are to be listed in Clause 1.9 of the LEP.

When an LEP is made, the relevant SEPPs, or parts of SEPPs, will not apply to land to which the plan applies.

Schedules

The Standard Instrument contains five schedules, although there is provision for additional schedules to be added over time if required.

The clauses that reference Schedules are:

- Clause 2.5 Schedule 1 Additional permitted uses
- Clause 3.1 Schedule 2 Exempt development
- Clause 3.2 Schedule 3 Complying development
- Clause 5.2 Schedule 4 Classification and reclassification of public land
- Clause 5.10 Schedule 5 Environmental heritage

A council may add local specific schedules, as a result of additional local provisions if justified and agreed with the Department of Planning. Any schedules added by a council will be identified as Schedule 6A, 6B, etc.

Clause-by-clause outline

Attachment A outlines how to prepare a basic Standard Instrument LEP. For more details please refer to the Standard Instrument, which provides instructions in italics (and in Note form or by way of a Direction to councils). Planning Circular PS 09-011 - *Certification of draft Standard Instrument LEPs for exhibition* may also assist as it includes additional drafting guidance.

Further information

A copy of this practice note, the Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/LocalPlanning/t/abid/246/language/en-US/Default.aspx>

An updated version of the standard instrument is available on the NSW Parliamentary Counsel's office website: www.legislation.nsw.gov.au under 'Browse A-Z In Force'.

If you have further enquiries, please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

Authorised by:

Sam Haddad
Director General

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ATTACHMENT A. CLAUSE- BY- CLAUSE OUTLINE

The following is a clause by clause outline of how to prepare a basic Standard Instrument LEP. For more detailed instructions please refer to the Instructions in italics, Directions and Notes in the Standard Instrument.

[Title]

[<i>Name of local government area</i>] Local Environmental Plan [<i>Year</i>]	Replace <i>italics</i> with name of council local government area (LGA) and year in numbers.
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Part 1 – Preliminary

Clause No. and Name	Instruction
1.1 Name of plan	Compulsory Replace <i>italics</i> with name of council LGA and year in numbers.
1.1AA Commencement	Compulsory Can be amended as per the Direction if another date is required to be specified for commencement.
1.2 Aims of plan	Compulsory Insert name of LGA in 1.2(1). Insert council's particular aims for its LEP in subclause (2)(a). Note that the aims should not repeat the objects of the EP&A Act, nor should they refer to other documents. Instead, they should reflect the local strategic planning underpinning the LEP.
1.3 Land to which plan applies	Compulsory The Standard Instrument specifies that there is to be a Land Application Map. This may be a separate map or be constituted by the outer boundary of the Land Zoning Map by an annotation on that map. It should generally apply to the whole of the LGA.
1.4 Definitions	Compulsory The Dictionary at the end of the document contains both land use terms (to be used in the Land Use Table) and explanatory terms (not to be used in the Land Use Table). Direction 5 lists all types of development that may be included in the Land Use Table.
1.5 Notes	Compulsory The notes are non-statutory guidance to aid in the understanding of a clause and do not form part of the legal instrument. Notes will remain in councils' LEPs. Councils are not to insert notes. Directions are included to aid in preparing a Standard LEP. They should be deleted from the draft LEP.
1.6 Consent authority	Compulsory The consent authority for the purposes of this Plan is (subject to the Act) the Council. If required, another person or body may be specified as the consent authority for all or any particular kind of development.
1.7 Maps	Compulsory Requirements relating to the maps are set out in the documents entitled <i>Standard technical requirements for LEP maps</i> and <i>Standard requirements for LEP GIS data</i> which are available on the Department of Planning's website.
1.8 Repeal of planning instruments applying to land	Compulsory This clause repeals all existing environmental planning instruments that apply to the land to which the Plan applies. See the Direction to this clause in the Standard Instrument template regarding other possibilities.

1.9 Application of SEPPs	<p>Compulsory</p> <p>s.36 of the Act generally provides that SEPPs prevail over LEPs. However, an LEP may (by an additional clause included in the plan) displace or amend a SEPP to deal specifically with the relationship between this plan and the SEPP, where agreed by the Department of Planning.</p> <p>SEPPs that have already been incorporated into the Standard Instrument are listed in 1.9(2). Councils are to add any additional SEPPs which will not apply to the land to which the Plan applies.</p>
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Part 2 – Permitted or prohibited development

Clause No and Name	Instruction
2.1 Land use zones	<p>Compulsory</p> <p>Additional zones or subzones are not to be inserted.</p> <p>If there are zones that are not applied in the Plan, the reference to such zones in this clause and the provisions relating to them in the Land Use Table in clause 2.3 may, but need not, be included.</p>
2.2 Zoning of land to which Plan applies	<p>Compulsory</p> <p>For the purposes of the Plan, land is within the zones shown on the Land Zoning Map.</p>
2.3 Zone objectives and Land Use Table	<p>Compulsory</p> <p>The notes applicable to this clause explain the elements of the Land Use Table and the relationship between the Land Use Table and other provisions of the Plan. Councils may fill in Note 5 if they wish.</p> <p>Any additional objectives must be consistent with the zone and must not repeat the aims of the LEP, the objects of the Act, nor any SEPP to which the LEP is subordinate.</p>
2.4 Unzoned land	<p>Compulsory</p> <p>All land must be zoned. However, the purpose of this clause is generally to capture any land that a council may inadvertently not zone.</p>
2.5 Additional permitted uses for particular land	<p>Compulsory</p> <p>Councils may insert a list of additional permitted uses in Schedule 1 for particular land, e.g. by lot and DP number. Listings in the LEP Schedule 1 should be minimised, with appropriate justification provided to the Department for any inclusions. Wherever possible, land uses should be governed by the Land Use Table and Schedule 1 should only be used where council has demonstrated why this cannot be achieved.</p>
2.6 Subdivision – consent requirements	<p>Compulsory</p> <p>The purpose of this clause is to clarify that land may be subdivided with consent. The exception to this relates to the subdivision of land on which there is a secondary dwelling in particular circumstances.</p> <p>Subdivision that is identified as exempt development in an applicable environmental planning instrument, such as the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> may be carried out without development consent.</p> <p>Note: An amendment was made to this clause in 2011, so that controls relating to minor boundary adjustments are only contained in the <i>Exempt and Complying Development Codes SEPP 2008</i></p>
2.7 Demolition requires consent	<p>Compulsory [formerly 2.6AA]</p> <p>States that, unless identified as exempt development under Schedule 2 or the <i>Exempt and Complying Development Codes SEPP 2008</i>, the demolition of a building or work may be carried out only with consent.</p>

2.8 Temporary use of land	Optional [formerly 2.6BB] This clause enables councils to consider land uses for a certain period of time (52 days per 12 months is suggested). Councils can change the number of days as considered appropriate, provided it reflects the 'temporary' intent of the clause. Exceptions to subclause (2) may be added where justified.
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Land Use Table

Clause No and Name	Instruction
<p>Rural Zones RU1 Primary Production RU2 Rural Landscape RU3 Forestry RU4 Primary Production Small Lots RU5 Village RU6 Transition</p> <p>Residential Zones R1 General Residential R2 Low Density Residential R3 Medium Density Residential R4 High Density Residential R5 Large Lot Residential</p> <p>Business Zones B1 Neighbourhood Centre B2 Local Centre B3 Commercial Core B4 Mixed Use B5 Business Development B6 Enterprise Corridor B7 Business Park B8 Metropolitan Centre</p> <p>Industrial Zones IN1 General Industrial IN2 Light Industrial IN3 Heavy Industrial IN4 Working Waterfront</p> <p>Special Purpose Zones SP1 Special Activities SP2 Infrastructure SP3 Tourist</p> <p>Recreation Zones RE1 Public Recreation RE2 Private Recreation</p> <p>Environment Protection Zones E1 National Parks and Nature Reserves E2 Environmental Conservation E3 Environmental Management E4 Environmental Living</p> <p>Waterway Zones W1 Natural Waterways W2 Recreational Waterways W3 Working Waterways</p>	<p>Compulsory</p> <p>The following directions must be followed when developing the provisions to apply in each zone in the Land Use Table.</p> <p>Direction 1. Additional objectives may be included in a zone at the end of the listed objectives to reflect particular local objectives of development, but only if they are consistent with the core objectives for development in the zone as set out in the Land Use Table. See LEP Practice Note PN09-005 for more information about local zone objectives.</p> <p>Direction 2. Specified uses may be added to (but not removed from) the list of development that is permitted or prohibited in a zone. Additional uses may be added to an Item of a zone even if some uses are already specified in that item. Additional permitted uses for particular land (but not all land in a particular zone) may be set out in Schedule 1.</p> <p>Direction 3. Items 2, 3 and 4 of each zone requires a relevant entry to be inserted. The following may be entered:</p> <ul style="list-style-type: none"> (a) particular uses, (b) the word "Nil", (c) the words "Any development not specified in item [<i>specify item number or numbers</i>]", <p>so long as all residual (i.e. non-specified) uses are covered.</p> <p>Direction 4. Respite day centres must be permitted wherever a child care centre is permitted in the Land Use Table.</p> <p>Direction 5. Only certain types of development defined in the standard Dictionary by be included in the Land Use Table (a list of types of development are provided).</p> <p>Directions in each Zone. After the heading of each zone is a list of uses that must be incorporated into the Land Use Table as either "Permitted without consent" or "Permitted with consent".</p> <p>See Practice Note 11-002, <i>Preparing LEPs using the Standard Instrument: standard zones</i>, for further information on using standard zones including 'closed' and 'open' zone approaches.</p>

Part 3 – Exempt and complying development

Clause No and Name	Instruction
3.1 Exempt development	Compulsory Councils may insert a list of exempt development in Schedule 2 not covered by the <i>SEPP (Exempt and Complying Development Codes) 2008</i> .
3.2 Complying development	Compulsory Councils may insert a list of complying development in Schedule 3 not covered by the <i>SEPP (Exempt and Complying Development Codes) 2008</i> .
3.3 Environmentally sensitive areas excluded	Compulsory This clause defines an ' <i>environmentally sensitive area</i> ' where exempt or complying development must not be carried out. Note that in 2011, the clause was amended to clarify that <i>environmentally sensitive area</i> includes land reserved under the <i>National Parks and Wildlife Act 1974</i> in relation to exempt and complying development. Whilst the direction states that additional areas may be added to this list, any such additions must be agreed by the Department of Planning and must be in addition to (and not repeat) those in the <i>SEPP (Exempt and Complying Development Codes) 2008</i> . These additional areas do not apply to exempt or complying development arising out of other environmental planning instruments such as the <i>SEPP (Exempt and Complying Development Codes) 2008</i> .

Part 4 – Principal development standards

Clause No and Name	Instruction
4.1 Minimum subdivision lot size	Optional If a council wishes to identify subdivision lot sizes in its LGA, these are to be shown on a Lot Size Map to the LEP. Different lot sizes may be identified for different categories of land in the same zone.
4.1AA Minimum subdivision lot size for community title schemes	Optional if clause 4.1 is adopted As clause 4.1 does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme, and the 2011 amendments removed the wording '(not being an individual lot in a strata plan or community title scheme)' in certain residential accommodation land use terms, this clause enables a council to control the size of lots under community title schemes through the Minimum lot size map, if desired. It also includes a direction enabling councils to further specify exceptions for residential accommodation development suited for community title subdivision such as 'multi dwelling housing.'
4.2 Rural subdivision	Compulsory if clause 4.1 is adopted and land to which Plan applies includes land zoned Primary Production RU1, Rural Landscape RU2, Primary Production Small Lot RU3 or Transition RU6. The purpose of this clause is to provide some flexibility in the subdivision of land for <i>primary production purposes</i> , without creating opportunities for dwellings on undersized lots.

Clause No and Name	Instruction
4.3 Height of buildings	<p>Optional</p> <p>If a council wishes to identify building heights in its LGA, they are to be shown on a 'Height of Buildings Map' in the LEP. Local objectives for building height restrictions are to be inserted into the clause.</p> <p>Different heights may be shown on the 'Height of Buildings Map' for different zones or for different land in the same zone. The Plan may also provide for specific height restrictions to be varied or modified in certain circumstances, for example, to prevent overshadowing of public open space, for air safety reasons or for the purposes of promoting design excellence.</p> <p>See LEP Practice Note 08-001, <i>Height and floor space ratio</i>, for further information.</p>
4.4 Floor space ratio	<p>Optional</p> <p>If a council wishes to identify floor space ratios in its LGA, they should be shown on a 'Floor Space Ratio Map' to the LEP. Local objectives for floor space ratios are to be inserted into the clause.</p> <p>Different floor space ratios may be shown on the 'Floor Space Ratio Map' for different zones, for different land in the same zone or for different land uses within a building.</p> <p>In exceptional cases, where agreed by the Department of Planning, the Plan may provide that despite subclause (2), the maximum floor space ratio for a building is to be determined partly by the FSR map and partly by other means, or wholly by other means.</p> <p>See LEP Practice Note 08-001, <i>Height and floor space ratio</i>, for further information.</p>
4.5 Calculation of floor space ratio and site area	<p>Optional</p> <p>This clause sets out additional provisions for the purposes of applying floor space ratios to development sites. This clause should be adopted wherever a council adopts clause 4.4 Floor space ratio.</p>
4.6 Exceptions to development standards	<p>Compulsory</p> <p>This clause sets out where an exception to a development standard (for example Minimum subdivision lot size, Height of buildings and Floor space ratio) may be requested.</p> <p>Subclause (8) sets out situations where this clause does not apply. Additional exclusions may be added.</p> <p>The clause requires the concurrence of the Director General to be obtained prior to the granting of consent for development that contravenes a development standard. Prior to granting concurrence, consideration must be given to whether contravention of the development standard raises any matter of significance for State or regional environmental planning and the public benefit of complying with the standard.</p> <p>Clause 4.6 cannot be used to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in most Rural Zones (RU1, RU2, RU3, RU4, RU6), Large Lot Residential Zone R5, and Environment Protection Zones E2, E3 and E4.</p> <p>The clause also cannot be used to vary standards in relation to complying with BASIX or controls established under <i>Clause 5.4 Controls relating to miscellaneous permissible uses</i>.</p> <p>Once the principal LEP is made, then SEPP 1 will no longer apply to that land. See LEP Planning circular 08-003 <i>Variations to development standards</i> for further information (or its replacement).</p>

Part 5 – Miscellaneous provisions

Clause No and Name	Instruction
5.1 Relevant acquisition authority	<p>Compulsory</p> <p>This clause provides, for the purpose of section 27 of the EP&A Act, the identification of the relevant public authority for acquiring land reserved exclusively for certain public purposes. The clause supplements existing owner initiated acquisition procedures where acquisition can be triggered if the owner will suffer hardship, if there is any delay in the land being acquired by the relevant authority.</p> <p>Direction. Land is required to be shown on the 'Land Reservation Acquisition Map' if it is expressly set apart by the Plan exclusively for a public purpose referred to in section 26 (1) (c) of the Act. However, any such land that is held by an authority of the State, or by a public company or a subsidiary of a public company (within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth) is not required to be shown on that Map. An authority of the State is to be listed for all land shown on the 'Land Reservation Acquisition Map', but the land is not to be so reserved and the authority listed unless the authority consents to its being listed.</p> <p>A 'Land Reservation Acquisition Map' must be prepared even when no land is identified for acquisition at the time the plan is made.</p> <p>The table in subclause 2 lists the type of land to be shown on the 'Land Reservations Acquisition Map'. The clause prescribes that the relevant council is responsible for acquisition in relation to local open space, the relevant public corporation in relation to regional open space, RTA in relation to classified roads and the Minister for the Environment in relation to national parks lands.</p>
5.2 Classification and reclassification of public land	<p>Compulsory</p> <p>Councils are to insert in relevant parts in Schedule 4, land that is to be classified or reclassified as either 'operational land' or 'community land' (this is for new classifications or reclassifications only).</p> <p>See LEP Practice Note 09-003 (<i>Re</i>)<i>classification of public land through a LEP</i> for further information.</p>
5.3 Development near zone boundaries	<p>Optional</p> <p>This clause provides flexibility to allow a use that is permitted on one side of a zone boundary to occur on the immediate other side if this would enable a more logical and appropriate development of the site.</p> <p>Council is to insert the relevant distance from the zone boundary.</p> <p>The clause provides that such a use must be compatible with the objectives of the zones. The clause identifies a number of zones where this clause will <u>not</u> apply. A council may also add to this list in a separate paragraph numbered (a1).</p>
5.4 Controls relating to miscellaneous permissible uses	<p>Compulsory</p> <p>This clause enables councils to insert numerical standards for certain types of development to reflect the characteristics of a local government area. In 2011, the controls relating to secondary dwellings and industrial retail outlets were amended to simplify the floor area calculation.</p>
5.5 Development within the coastal zone	<p>Compulsory if land to which Plan applies includes land in the coastal zone</p> <p>This clause provides for implementing the principles of the Coastal Policy and provides heads of consideration for certain types of development in the Coastal zone. In 2011, a subclause was added to require specific consideration of coastal hazards.</p>

Clause No and Name	Instruction
5.6 Architectural roof features	Optional This clause enables consent to be granted to development that includes an architectural roof feature which exceeds the height limits set by clause 4.3.
5.7 Development below mean high water mark	Compulsory if land to which Plan applies contains tidal waters This clause requires consent for any development that may be proposed below mean high water mark.
5.8 Conversion of fire alarms	Compulsory This clause specifies when consent is required for the conversion of fire alarm systems, and which development is complying development. In 2011, the name of the relevant authority was changed from NSW Fire Brigades to Fire and Rescue NSW.
5.9 Preservation of trees or vegetation	Compulsory [except subclause (9) – optional] If a council wishes to use this clause to require either a permit or development consent for the damage to, or removal of trees or vegetation, then the species, size, location or other criteria of the trees and vegetation should be prescribed in a DCP. In 2011, an optional subclause was added to allow a permit or development consent for certain clearing of native vegetation listed under the <i>Native Vegetation Act 2003</i> . Subclause (7) was also amended to clarify the assessment process when the tree or vegetation is within a 'heritage conservation area' or 'Aboriginal place of heritage significance,' or forms part of a 'heritage item' or an 'Aboriginal object'. The clause lists exclusions from the application of this clause.
5.9AA Trees or vegetation not prescribed by development control plan	Compulsory This clause provides that damage to, or removal of, any tree or vegetation not prescribed by a development control plan under clause 5.9 is permitted without development consent. It was introduced in 2011 to clarify the status of works to trees and vegetation not prescribed under a DCP.
5.10 Heritage conservation	Compulsory Council is to insert the name of the local government area in the objective of the clause. Heritage items (if any) are to be listed and described in Schedule 5. The Heritage Map may also show the location of a heritage item. Heritage conservation areas (if any) must be shown on the Heritage Map as well as being described in Schedule 5. In 2011, the clause was amended to clarify the terminology to separate out 'Aboriginal place of heritage significance' and 'Aboriginal object' from other heritage items that need to be described in Schedule 5. The location and nature of 'Aboriginal objects' and 'Aboriginal places of heritage significance' may (but need not) be described in Schedule 5 and shown on the sheet of the Heritage Map marked 'Aboriginal Heritage Map'. The 2011 amendments also introduced 'heritage management documents to provide for a broader and more flexible range of documentation, clarified consent requirements for non-structural changes to listed elements inside a heritage item, clarified the process for granting consent for the demolition of a nominated State heritage item, and added new directions regarding what needs to be mapped.
5.11 Bushfire hazard reduction	Compulsory This clause makes it clear that bush fire hazard reduction work which is authorised by the <i>Rural Fires Act 1997</i> can be carried out without consent.

Clause No and Name	Instruction
5.12 Infrastructure development and use of existing buildings of the Crown	Compulsory This clause specifies that nothing in the Plan in any way restricts or prohibits permitted or exempt development undertaken by or on behalf of a public authority under <i>State Environmental Planning Policy (Infrastructure) 2007</i> .
5.13 Eco-tourist facilities	Compulsory. Introduced in 2011 to compliment the new land use term <i>eco-tourist facility</i> . The clause requires the consent authority to be satisfied that the eco-tourist facility is sympathetic to and maintains the environmental and cultural values of the land, and is designed and managed to have minimum impact on the environment.

Schedules

Schedule	Instruction
Schedule 1 Additional permitted uses (clause 2.5)	Compulsory Councils may insert a list of additional permitted uses for particular land. Consideration should be given to existing uses, appropriate zones and potential future land uses. Therefore it is not considered that many listings will be supported (if any) when the Plan is made. Principles for drafting Schedule 1: <ul style="list-style-type: none"> Clearly identify the land affected including the address and lot numbers. Entries are to be listed by alphabetical order of suburb and then by street name and number, where possible. Use terms in Land Use Table Direction 5 in the Standard Instrument. Keep conditions and standards to a minimum. Where possible, these standards should be incorporated into the relevant maps (e.g. FSR/height). Any conditions are to be discussed with the Department on a case-by-case basis.

Schedule	Instruction														
Schedule 2 Exempt development (clause 3.1)	<p>Compulsory</p> <p>Only development types that are not specified as exempt development under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> can be listed in the schedule.</p> <p>The following principles should be applied when nominating exempt and complying development:</p> <ul style="list-style-type: none"> • EP&A Act provisions should not be repeated. It is recommended not to duplicate exempt development that is enabled under a SEPP, such as the Infrastructure SEPP, as the SEPPs prevail. Avoid calling up other legislation or Codes. • Avoid subjective terms such as 'must not interfere with the amenity of the area', 'generally consistent with all relevant requirements', 'appropriately lit', 'satisfactory surveillance', 'structurally adequate', etc. as they are either ambiguous or require a merit consideration. • Avoid blanket exclusions that prevent types of exempt and complying development being carried out across the local government area. • Compliance with the BCA is already covered under clauses 3.1 and 3.2 of the Standard Instrument and the EP&A Regulations and does not need to be a standard or condition. • Minimise references to Australian Standards. Where it is necessary to refer to AS, the full reference of the standard with a date is required. • It is not necessary to identify requirements from other Acts, Regulations or Codes in the LEP. Do not include references to DCPs or other policies, or standards that require the opinion of the consent authority. • Additional process requirements should not be included. • Keep notes to a minimum. <p>The 2011 amendments deleted items from schedule 2 that are already provided for in the Codes SEPP.</p>														
Schedule 3 Complying Development (clause 3.2)	<p>Compulsory</p> <p>Councils to insert a list of complying development only where it is additional to those development types specified in the <i>Exempt and Complying Development Codes SEPP 2008</i>.</p>														
Schedule 4 Classification or reclassification of public land (clause 5.2)	<p>Compulsory</p> <ul style="list-style-type: none"> • Part 1: Any lands classified, or reclassified, as operational land – no interests changed - to be listed. <table border="1" data-bbox="687 1391 1313 1458"> <tr> <td>Column 1</td> <td>Column 2</td> </tr> <tr> <td>Locality</td> <td>Description</td> </tr> </table> • Part 2: Any land classified, or reclassified, as operational land – interests changed – to be listed. <table border="1" data-bbox="687 1529 1380 1597"> <tr> <td>Column 1</td> <td>Column 2</td> <td>Column 3</td> </tr> <tr> <td>Locality</td> <td>Description</td> <td>Any trusts etc not discharged</td> </tr> </table> • Part 3: Any land classified, or reclassified, as community land – shall be listed. <table border="1" data-bbox="687 1668 1313 1736"> <tr> <td>Column 1</td> <td>Column 2</td> </tr> <tr> <td>Locality</td> <td>Description</td> </tr> </table> <p>See LEP PN 09-003 (<i>Re</i>)classification of public land through a LEP.</p>	Column 1	Column 2	Locality	Description	Column 1	Column 2	Column 3	Locality	Description	Any trusts etc not discharged	Column 1	Column 2	Locality	Description
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Locality	Description														
Column 1	Column 2	Column 3													
Locality	Description	Any trusts etc not discharged													
Column 1	Column 2														
Locality	Description														

**Schedule 5
 Environmental
 Heritage
 (clause 5.10)**

Compulsory

This Schedule should be divided into 3 sections being heritage items, heritage conservation areas, and archaeological sites. Where agreement is reached with the Aboriginal community to list Aboriginal objects and/or Aboriginal places of heritage significance, the Schedule should also include separate parts listing any such object or place.

A Heritage Map may also show the location of all heritage items. Heritage conservation areas (if any) must be shown on the Heritage Map as well as being described in Schedule 5. The location and nature of 'Aboriginal objects' and 'Aboriginal places of heritage significance' described in Schedule 5 may be shown on the sheet of the Heritage Map marked 'Aboriginal Heritage Map.'

The items in this Schedule must be in alphabetical order in each respective Part, according to suburb or locality name (and by street name within each such suburb or locality).

The description of a heritage item should be included in a column headed "Item" and should include a brief description of those things that are part of the heritage significance of the item—for example,

- "House, front garden and front fence", or
- "Lindesay (building, summer house, grounds, 6 London Plane trees, Hoop Pine)" or
- "Dunmore Park (including bandstand, fountain and avenue of fig trees)."

If any interior features are part of the heritage significance of a heritage item, these should also be described—for example

- "Science House (including original interiors)" or
- "Buckle House (former) (street façade, awning, part interior)" or
- "Leamington (Building Including Interior)"

Any thing that is part of the heritage significance of a heritage item should also be included in the inventory of heritage items.

Heritage items cannot be identified as having "State significance" unless they are listed on the State Heritage Register. However, a heritage item may be listed in the Schedule as a "nominated item of State significance" if the item has been identified as an item of potential State significance in a publicly exhibited heritage study and the Council has nominated the item in writing to the Heritage Council.

Moveable objects that are not attached to land may, but need not, be listed in this Schedule. Moveable objects may be considered to be heritage items under the definition of heritage item under the provisions of the *Heritage Act 1977*. Items not listed in the Schedule will not appear on s.149 Planning Certificates.

The Schedule is to be set out as follows:

Schedule 5 Environmental heritage

Part 1. Heritage Items

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Suburb	Item Name	Address	Property Description	Significance	Item Number
<i>Example</i>					
<i>Adamstown</i>	<i>Adamstown Post Office</i>	<i>195 Bruncker Rd</i>	<i>Lot 1 DP 222812</i>	<i>Local</i>	<i>118</i>

Part 2. Heritage Conservation Areas			
Column 1	Column 2	Column 3	Column 4
Description	Identification on heritage map	Significance	Item number
<i>Example</i>			
<i>Cooks Hill</i>	<i>Shown by red hatching and marked 'Cooks Hill Heritage Conservation Area'</i>	<i>State</i>	<i>C71</i>

Part 3. Archaeological Sites					
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Suburb	Site Name	Address	Property Description	Significance	Item Number
<i>Example</i>					
<i>Prospect</i>	<i>Veteran Hall house remains</i>	<i>Great Western Highway</i>	<i>Lot X DP 123456</i>	<i>State</i>	<i>A665</i>

Division of Local Government
Department of Premier and Cabinet

GUIDELINES FOR THE
APPOINTMENT & OVERSIGHT OF
GENERAL MANAGERS

A decorative graphic consisting of a light blue background with white and darker blue abstract shapes, resembling a stylized map or network of lines.

July 2011

These are Director General's Guidelines issued pursuant to section 23A of the *Local Government Act 1993*.

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DEFINITIONS

Code of Meeting Practice means a code of meeting procedure complying with requirements set out in the *Local Government Act 1993* and the Local Government (General) Regulation 2005

GIPA means the *Government Information (Public Access) Act 2009*

Integrated Planning and Reporting:

Integrated Planning and Reporting Guidelines means the Guidelines issued by the Division of Local Government in 2009

Community Strategic Plan as prescribed under the *Local Government Act 1993*

Delivery Program as prescribed under the *Local Government Act 1993*

Operational Plan as prescribed under the *Local Government Act 1993*

Resourcing Strategy as prescribed under the *Local Government Act 1993*

LGSA means the Local Government and Shires Associations of NSW

LGMA means Local Government Managers Australia (NSW)

Model Code of Conduct means the Model Code of Conduct for Local Councils in NSW prescribed by the *Local Government Act 1993*

Ministerial Investment Order means any investment order approved by the Minister for Local Government under the *Local Government Act 1993*

Quarterly Budget Review Statements means the draft Guidelines issued by the Division of Local Government in October 2010

Senior Staff means senior staff as defined by the *Local Government Act 1993*

Standard Contract means the standard form of contract for the employment of the general manager approved by the Director General (or delegate) pursuant to section 338(4) of the *Local Government Act 1993*

Statutory and Other Offices Remuneration Tribunal means the Statutory and Other Offices Remuneration Tribunal (SOORT) as constituted under the *Statutory and Other Offices Remuneration Act 1975*

The Act means the *Local Government Act 1993*

The Regulation means the Local Government (General) Regulation 2005

PURPOSE

The purpose of these Guidelines is to assist councillors to be aware of their obligations under the *Local Government Act 1993* (the Act) and the Local Government (General) Regulation 2005 (the Regulation) when recruiting, appointing, reappointing and overseeing general managers. It provides a summary of the essential matters that must be addressed by councils when engaging in these processes.

These Guidelines are issued under section 23A of the *Local Government Act 1993* and must be taken into consideration by council's governing body when exercising council functions related to the recruitment, oversight and performance management of general managers.

These Guidelines should be read in conjunction with the following:

- Provisions of the Act and the Regulation 2005
- Local Government General Managers Performance Management Guidelines – LGSA & LGMA
- Practice Note 5: Recruitment of General Managers and Senior Staff – DLG
- The standard form of contract for the employment of the general manager

Any references to sections are references to sections of the Act. Where there are any inconsistencies between these Guidelines and the documents above (with the exception of the Act and Regulation 2005), the Guidelines prevail.

INTRODUCTION

The position of general manager is pivotal in a council. It is the interface between the governing body comprised of elected councillors, which sets the strategy and monitors the performance of the council, and the administrative body of the council, headed by the general manager, which implements the decisions of the governing body. The relationship between the general manager and the councillors is of utmost importance for good governance and a well functioning council.

The Act requires all councils' governing bodies to appoint a person to be general manager (section 334). The Guidelines provide a guide and checklist for councillors to refer to when considering:

- the recruitment and appointment of general managers
- re-appointment of general managers or ending contracts
- conducting performance reviews of general managers, and
- engaging in the day to day oversight of general managers.

They are designed to promote a consistent approach across NSW councils to the recruitment, appointment, and oversight of general managers.

There are appendices to the Guidelines which do not form part of the Guidelines.

These Guidelines were prepared with the assistance of the Local Government and Shires Associations of NSW (LGSA) and the Local Government Managers Association (NSW) (LGMA).

A. STAFFING OF COUNCIL

1. Organisation structure

A council should have sufficient and appropriately qualified staff for the efficient and effective delivery of its functions.

The Act requires the governing body of council to determine an organisation structure, the senior staff positions within that structure and the resources to be allocated towards the employment of staff (s332).

When considering the most appropriate organisation structure for council to adopt, the governing body of council needs to consider what human resources are necessary to successfully achieve the goals articulated in the council's Community Strategic Plan, Delivery Program and Resourcing Strategy. For this reason, a Workforce Strategy is an essential component of a council's Resourcing Strategy. A council's organisation structure should align with its Workforce Strategy and be designed to support its Delivery Program and the achievement of its Community Strategic Plan.

The governing body of council must approve and adopt their organisation structure by council resolution. Councils must review and re-determine the council's organisation structure within 12 months of an ordinary election.

Councils may review and re-determine the council's organisation structure at any other time. Generally a council should consider reviewing its organisation structure in the event of a significant change to its Community Strategic Plan, Delivery Program or Resourcing Strategy.

Councillors are entitled to access the council's organisation structure when required and upon request to the general manager.

2. Appointment of Staff

The only staff position that is appointed by the governing body of council is that of the general manager. The position of general manager is a senior staff position (s334).

The general manager is responsible for the appointment of all other staff (including senior staff) in accordance with the organisation structure and resources approved by the council's governing body (s335(2)).

However, the general manager may only appoint or dismiss senior staff after consultation with the governing body of council (s337).

B. RECRUITMENT AND SELECTION

1. *Requirements of the Local Government Act 1993*

As with the appointment of all council staff, the council must ensure that the appointment of the general manager is made using merit selection principles (section 349).

Recruitment using merit selection is a competitive process where the applicant who demonstrates that they have the best qualifications and experience relevant to the position is appointed.

Equal Employment Opportunity principles also apply to the recruitment of general managers (sections 349 and 344).

The recruitment process must be open and transparent, but the confidentiality of individual applicants must be maintained. A failure to maintain appropriate confidentiality may constitute a breach of the Act and/or Privacy legislation.

2. *The pre-interview phase*

The council's governing body is responsible for recruiting the general manager.

The governing body of council should delegate the task of recruitment to a selection panel and approve the recruitment process. The panel will report back to the governing body of council on the process and recommend the most meritorious applicant for appointment by the council.

The selection panel should consist of at least the mayor, the deputy mayor, another councillor and, ideally, a suitably qualified person independent of the council. The LGSA and the LGMA can be contacted for assistance to identify suitable independent recruitment committee members and recruitment consultants. The selection panel membership should remain the same throughout the entire recruitment process.

Selection panels must have at least one male and one female member (other than in exceptional circumstances).

The council's governing body should delegate to one person (generally the mayor) the task of ensuring:

- the selection panel is established
- the general manager position description is current and evaluated in terms of salary to reflect the responsibilities of the position
- the proposed salary range reflects the responsibilities and duties of the position
- the position is advertised according to the requirements of the Act
- information packages are prepared
- applicants selected for interview are notified.

The mayor, or another person independent of council staff, should be the contact person for the position and should maintain confidentiality with respect to contact by potential applicants.

3. Interview Phase

Interviews should be held as soon as possible after candidates are short listed.

Questions should be designed to reflect the selection criteria of the position and elicit the suitability of the candidate for the position.

Interviews should be kept confidential.

All written references must be checked.

A selection panel must delegate the task of contacting referees to one panel member. Other panel members should not contact referees.

If contact with someone other than a nominated referee is required, the applicant's permission is to be sought.

At least 2 referees must be contacted and asked questions about the candidate relevant to the selection criteria.

Where tertiary qualifications are relied on they should be produced for inspection and if necessary for verification.

Appropriate background checks must be undertaken, for example bankruptcy checks. For more guidance on better practice recruitment background checks, councils are referred to the Australian Standard AS 4811-2006 *Employment Screening* and ICAC publications, which can be found on the ICAC website at <http://www.icac.nsw.gov.au>.

4. Selection Panel Report

The selection panel is responsible for preparing a report to the council's governing body that:

- outlines the selection process
- recommends the most meritorious applicant with reasons
- recommends an eligibility list if appropriate
- recommends that no appointment is made if the outcome of interviews is that there are no suitable applicants.

This report should be confidential and reported to a closed meeting of council.

The council's governing body must by resolution approve the position of the general manager being offered to the successful candidate before that position is actually offered to that candidate.

5. Finalising the appointment

The mayor makes the offer of employment after the governing body of council has resolved to appoint the successful candidate. The initial offer can be made by telephone.

Conditions such as term of the contract (1-5 years) and remuneration package (within the range approved by the governing body of council) can be discussed by phone, but must be confirmed in writing.

The Standard Contract for the Employment of General Managers as approved by the Chief Executive of the Division of Local Government must be used. The Standard Contract (Annexure 3 of these Guidelines) is available in the 'Information for Councils', 'Directory of Policy Advice for Councils' section of the Division's website at <http://www.dlg.nsw.gov.au>.

The terms of the Standard Contract must not be varied. Only the term and the schedules to the Standard Contract can be individualised.

General managers must be employed for 1 – 5 years.

The contract governs:

- the duties and functions of general managers
- performance agreements
- the process for renewal of employment contracts
- termination of employment and termination payments
- salary increases
- leave entitlements.

It should be noted that the Chief Executive of the Division of Local Government cannot approve individual variations to the standard terms of the contract.

Those candidates who are placed on the eligibility list and unsuccessful applicants should be advised of the outcome of the recruitment process before the successful applicant's details are made public.

6. Record keeping

Councils should keep and store all records created as part of the recruitment process including the advertisement, position description, selection criteria, questions asked at interview, interview panel notes, selection panel reports and notes of any discussions with the selected candidate. These records are required to be stored and disposed of in accordance with the *State Records Act 1998*.

C. ROLE OF THE GENERAL MANAGER

Councillors comprise the governing body of a council and make decisions by passing resolutions. It is the general manager's role to implement council decisions and carry out functions imposed by legislation. A council's governing body monitors the implementation of its decisions via reports by the general manager to council meetings.

1. *Key duties of all general managers*

The general manager is generally responsible for the effective and efficient operation of the council's organisation and for ensuring the implementation of the council's decisions without undue delay. The general manager carries out all their functions within the guidelines and policy framework approved by the council.

The general manager also has a role to play in assisting the governing body of council develop its strategic direction. The general manager is responsible for guiding the preparation of the Community Strategic Plan and the council's response to it via the Delivery Program. The general manager is responsible for implementing the Delivery Program and will report to the governing body of council on its progress and conduct regular updates and reviews.

The general manager is responsible for recruiting and appointing staff within the organisation structure determined by the governing body of council. This must be in accordance with the budget approved by the council's governing body and be for the purpose of carrying out the council's statutory functions and implementing council's Community Strategic Plan, Delivery Program and Operational Plan.

The general manager must consult with the governing body of council before appointing or dismissing senior staff. The general manager must report to the council at least annually on the contractual conditions of senior staff (cl.217 of the Regulation).

The general manager is responsible for performance management of staff, including staff discipline and dismissal.

The general manager is also responsible for ensuring councillors are provided with information and the advice they require in order to make informed decisions and to carry out their civic duties.

The governing body of council may direct the general manager to provide councillors with advice or a recommendation, but cannot direct as to the content of that advice or recommendation.

Generally, requests by councillors for assistance or information should go through the general manager, except where he or she has authorised another council officer to undertake this role. The Guidelines for the Model Code of Conduct contemplate that a council should develop a policy to provide guidance on interactions between council officials. This policy should be agreed to by both the council's governing body and the general manager.

Councillors could reasonably expect general managers will report routinely on significant industrial issues and/or litigation affecting the council, particularly those that impact on the council's budget or organisation structure.

The general manager should ensure that the council meeting business papers are sufficient to enable the council to make informed decisions, as well as to allow councillors to properly monitor and review the operations of the council. This will assist councils in ensuring that they are complying with any relevant statutory obligations, keeping within the budget approved by the council and achieving the strategic goals set by the council in its Delivery Program and Operational Plan.

Councillors should receive a number of financial reports during the year, including the Quarterly Budget Review Statements included in the Code of Accounting Practice and Financial Reporting and which are referred to in the draft Quarterly Budget Review Statements Guidelines, reports required by the Regulation and any legislation. In addition, the council should receive at least quarterly a report about any significant litigation affecting the council.

Councillors should also receive reports, at least half yearly, on progress towards implementation of the Community Strategic Plan and Delivery Program (see clause 203 of the Regulation or page 20 of the Integrated Planning and Reporting Guidelines).

Clause 10 of the Model Code of Conduct sets out the obligations on general managers and council staff to provide councillors with information in order for councillors to carry out their civic functions.

Councillors have a right to sufficient information to make informed decisions. Applications for information under the *Government Information (Public Access) Act 2009* (GIPAA) are available to everyone including councillors.

2. Duties delegated to general managers

A governing body of council may delegate certain functions to the general manager. A delegation of a council function must be made by a council resolution (Chapter 12 Part 3 ss 377-381 of the Act).

A governing body of council cannot delegate the functions set out in section 377(1) of the Act.

A council's governing body may not delegate the adoption of a Code of Meeting Practice, a Code of Conduct, or the endorsement of Community Strategic Plans, Resourcing Strategies, Delivery Programs and Operational Plans.

Each governing body of council must review its delegation of functions during the first 12 months of each term of office (s.380). To assist with this review, it is recommended that, within the first 6 months of the new term, the governing body of council reviews what functions have been delegated and to whom they have been delegated to determine if the delegation and the policies guiding those delegated decisions have been working effectively.

It should be noted that the general manager may sub-delegate a function delegated to him/her by the governing body of council (s378). However, the general manager still retains responsibility to ensure that any sub-delegated function is carried out appropriately.

Where functions are delegated to the general manager to perform on behalf of a governing body of council, it is important for the governing body of council to ensure there are policies in place to guide the decision making. The governing body of council should keep policies guiding the delegated decisions under regular review.

For example, where media liaison is delegated to the general manager, the governing body of council should adopt a media policy to guide statements to the media.

It is important that council's governing body ensure that proper records are kept of applications that are determined under delegation and that there is regular reporting on the implementation of delegated functions. This is essential so that council's governing body can be provided with assurance that the delegated function is being undertaken in accordance with any relevant council policies and regulatory framework, eg, development application decisions.

The council's internal audit function is another important internal control to ensure that delegated functions are complying with relevant policy and legislation. A well designed internal audit program should give council independent assurance that council's internal controls are working effectively.

Where authority to make a decision is delegated this does not remove a council's authority to make a decision.

Matters that fall outside the terms of a council policy, delegation, or day to day management (section 335), should be referred to the governing body of council for a decision.

D. DAY-TO-DAY OVERSIGHT AND LIAISON WITH THE GENERAL MANAGER

Council's governing body is required to monitor and review the performance of the general manager as discussed in Section C, above. However, a council's governing body should delegate to the mayor the role of day-to-day oversight of and liaison with the general manager.

The mayor's role in the day-to-day management of the general manager should include:

- approving leave
- approving expenses incurred
- managing complaints about the general manager.

The council's governing body should ensure there are adequate and appropriate policies in place to guide the mayor in the day-to-day oversight of and liaison with the general manager and keep those policies under regular review.

Some of the key policies the governing body of council should have in place relate to:

- leave
- travel
- credit cards
- purchasing and procurement
- expenses and facilities
- petty cash
- financial and non-financial delegations of authority.

The governing body of council should also ensure there are adequate policies in place with respect to expenditure of council funds, as well as adequate reporting requirements in relation to that expenditure.

The council's governing body should satisfy itself that any policy governing the conferral of a benefit on the general manager, such as use of a motor vehicle, allows the actual dollar value of that benefit to be quantified so it can be accurately reflected in the general manager's salary package in Schedule C to the Standard Contract.

Within 6 months of the date of these Guidelines, council's governing body should check to ensure these key policies are in place. They should then be kept under regular review.

E. PERFORMANCE MANAGEMENT

1. *General manager performance management framework*

The general manager is made accountable to their council principally through their contract of employment.

The role of the governing body is to oversee the general manager's performance in accordance with the Standard Contract.

The performance of the general manager must be reviewed at least annually against the agreed performance criteria for the position. Council may also choose to undertake more frequent interim reviews of the general manager's performance.

The agreed performance criteria are set out in an agreement that is signed within three months of the commencement of the contract. Development of the performance agreement is discussed below.

2. *Establishing the framework for performance management*

The council's governing body is to establish a performance review panel and delegate the task of performance reviews of the general manager to this panel. The extent of the delegation should be clear.

It is recommended that the whole process of performance management be delegated to the performance review panel, including discussions about performance, any actions that should be taken and the determination of the new performance agreement.

Performance review panels should comprise the mayor, the deputy mayor, another councillor nominated by council and a councillor nominated by the general manager. The council's governing body may also consider including an independent observer on the panel. Panel members should be trained in the performance management of general managers.

The role of the review panel includes:

- conducting performance reviews
- reporting the findings and recommendations of those reviews to council
- development of the performance agreement.

The governing body of council and the general manager may agree on the involvement of an external facilitator to assist with the process of performance appraisal and the development of new performance plans. This person should be selected by the governing body of council or the performance review panel. The LGSA and the LGMA can be contacted for assistance to identify suitable independent facilitators to assist in the performance management process.

All councillors not on the panel can contribute to the process by providing feedback to the mayor on the general manager's performance.

All councillors should be notified of relevant dates in the performance review cycle and be kept advised of the panel's findings and recommendations.

The panel should report back to the governing body of council in a closed session the findings and recommendations of its performance review as soon as practicable following any performance review. This should not be an opportunity to debate the results or re-enact the performance review of the general manager. The general manager should not be present when the matter is considered.

The performance management report of any council staff member, including the general manager, should not be released to the public and should be retained on the appropriate confidential council employment file. Release of such personal information to other than the Performance Review Panel, the general manager and the councillors in confidence may be a breach of privacy legislation.

3. *Establishing the performance agreement*

The performance agreement is the most important component of successful performance management. The performance agreement should include clearly defined and measurable performance indicators against which the general manager's performance can be measured.

As one of the general manager's key responsibilities is to oversee the implementation of council's strategic direction, it is important to align the general manager's performance criteria to the goals contained in the council's Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan.

The performance agreement should also include the general manager's personal contribution to the council's key achievements and the general manager's core capabilities, including leadership qualities.

The performance agreement should contain but not be limited to key indicators that measure how well the general manager has met the council's expectations with respect to:

- service delivery targets from the council's Delivery Program and Operational Plan;
- budget compliance;
- organisational capability;
- timeliness and accuracy of information and advice to councillors;
- timely implementation of council resolutions;
- management of organisational risks;
- leadership etc.

4. *Performance Review Process*

The Standard Contract requires that the performance of the general manager must be formally reviewed at least annually. The governing body of council may also undertake interim performance reviews as appropriate.

The assessment should include:

- self assessment by the general manager
- assessment by the review panel of the general manager's performance against the performance agreement.

The performance review meeting should be scheduled with sufficient notice to all parties and in accordance with clauses 7.6 and 7.7 of the Standard Contract.

The meeting should concentrate on constructive dialogue about the general manager's performance against all sections of the agreed performance plan.

The meeting should identify any areas of concern and agree actions to address those concerns.

In undertaking any performance review, care must be taken to ensure that the review is conducted fairly and in accordance with the principles of natural justice and that the laws and principles of anti-discrimination are complied with. The

appointment by a council, in agreement with the general manager, of an external facilitator (see above) to advise on the process should assist council in complying with these laws and principles.

The council's governing body must advise the general manager, in writing, in clear terms, the outcome of any performance review.

The new performance agreement for the next period should be prepared as soon as possible after the completion of the previous period. The agreement should be presented to the governing body of council for discussion in a closed meeting together with the outcomes of the previous review period.

5. *Contract Renewal or Separation*

It is important that any decision by the governing body of council to renew a contract for the general manager and the term of that contract be reported back to an open meeting of council, together with the total amount of any salary package agreed to.

Termination of a contract on the basis of poor performance can only occur where there has been a formal review undertaken against the signed performance agreement where performance difficulties were identified and have not subsequently been remedied. For further discussion on separation or renewal of general managers' contracts, see section F, below.

6. *Reward and Remuneration*

An annual increase in the salary package, equivalent to the latest percentage increase in remuneration for senior executive office holders as determined by the Statutory and Other Offices Remuneration Tribunal, is available to the general manager under the Standard Contract on each anniversary of the contract.

Discretionary increases to the general manager's total remuneration package under the provisions of the Standard Contract may only occur after a formal review of the general manager's performance has been undertaken by the governing body of council and the governing body of council resolves to grant such a discretionary increase because of better than satisfactory performance.

Discretionary increases are intended to be an incentive for general managers to perform at their maximum throughout the life of the contract. Discretionary increases are also intended to encourage contracts of the maximum duration.

Any discretionary increases should be modest and in line with community expectations.

All discretionary increases in remuneration, together with the reasons for the increase, must be reported to an open meeting of council.

F. SEPARATION OR RENEWAL

1. *Termination of a general manager's employment*

The Standard Contract for general managers sets out how a general manager's contract can be terminated before its expiry date by either the governing body of council or the general manager (clause 10 of the Standard Contract).

Termination can be by agreement of both parties. The general manager may terminate the contract by giving 4 weeks written notice to the governing body of council.

A governing body of council may terminate the contract by giving 4 weeks written notice where the general manager has become incapacitated for 12 weeks or more, has exhausted their sick leave and the duration of the incapacity is either indefinite or for a period that would make it unreasonable for the contract to be continued.

Termination of a contract on the basis of poor performance may only occur where there has been a formal review undertaken against the signed performance agreement, where performance difficulties have been identified and have not been remedied as agreed. In these instances, the council must give the general manager either 13 weeks written notice of termination or termination payment in lieu of notice calculated in accordance with Schedule C of the Standard Contract.

A governing body of council may terminate the general manager's contract at any time by giving the general manager 38 weeks written notice or pay the general manager a lump sum of 38 weeks remuneration in accordance with Schedule C of the Standard Contract. If there are less than 38 weeks left to run in the term of the general manager's contract, a council can pay out the balance of the contract in lieu of notice.

In the circumstances set out at 10.4 of the Standard Contract, a council may summarily dismiss a general manager. The remuneration arrangements under these circumstances are set out in clause 11.4 of the Standard Contract.

Section 336 (2) of the Act sets out other circumstances where a general manager's appointment is automatically terminated.

2. *Suspension of General Manager*

The governing body of council may suspend the general manager. However, great caution should be exercised when considering such a course of action and it would be appropriate for a governing body of council to seek and be guided by expert advice from a person or organisation that is suitably qualified and experienced in such matters. The governing body may authorise the Mayor to obtain such expert advice.

Suspension should be on full pay for a clearly defined period.

Any decision to suspend a general manager should be taken by a governing body of council at a closed council meeting, having first carefully considered any independent expert advice obtained on the specific matter.

It would not be appropriate to seek advice from council human resources staff on the issue of suspending the general manager.

The principals of natural justice and procedural fairness apply to any decision to suspend a general manager, ie, the general manager must be advised of the circumstances leading to the suspension, the reasons for the suspension, the period of the suspension and be given a right to respond to the decision to suspend.

3. *Dispute resolution*

The Standard Contract contains a dispute resolution clause at clause 17.

These provisions are designed to encourage councils and general managers to attempt to negotiate agreement on disputes where they arise.

The governing body of council should ideally resolve to delegate this function to the mayor or a panel of 3 councillors including the mayor.

If the dispute involves the mayor then the deputy mayor should take the mayor's place. If there is no deputy mayor then the governing body should resolve to appoint another councillor to take the mayor's place.

The governing body of council and general manager should agree on an independent mediator to mediate the dispute. The LGSA and LGMA can provide assistance to their members to identify a suitable mediator.

The Standard Contract allows the Chief Executive of the Division of Local Government to appoint a mediator where the parties cannot agree on one.

4. *Renewing a general manager's contract*

Clause 5 of the Standard Contract describes how a general manager's appointment may be renewed.

The terms of the new contract, and in particular the schedules to the new contract, should be set out in the letter of offer. Before offering a new contract, the council should carefully review the terms of the schedules to the new contract.

The governing body of council should ensure that the performance management terms of the new contract adequately reflect its expectations as to the general manager's performance.

The governing body of council should also have regard to the previous performance reviews conducted under previous contracts.

The process of deciding whether or not to offer a general manager a new contract should be that:

- a performance review is conducted
- findings and recommendations are reported to a closed council meeting in the absence of the general manager
- the closed meeting considers and decides whether or not to offer a new contract and on what terms as set out in the schedules to the contract
- the general manager is then advised of the governing body of council's decision in confidence by the mayor.

Details of the decision to offer a new contract and a salary package should be reported to an open council meeting.

Appendix 1 - Performance Management Timelines

Timeline	Activity	Responsibility
At commencement of each new council	Provide induction training on performance management of the general manager	Council
Within 3 months of the commencement date of the contract	A performance agreement setting out agreed performance criteria must be signed between the general manager and the council	Council or council panel General Manager
Within 2 months of the signing of the performance agreement	The general manager must prepare and submit to council an action plan which sets out how the performance criteria are to be met	General Manager
21 days notice (before annual review)	The general manager gives the council written notice that an annual performance review is due	General Manager
At least 10 days notice	The council must give the general manager written notice that any performance review is to be conducted	Council or council panel
After 6 months	The council may also decide, with the agreement of the general manager, to provide interim feedback to the general manager midway through the annual review period	Council or council panel General Manager
Prior to the annual review	Ensure all councillors on the Review Panel have been trained in performance management of general managers	Council
Prior to the annual performance review	The general manager may submit to council a self assessment of his/her performance	General Manager
Annually	The general manager's performance must be reviewed having regard to the performance criteria in the agreement	Council or council panel General Manager
Annually	The performance agreement must be reviewed and varied by agreement	Council or council panel General Manager
Within 6 weeks of the conclusion of the performance review	Council will prepare and send to the general manager a written statement with council's conclusions on the general manager's performance during the performance review period	Council or council panel
As soon as possible after receipt of the statement	The general manager and the council will agree on any variation to the performance agreement for the next period of review	Council or council panel General Manager

Appendix 2 - Stages of performance management

STAGE	ACTION	PROCESS
1. Developing performance agreement	<ul style="list-style-type: none"> ▪ Examine the position description and contract ▪ List all position responsibilities from the position description ▪ Identify stakeholder expectations ▪ List the key strategic objectives from the Service Delivery and Operational Plans ▪ Develop performance measures (identify indicators - set standards) 	<ul style="list-style-type: none"> ▪ Good planning ▪ Direct and effective communication ▪ Open negotiation ▪ Joint goal setting
2. Action planning	<ul style="list-style-type: none"> ▪ Develop specific strategies to meet strategic objectives ▪ Identify resources ▪ Delegate tasks (eg, put these delegated tasks into the performance agreements for other senior staff) 	<ul style="list-style-type: none"> ▪ Detailed analysis ▪ Two way communication ▪ Detailed documentation
3. Monitoring progress (feedback half way through the review period)	<ul style="list-style-type: none"> ▪ Assess performance ▪ Give constructive feedback ▪ Adjust priorities and reset performance measures if appropriate 	<ul style="list-style-type: none"> ▪ Communication ▪ Avoid bias ▪ Counselling ▪ Coaching ▪ Joint problem solving
4. Annual	<ul style="list-style-type: none"> ▪ Assess performance against measures ▪ Give constructive feedback ▪ Identify poor performance and necessary corrective action ▪ Identify outstanding performance and show appreciation 	<ul style="list-style-type: none"> ▪ Evaluation of the reasons behind performance being as assessed ▪ Open, straightforward communication (as bias free as possible) ▪ negotiation ▪ Counselling, support, training ▪ Documenting ▪ Decision making
5. Developing revised agreement	See stage 1	See Stage 1

Appendix 3 – Standard Contract of Employment

STANDARD CONTRACT OF EMPLOYMENT

for

**GENERAL MANAGERS OF LOCAL
COUNCILS IN NEW SOUTH WALES**

Acknowledgements

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Contract of Employment

This Contract of Employment is made on

Date _____

between

Name of Council _____

[Referred to in this contract as "Council"]

Address _____

and

Name of Employee _____

[Referred to in this contract as "the employee"]

Address _____

1 Position

The position to which this contract applies is that of General Manager.

Note: A person who has held civic office in relation to Council must not be appointed to any paid position on the staff of Council within 6 months after ceasing to hold the office: section 354 of the Act.

2 Term

Subject to the terms and conditions in this contract, Council will employ the employee for a term of:

[Length of term] _____

Note: The term of this contract must not be less than 12 months or more than 5 years (including any option for renewal): section 338 of the Act.

commencing on [date] _____

and terminating on [date] _____

3 Definitions

3.1 In this contract, unless otherwise stated or indicated:

the Act means the *Local Government Act 1993*.

Code of conduct means the document within the meaning of section 440 of the Act adopted by Council and which incorporates the provisions of the model code.

Commencement date means the date that this contract commences as specified in clause 2.

Confidential information means any and all confidential information, data, reports, operations, dealings, records, materials, plans, statistics, finances or other agreements and things (other than that which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of Council or any undertaking from time to time carried out by Council.

Director-General means the Director-General of the New South Wales Department of Local Government.

Equal employment opportunity management plan means the document a council must prepare under Part 4 of Chapter 11 of the Act.

Minister means the New South Wales Minister for Local Government.

Model code means the Model Code of Conduct for Local Councils in NSW prescribed by the Regulation.

Month means a calendar month.

Performance agreement means the agreement referred to in clause 7.

Performance criteria means the criteria to which a performance review is to have regard.

Performance review means a review of the employee's performance conducted in accordance with the procedures under clause 7.

the position means the position referred to in clause 1.

the Regulation means the *Local Government (General) Regulation 2005*.

Senior executive office holder (New South Wales Public Service) means the holder of a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002*.

Statutory and Other Officers Remuneration Tribunal means the Statutory and Other Officers Tribunal constituted under the *Statutory and Other Officers Remuneration Act 1975*.

Termination date means the date that this contract terminates as specified in clause 2.

3.2 Expressions in this contract corresponding with expressions that are defined in the Act have those meanings.

4 Contract operation and application

- 4.1 This contract constitutes a contract of employment for the purposes of section 338 of the Act, and governs the employment of the employee while in the position.
- 4.2 A reference in this contract to any Act or regulation, or any provision of any Act or regulation, includes a reference to subsequent amendments of that Act, regulation or provision.
- 4.3 A reference to a Schedule to this contract refers to a Schedule as may be varied in accordance with this contract, and applies whether or not the Schedule has been physically attached to this contract.
- 4.4 Where the mayor or any other person is lawfully authorised to act as Council or Council's delegate for the purpose of this contract, this contract will be construed as if:
- (a) any reference to Council includes a reference to that authorised person, and
 - (b) any reference to a requirement for Council's approval includes a reference to a requirement for that authorised person's written approval,
- 4.5 Any staff entitlement under a lawful policy of Council as adopted by Council from time to time and that is set out in Schedule A will apply to the employee unless this contract makes express provision to the contrary. Schedule A may be varied from time to time by agreement between the employee and Council, such agreement not to be unreasonably withheld.

Note: Only those policies that create entitlements are to be set out in Schedule A. Schedule A policies are distinct from those which create a *duty or function* as referred to in subclause 6.1.4 and which are *not* required to be set out in Schedule A.

- 4.6 Subject to clauses 7 and 13, the terms of this contract, as varied from time to time in accordance with this contract, represent the entire terms of all agreements between the employee and Council and replace all other representations, understandings or arrangements made between the employee and Council that relate to the employment of the employee in the position.

Note: The contract authorises the making of agreements that are linked to the contract. Clause 7 requires the parties to sign a performance agreement. Clause 13 allows either party to require the other to sign a confidentiality agreement for the purpose of protecting intellectual property.

5. Renewal of appointment

- 5.1 At least 9 months before the termination date (or 6 months if the term of employment is for less than 3 years) the employee will apply to Council in writing if seeking re-appointment to the position.
- 5.2 At least 6 months before the termination date (or 3 months if the term of employment is for less than 3 years) Council will respond to the employee's application referred to in subclause 5.1 by notifying the employee in writing of its decision to either offer the employee a new contract of employment (and on what terms) or decline the employee's application for re-appointment.
- 5.3 At least 3 months before the termination date (or 1 month if the term of employment is for less than 3 years) the employee will notify Council in writing of the employee's decision to either accept or decline any offer made by Council under subclause 5.2.
- 5.4 In the event the employee accepts an offer by Council to enter into a new contract of employment, a new contract of employment will be signed.

6. Duties and functions

- 6.1 The employee will:
- 6.1.1 to the best of their ability, meet the performance criteria set out in the performance agreement as varied from time to time,
- 6.1.2 carry out the duties and functions imposed by the Act and Regulation, or any other Act and associated regulations, which include but are not limited to:
- (a) the efficient and effective operation of Council's organisation,
 - (b) implementing, without undue delay, the decisions of Council,
 - (c) exercising such of the functions of Council as are delegated by Council to the employee,
 - (d) appointing staff in accordance with an organisation structure and resources approved by Council,
 - (e) directing and dismissing staff,
 - (f) implementing Council's equal employment opportunity management plan,

-
- (g) consulting with Council prior to the appointment or dismissal of senior staff,
 - (h) reporting to Council, at least once annually, on the contractual conditions of senior staff,
 - (i) giving immediate notice to Council on becoming bankrupt or making a composition, arrangement or assignment for the benefit of the employee's creditors and providing Council, within the time specified by Council with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment,
 - (j) subject to subclause 6.2.3, providing advice and recommendations to Council or the mayor if directed to do so,
 - (k) not engaging, for remuneration, in private employment or contract work outside the service of Council without the approval of Council,
 - (l) not approving, where appropriate, any member of Council staff from engaging, for remuneration, in private employment or contract work outside the service of Council that relates to the business of Council or that might conflict with the staff member's Council duties,
 - (m) acting honestly and exercising a reasonable degree of care and diligence in carrying out the employee's duties and functions,
 - (n) complying with the provisions of the code of conduct,
 - (o) preparing and submitting written returns of interest and disclosing pecuniary interests in accordance with the Act and the Regulation,

Note: Sections 335, 337, 339, 341, 352, 353, 439, 440 and 445 of the Act.

- 6.1.3 carry out the duties and functions set out in Schedule B as varied from time to time by agreement between the employee and Council, such agreement not to be unreasonably withheld,

Note: Schedule B may include additional duties and functions, for example, those related to special projects.

- 6.1.4 carry out the duties and functions set out in the policies of Council as adopted by Council from time to time during the term of this contract,

-
- 6.1.5 observe and carry out all lawful directions given by Council, in relation to the performance of the employee's duties and functions under this contract,
 - 6.1.6 work such reasonable hours as are necessary to carry out the duties and functions of the position and the employee's obligations under this contract,
 - 6.1.7 obtain the approval of the Council for any absences from the business of Council,
 - 6.1.8 promote ethical work practices and maintain a culture of integrity and professionalism where Council staff members treat each other, members of the public, customers and service providers with respect and fairness,
 - 6.1.9 facilitate Council staff awareness of the procedures for making protected disclosures and of the protection provided by the *Protected Disclosures Act 1994*,
 - 6.1.10 take all reasonable steps to ensure that actions and policies of Council accord with the strategic intent of Council,
 - 6.1.11 take all reasonable steps to maximise compliance with relevant legislative requirements,
 - 6.1.12 maintain effective corporate and human resource planning,
 - 6.1.13 maintain the Council staff performance management system,
 - 6.1.14 maintain satisfactory operation of Council's internal controls, reporting systems (including protected disclosures), grievance procedures, the documentation of decision-making and sound financial management,
 - 6.1.15 develop procedures to ensure the code of conduct is periodically reviewed so that it is in accordance with the Act and Regulation and adequately reflects specific organisational values and requirements,
 - 6.1.16 promote and facilitate compliance with the code of conduct ensuring that each councillor and Council staff member is familiar with its provisions, and
 - 6.1.17 report to Council on any overseas travel taken by the employee or any Council staff member where that travel is funded in whole or in part by Council.
- 6.2 Council:

- 6.2.1 will provide adequate resources to enable the employee to carry out the duties and functions specified in subclause 6.1 and Schedule B,
- 6.2.2 will provide the employee with reasonable opportunities to participate in professional development initiatives relevant to the duties and functions under this contract subject to the operational needs of Council, and
- 6.2.3 will not direct the employee as to the content of any advice or recommendation made by the employee.

Note: section 352 of the Act.

7. Performance agreement and review

- 7.1 Within 3 months after the commencement date, the employee and Council will sign a performance agreement setting out agreed performance criteria.
- 7.2 In the event that the employee and Council are unable to agree on the performance criteria, Council will determine such performance criteria that are reasonable and consistent with the employee's duties and functions under clause 6 and in Schedule B.
- 7.3 The performance agreement may be varied from time to time during the term of this contract by agreement between the employee and Council, such agreement not to be unreasonably withheld.
- 7.4 Within 2 months after signing or varying the performance agreement, the employee will prepare and submit to Council an action plan which sets out how the performance criteria are to be met.
- 7.5 Council will ensure that the employee's performance is reviewed (and, where appropriate, the performance agreement varied) at least annually. Any such review is to have regard to the performance criteria.

Note: Council may review the employee's performance every 6 months or more frequently if necessary.

- 7.6 The employee will give Council 21 days' written notice that an annual performance review in accordance with subclause 7.5 is due.
- 7.7 Council will give the employee at least 10 days notice in writing that any performance review is to be conducted.

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- 7.8 The structure and process of the performance review is at the discretion of Council following consultation with the employee.
- 7.9 The employee may prepare and submit to Council an assessment of the employee's own performance prior to a performance review.
- 7.10 Within 6 weeks from the conclusion of a performance review, Council will prepare and send to the employee a written statement that sets out:
- (a) Council's conclusions about the employee's performance during the performance review period,
 - (b) any proposal by Council to vary the performance criteria as a consequence of a performance review, and
 - (c) any directions or recommendations made by Council to the employee in relation to the employee's future performance of the duties of the position.
- 7.11 The employee and Council will, as soon as possible after the employee receives the written statement referred to in subclause 7.10, attempt to come to agreement on any proposal by Council to vary the performance criteria and on any recommendations by Council as to the future performance of the duties of the position by the employee.
- 7.11 Subject to the employee being available and willing to attend a performance review, Council undertakes that if a performance review is not held in accordance with this clause, this will not operate to the prejudice of the employee unless the employee is responsible for the failure to hold the performance review.

8. Remuneration

- 8.1 Council will provide the employee with the total remuneration package set out in Schedule C.
- 8.2 The total remuneration package includes salary, compulsory employer superannuation contributions and other benefits including any fringe benefits tax payable on such benefits.

Note: Compulsory employer superannuation contributions are those contributions required under the *Superannuation Guarantee Charge Act 1992* of the Commonwealth and any contributions required to be paid for an employee under a superannuation arrangement entered into by Council for that employee. See Schedule C.

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- 8.3 Council may, on only one occasion during each year of this contract, approve an increase in the total remuneration package where the employee's performance has been assessed in accordance with a performance review as being of a better than satisfactory standard.
- 8.4 Any increase in remuneration approved under subclause 8.3 will not be paid as a lump sum.
- 8.5 On each anniversary of the commencement date, the total remuneration package will be increased by a percentage amount that is equivalent to the latest percentage amount increase in remuneration for senior executive office holders as determined by the Statutory and Other Officers Remuneration Tribunal.

Note: When making determinations referred to in subclause 8.5, the Tribunal takes into account key national economic indicators and movements in public sector remuneration across Australia, market conditions, the Consumer Price Index and wages growth as measured by the Wage Cost Index. Tribunal determinations are published in the Government Gazette and are available at www.remtribunals.nsw.gov.au. The Premier's Department issues periodic Memoranda summarising the Tribunals determinations. These Memoranda are available at www.premiers.nsw.gov.au.

- 8.6 The structure of the total remuneration package may be varied from time to time during the term of this contract by agreement between the employee and Council, such agreement not to be unreasonably withheld.
- 8.7 The total remuneration package, as varied from time to time, remunerates the employee for all work undertaken by the employee while in the position. No other remuneration, benefit, overtime or allowances other than those to which the employee may be entitled under this contract will be paid to the employee during the term of this contract.

9. Leave

9.1 General

- 9.1.1 Council will pay remuneration calculated in accordance with Schedule C to the employee proceeding on paid leave under this clause.
- 9.1.2 On the termination of this contract, and if the employee is not re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure, the Council will pay:
- (a) to the employee in the case of annual leave, or

- (b) to the employee or new employer council in the case of long service leave,

accrued but unused leave entitlements calculated at the monetary value of the total remuneration package as specified in Schedule C.

9.1.3 If the employee is re-appointed to the position under clause 5 or appointed to any other position in Council's organisation structure within 3 months after the termination of this contract, the employee will be taken to have continuing service with Council for the purpose of determining the employee's entitlement to annual leave, long service leave and sick leave.

9.1.4 Any leave accrued with Council standing to the credit of the employee immediately prior to entering into this contract will be taken to be leave for the purposes of this contract.

9.2 Annual leave

The employee is entitled to four weeks paid annual leave during each year of employment under this contract to be taken as agreed between the employee and Council.

9.3 Long service leave

9.3.1 The employee's entitlement to long service leave is to be calculated by the same method that applies to a non-senior member of Council staff.

9.3.2 Long service leave is transferable between councils in New South Wales in the same manner that applies to a non-senior member of Council staff.

9.4 Sick leave

9.4.1 The employee is entitled to 15 days paid sick leave during each year of employment under this contract provided that:

- (a) Council is satisfied that the sickness is such that it justifies time off, and
- (b) satisfactory proof of illness to justify payment is provided to Council for absences in excess of two days.

9.4.2 Sick leave will accumulate from year to year of employment under this contract so that any balance of leave not taken in any one year may be taken in a subsequent year.

9.4.3 Council may require the employee to attend a doctor nominated by Council at Council's cost.

9.4.4 Accrued but unused sick leave will not be paid out on the termination of this contract.

9.5 Parental leave

9.5.1 Parental leave includes supporting parent's leave, maternity leave, paternity leave and adoption leave.

9.5.2 The employee is entitled to the same parental leave that a non-senior member of Council staff would be entitled.

9.6 Carer's leave

The employee is entitled to the same carer's leave that a non-senior member of Council staff would be entitled.

9.7 Concessional leave

The employee is entitled to the same concessional leave that a non-senior member of Council staff would be entitled.

9.8 Special leave

Council may grant special leave, with or without pay, to the employee for a period as determined by Council to cover any specific matter approved by Council.

10 Termination

10.1 General

On termination of this contract for any reason the employee will immediately return to Council all property of Council in the employee's possession including intellectual property and confidential information and will not keep or make any copies of such property and information.

10.2 Termination date

The employment of the employee under this contract terminates on the termination date.

10.3 Termination by either the employee or Council

This contract may be terminated before the termination date by way of any of the following:

10.3.1 written agreement between the employee and Council,

10.3.2 the employee giving 4 weeks' written notice to Council,

10.3.3 Council giving 4 weeks' written notice to the employee, or alternatively by termination payment under subclause 11.1, where:

- (a) the employee has been incapacitated for a period of not less than 12 weeks and the employee's entitlement to sick leave has been exhausted, and
- (b) the duration of the employee's incapacity remains indefinite or is likely to be for a period that would make it unreasonable for the contract to be continued,

10.3.4 Council giving 13 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.2 where Council:

- (a) has conducted a performance review, and
- (b) concluded that the employee has not substantially met the performance criteria or the terms of the performance agreement,

10.3.5 Council giving 38 weeks' written notice to the employee, or alternatively, by termination payment under subclause 11.3.

10.4 Summary dismissal

10.4.1 Council may terminate this contract at any time and without notice if the employee commits any act that would entitle an employer to summarily dismiss the employee. Such acts include but are not limited to:

- (a) serious or persistent breach of any of the terms of this contract,

- (b) serious and willful disobedience of any reasonable and lawful instruction or direction given by Council,
- (c) serious and willful misconduct, dishonesty, insubordination or neglect in the discharge of the employee's duties and functions under this contract,
- (d) failure to comply with any law or Council policy concerning sexual harassment or racial or religious vilification,
- (e) commission of a crime, resulting in conviction and sentencing (whether or not by way of periodic detention), which affects the employee's ability to perform the employee's duties and functions satisfactorily, or in the opinion of Council brings Council into disrepute,
- (f) absence from the business of Council without Council approval for a period of 3 or more consecutive business days.

10.4.2 This contract is terminated immediately without notice if the employee 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.

11 Termination payments

- 11.1 On termination of this contract under subclause 10.3.3, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 4 weeks' remuneration calculated in accordance with Schedule C.
- 11.2 On termination of this contract under subclause 10.3.4, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 13 weeks' remuneration calculated in accordance with Schedule C.
- 11.3 On termination of this contract under subclause 10.3.5, where written notice has not been given, Council will pay the employee a monetary amount equivalent to 38 weeks' remuneration calculated in accordance with Schedule C, or the remuneration which the employee would have received if the employee had been employed by Council to the termination date, whichever is the lesser.
- 11.4 On termination of this contract under subclause 10.3.1, 10.3.2, 10.4.1 or 10.4.2, Council will pay the employee remuneration up to and including the

date of termination calculated in accordance with Schedule C and any other payment to which the employee is entitled under this contract.

12 Expenses and credit cards

In addition to any duties or entitlements that may be set out in any relevant policies of Council as adopted by Council from time to time, the employee will:

- 12.1 keep such records of expenses, travel and motor vehicle use as required by Council from time to time,
- 12.2 be reimbursed by Council for expenses properly incurred on Council business, subject to Council's prior approval to this expense being incurred,
- 12.3 only use any credit card provided by Council for expenses incurred on Council business, and
- 12.4 return any credit card provided by Council on request from Council.

13 Intellectual property

- 13.1 Any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract is the sole property of Council and Council will unless otherwise agreed have the exclusive right to use, adapt, patent and otherwise register it.
- 13.2 The employee will immediately disclose to Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee after the commencement date to enable Council to ascertain whether it was discovered, developed or produced wholly outside and wholly unconnected with the course of employment under this contract.
- 13.3 To protect disclosures made in accordance with subclause 13.2, Council or the employee may require a confidentiality agreement to be signed prior to, during or immediately after discussion of the intellectual property being considered.

Note: IP Australia, the Commonwealth Government intellectual property agency, has developed a Confidentiality Agreement Generator for the purpose of preparing intellectual property confidentiality agreements. It is available at <http://www.ipaustralia.gov.au/smartstart/cag.htm>.

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- 13.4 The employee assigns to Council by way of future assignment all copyright, design, design right and other property rights (if any) in respect to any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract.
- 13.5 At the request and expense of Council the employee will complete all necessary deeds and documents and take all action necessary to vest in Council any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment under this contract and obtain for Council the full benefit of all patent, trademark, copyright and other forms of protection throughout the world.

14 Confidential Information

The employee will not divulge any confidential information about Council either during or after the term of their employment under this contract.

15 Waiver

The failure of either the employee or Council to enforce at any time any provision of this contract or any right under this contract or to exercise any election in this contract will in no way be considered to be a waiver of such provision, right or election and will not affect the validity of this contract.

16 Inconsistency and severance

- 16.1 Each provision of this contract will be read and construed independently of the other provisions so that if one or more are held to be invalid for any reason, then the remaining provisions will be held to be valid.
- 16.2 If a provision of this document is found to be void or unenforceable but would be valid if some part were deleted, the provision will apply with such modification as may be necessary to make it valid and effective.

17 Dispute resolution

- 17.1 In relation to any matter under this contract that may be in dispute, either the employee or Council may:

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- (a) give written notice to each other of the particulars of any matter in dispute, and
 - (b) within 14 days of receiving a notice specified in subclause 17.1(a), a meeting will be convened between Council (along with any nominated representative of Council) and the employee (along with any nominated representative of the employee) in an attempt to resolve the dispute.
- 17.2 The employee and Council will attempt to resolve the dispute at the workplace level.
- 17.3 Upon failure to resolve the dispute at the workplace level, the employee and Council will:
- (a) refer the dispute to an independent mediator as agreed by the employee and Council, or otherwise as appointed by the Director-General,
 - (b) agree to participate in any mediation process in good faith, with such mediation to operate in a manner as agreed by the employee and Council, and
 - (c) acknowledge the right of either the employee or Council to appoint, in writing, another person to act on their behalf in relation to any mediation process.
- 17.4 The cost of the mediation service will be met by Council.
- 17.5 The employee and Council will each be responsible for meeting the cost of any advisor or nominated representative used by them.

18 Service of notices and communications

- 18.1 Any communication, including notices, relating to this contract will be in writing and served on the employee or Council at their last known residential or business address in accordance with subclause 18.2.
- 18.2 Any written communication including notices relating to this contract is taken to be served:
- (a) when delivered or served in person, immediately,
 - (b) where served by express post at an address within New South Wales in the Express Post Network, on the next business day after it is posted,

- (c) where served by post otherwise in the ordinary course of postage, as set down in Australia Post's delivery standards, and
- (d) where sent by facsimile, within standard business hours otherwise on the next business day after it is sent.

19 Variations

- 19.1 Where this contract provides that its terms may be varied, that variation will be by agreement in writing signed by the employee and Council.

Note: See clauses 4.5, 6.1.3, 7.3, 8.6 and 19.2.

- 19.2 Where the Director-General approves an amended or substitution standard form of contract for the employment of the general manager of a council, the provisions of this contract may be varied by agreement between the employee and Council to the extent that they are consistent with the provisions of that amended or substitution standard form of contract.

Note: See section 338 of the Act.

20 Other terms and conditions

- 20.1 The employee and Council acknowledge that they have sought or had the opportunity to seek their own legal and financial advice prior to entering this contract.
- 20.2 In accordance with section 731 of the Act, nothing in this contract gives rise to any action, liability, claim or demand against the Minister, the Director-General or any person acting under their direction.

21 Signed by the employee and Council

COUNCIL:

The Seal of

_____ [Council name]

_____ [Seal]

affixed by authority of a resolution of Council.

Signed
by Council

Date

Name of signatory
in full [printed]

Office held [printed]

Signed by Witness

Name of Witness
in full [printed]

THE EMPLOYEE:

Signed
by the employee

Date

Name of employee
in full [printed]

Signed by Witness

Name of Witness
in full [printed]

Schedule A – Council policies

Note: This Schedule may be varied during the term of this contract in accordance with subclauses 4.5 and 19.1 of this contract.

This Schedule operates on and from

Date _____

For the purposes of subclause 4.5 of this contract, the following policies apply to the employee:

Signed by Council _____

Signed by the employee _____

Schedule B - Duties and functions

Note: This Schedule may be varied during the term of this contract in accordance with subclauses 6.1.3 and 19.1 of this contract.

This Schedule operates on and from

Date _____

In addition to the duties and functions specified in clause 6 of this contract, the employee will carry out the following duties and functions:

Signed by Council _____

Signed by the employee _____

Schedule C - Remuneration

Note: This Schedule may be varied during the term of this contract in accordance with subclauses 8.7 and 19.1 of this contract.

This Schedule operates on and from

Date _____

The Annual Total Remuneration Package is as follows:

\$ _____

The Total Remuneration Package is comprised of:

ANNUAL REMUNERATION	\$

The employee agrees and acknowledges that deductions under subclause 8.2 of this contract are made principally for the benefit of the employee and that the Council relies on that statement in providing the non-cash benefits requested by the employee.

In the case of an employee who is a member of a defined benefit division of the Local Government Superannuation Scheme (or equivalent) compulsory employer superannuation contributions are the long term or “notional” employer contribution, as advised by the Actuary for the Local Government Superannuation Scheme from time to time.

The employee’s superable salary will be the amount of the total remuneration package less the amount of compulsory superannuation contributions.

Signed by Council _____

Signed by the employee _____



Varying development standards: A Guide

August 2011

The NSW planning system provides flexibility in planning controls by providing the ability for a council to vary development standards in certain circumstances. This Guide will assist applicants to vary development standards where appropriate as well as councils in determining applications.

Introduction

Development standards are a means to achieving an environmental planning objective and can be numerical or performance based. Some developments may achieve planning objectives despite not meeting the required development standards. The planning system provides flexibility to allow these objectives to still be met by varying development standards in exceptional cases.

If someone wishes to vary a development standard contained within an environmental planning instrument, their development application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This guide outlines matters that need to be considered in these applications.

This guide is to also assist council when determining applications to vary development standards where they are required to take into consideration whether the non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further advice and assistance is available from the Regional Offices of the Department of Planning & Infrastructure. Throughout these guidelines reference is made to various functions exercised by the Director-General. However, the first point of contact in relation to varying a development standard should always be the local Regional Office.

How are development standards varied?

The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:

- Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP); and
- State Environment Planning Policy No 1 – Development Standards (SEPP1).

Both Clause 4.6 and SEPP 1 provide flexibility in the application of planning controls by allowing councils to approve a development

application that does not comply with a development standard where this can be shown that compliance is unreasonable or unnecessary.

Clause 4.6

In new local environmental plans (in the Standard Instrument format), clause 4.6 *Exception to development standards (compulsory)* replaces SEPP 1. The Standard Local Environmental Plan incorporates many State environmental planning policies, including SEPP 1. SEPP 1 does not apply to land to which a Standard Instrument LEP applies as Clause 4.6 provides for exceptions to development standards (see **Appendix 1**).

If your council has recently adopted a Local Environmental Plan (LEP) that was prepared under the standard instrument (known as a Standard Instrument LEP), an application to vary a development standard can be made under Clause 4.6. This clause was modeled along the lines of SEPP 1 but with some differences. It aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 also requires the concurrence of the Director-General to be obtained prior to the granting of consent for development that contravenes a development standard (see section on Concurrence below).

Clause 4.6 is not to be used in Rural or Environmental zones to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in the following SI zones: Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

SEPP 1

SEPP 1 (see **Appendix 2**) applies where council has an existing LEP that was not prepared through the Standard Instrument and to any development standard that is not a 'non-discretionary development standard'. In its 25 years of operation, it has been a valuable planning tool for allowing flexibility.

A consent authority may not grant consent to a development application to subject to a SEPP 1 application, except with the concurrence of the Director-General of Planning & Infrastructure. Consent authorities have broad delegation from the Director-General to assume concurrence in respect of SEPP 1 applications. The main exception is an application to subdivide land zoned rural or non-urban where permissibility of residential accommodation development is linked to the subdivision standard (see section on Concurrence below).

What is an environmental planning instrument?

Environmental Planning Instruments (EPIs) are made under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and guide development through mandatory legal requirements on a wide range of issues. Provisions within EPIs are not able to be varied by a council under delegation without the concurrence of the Director General. In exceptional cases, SEPP 1 or Clause 4.6 for Standard Instrument LEPs permits these standards to be relaxed or varied where a case is justified on planning grounds.

EPIs can include:

- State Environmental Planning Policies (SEPPs)
- Deemed SEPPs
- Local Environmental Plans (LEPs)
- Deemed EPIs

Most variations relate to the development standards contained within a Local Environmental Plan (LEP), which is the primary document to guide planning decisions for local government areas. Through zoning and development controls, they allow councils and other consent authorities to manage the ways in which land is used.

What are 'Standard Instrument LEPs'?

In 2006, the NSW Government gazetted the Standard Instrument Order which set out a template for preparing new LEPs. Since then many councils in NSW have prepared a Standard Instrument LEP which introduces consistency of approach for terminology, zoning and principal development standards. Councils are able to include localised planning objectives and provisions specific to their area where justified and consistent with the mandatory provisions of the template, as well as determine zoning, additional land uses, heritage items, and principal development standards such as height, floor space ratio and minimum lot sizes.

SEPP 1 will be retained until all council have new SI LEPs in place. When this occurs, there will be no need for SEPP 1 to exist and it will be repealed.

What are development standards?

The term 'development standards' is defined in the *Environmental Planning and Assessment Act 1979*. They are provisions in environmental planning instruments that guide development to be carried out in accordance with particular requirements under certain circumstances, such as minimum building heights in residential areas. They can be numerical or may require compliance with a particular condition or require facilities to be provided in association with certain development.

The Standard Instrument LEPs include Principal Development Standards being minimum lot sizes, height and floor space ratio. Development standards in non-Standard Instrument LEPs include both numerical and non-numerical standards and will vary between each council area.

A proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard would be deemed to be unreasonable and unnecessary and council could approve a variation.

It is important to note that even if a development standard is met, it does not guarantee that it will be approved. All development applications are to be assessed on a merits basis and as such may be refused despite development standards being met.

Making an application to vary a development standard

If an applicant wishes to vary a development standard in an environmental planning instrument, they can formally lodge a written application justifying the variation along with their development application to council. Applicants may use the form (at **Appendix 3**) or a letter to justify the variation to the development standards. This Guide also contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard.

Because of the nature of such variation to a development standard, an applicant may wish to engage a professional to prepare your submission, someone who is aware of the legal and technical requirements. A professional may be, for example, a town planning consultant, an architect or similar. To locate a suitable professional, applicants may wish to contact the relevant industry association (Planning Institute of Australia, Australian Institute of Architects or similar).

The applicant and their consultant may wish to have a pre-development application meeting with a council development assessment officers to discuss the development proposal and any proposed development standard variations. The council officer may be able to provide some information on whether the type of proposed variation has previously been considered by council, and in general terms how similar types of variations have been viewed by council. In addition, the council officer may be able to offer some general information regarding the size of the proposed variation and how similar size variations have been viewed by council in the past.

It is important to note that there is no automatic right to vary a development standard. SEPP 1 and Clause 4.6 places the onus on the applicant to provide a written justification for the variation to the development standard through application.

Applicants should also make themselves aware of the 'five part test' outlined on page 5.

Matters to address in an application

When applicants lodge development applications and associated applications to vary a development standard, they must give grounds of objection to the development standard. Variation of a development standard may be justified where it is consistent with the objectives that the relevant environmental planning instrument is attempting to achieve. The application must:

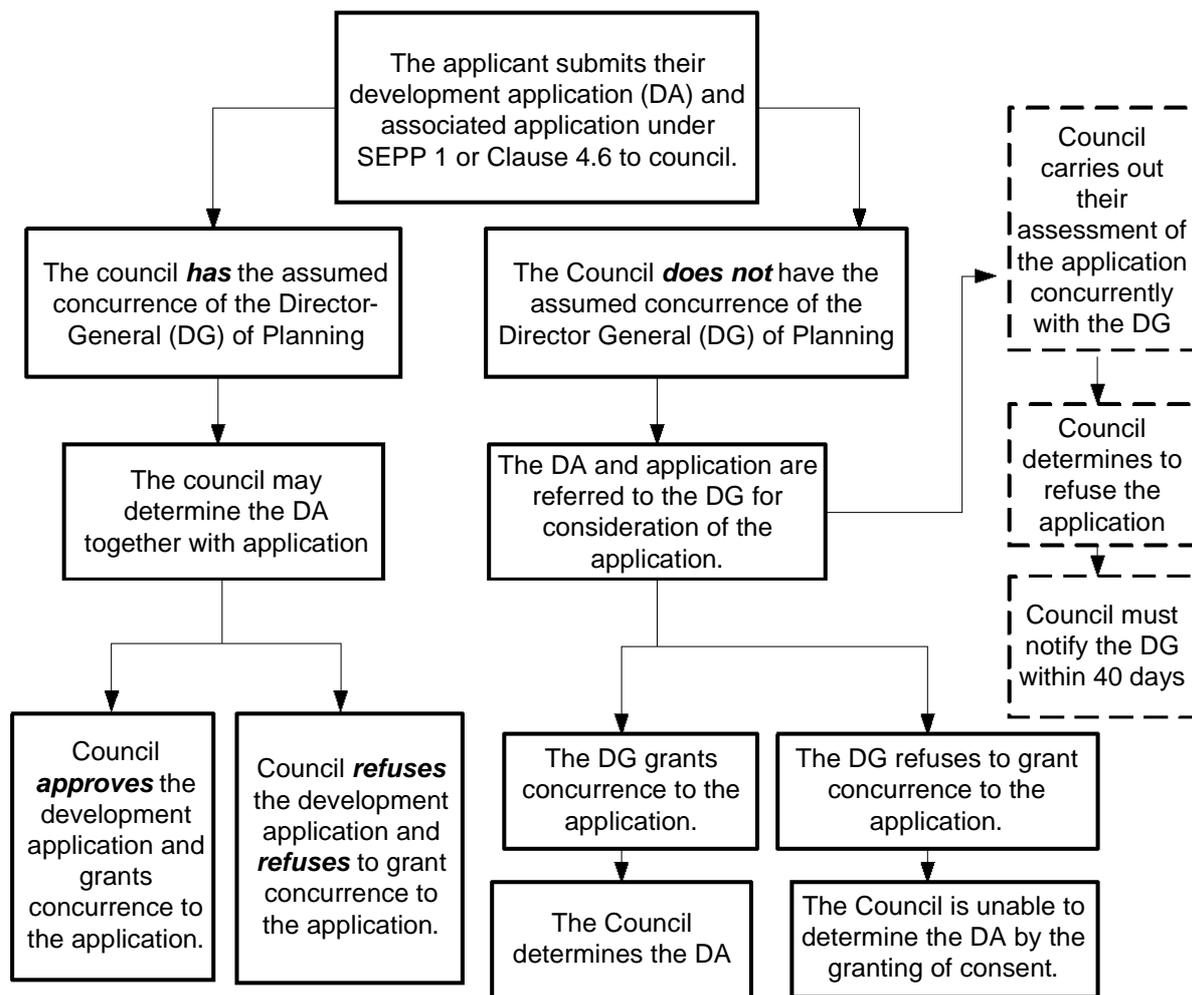
- address whether strict compliance with the standard, in the particular case, would be unreasonable or unnecessary and why, and
- demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Refer to the Application Form at **Appendix 3**.

What does the application process involve?

Councils may determine development applications with associated applications to vary development standards only where they have assumed concurrence (see section on Concurrence below). Where councils do not have assumed concurrence, they must refer the SEPP 1 application to the Director-General of Planning & Infrastructure for consideration and determination, and if concurrence is granted, then the council may consider and determine and development application.

Section 79B of the *Environmental Planning and Assessment Act 1979* (EP&A Act) sets out the procedure for determining development applications with concurrence requirements such as SEPP 1 or Clause 4.6 applications. The process is shown below.



Consideration of applications by councils

In deciding whether to approve a development application and associated application to vary a standard, council must consider whether non-compliance with the development standard raises any matter of significance for State and regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. As part of the consideration, council should examine whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and, in particular, the underlying objective of the standard.

Consideration of Clause 8 in SEPP 1

Clause 8 requires council to assess whether non-compliance with the development standard raises any matter of significance for State and regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. Councils must furnish written evidence that they had considered the matters referred to in clause 8 of SEPP 1 in their assessment of an application.

The 'five part test'

Written applications to vary development standards will not only address the above matters but may also address matters set out in the 'five part test' established by the NSW Land and Environment Court. Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

What objectives should council consider when assessing applications?

The planning objectives for certain land generally identified in State (Metropolitan and Regional Strategies) and more specifically in local environmental planning instruments. Objectives may relate to the purpose of the zone and intended strategic land use direction, or they may be set out in local provisions addressing matters such as residential amenity, heritage conservation, riparian corridor protection etc.

The planning objectives of a development standard are usually stated in the relevant clause, as well as being interpreted within the context of the whole EPI. For example, a floor space ratio for commercial development in a business zone is designed to indicate the desired scale of development for business, office and retail purposes. It reflects the intended regional and local distribution of commercial space and the capacity of the transport system to service the area.

The planning objectives for a locality may overlap to some extent with the objective of the development standard, but are likely to include a broader range of considerations than those attached to the development standard. In some cases, to assist councils in identifying matters of State or regional importance, councils have been notified directly by the Department's regional offices concerning the standards regarded as having State or regional significance in their region.

What objectives should councils consider where council has a Standard Instrument LEP?

Some councils may have implemented a new Standard Instrument LEP or may be preparing a Standard Instrument LEP. When assessing applications for varying development standards under Clause 4.6 of the Standard Instrument, council should take into account both the mandatory zone objectives as well as any additional objectives. Mandatory (core) zone objectives are included in the Standard Instrument to ensure consistency in how zones are applied across NSW and reflect the intended strategic land use direction. Councils when preparing their Standard Instrument LEPs can apply additional LEP zone objectives relevant to their locality which clearly articulate what additional goals are intended to be achieved in the zone, provided they support the core objectives.

Councils should also take into consideration mandatory or added objectives set out in clauses contained in Part 4 of the SI – *Principal Development Standards*. The objectives of these clauses explain the intention of planning tools to be used to achieve the overall objectives of the zone. The hierarchy of policy intention is established from the overarching *Aims of the Plan* (SI Clause 1.2), zone objectives, land use table and the objectives in SI clauses setting out development standards (see [PN 09-005](#)).

Concurrence of the Director-General to vary development standards

An environmental planning instrument may provide that consent cannot be given by a local council unless the Director-General or Minister grants concurrence and therefore agrees to the granting of consent. Where the council is satisfied that the application to vary a development standard is well founded and wishes to grant consent to that development application, it may, with the concurrence of the Director-General, grant consent to that development application.

Assumed concurrence under SEPP 1

In March 1989, councils were advised by Circular B1 that they may assume the Director-General of Planning & Infrastructure's concurrence under SEPP 1 in relation to all development applications, with the following exceptions:

- (a) To erect a dwelling on an allotment of land zoned rural or non-urban or within the zones listed in Schedule A to Circular B1 (see **Appendix 4**);
- (b) To subdivide land which is zoned rural or non-urban or within the zones listed in Schedule A to this Circular B1 (see **Appendix 4**);

Councils may assume the Director-General's concurrence under SEPP 1 in relation to these applications but only if:

- (i) Only one allotment does not comply with the minimum area; and
- (ii) That allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.

Concurrence required from Director-General under SEPP 1

The *EP&A Regulation* contains provisions setting out the requirements for all development applications which have a concurrence requirement. Concurrence from the Director-General is required if a development application and associated SEPP 1 application is for the types of developments listed in (a) and (b) above and does not comply with (i) or (ii) above.

In these circumstances, the council must forward a copy of the development application and associated SEPP 1 application to the

Department of Planning & Infrastructure (to the relevant Regional Team) for consideration by the Director-General (or delegate) within 2 days of receiving the DA.

The Director-General then either grants concurrence (with or without conditions) or refuses concurrence. The Department of Planning & Infrastructure must advise the council (within 40 days of receiving the SEPP 1 application) of the Director-General's decision on the SEPP 1 application. However, the council may refuse the DA prior to the 40-day concurrence period, if so, the council must advise the Department of Planning & Infrastructure of the determination.

Where a council has been separately notified since 26 April 1985 of a modification to or revocation of the assumed concurrence arrangements described above, that modification or revocation continues to apply. If in doubt, councils should contact the Department of Planning & Infrastructure Regional Team.

Boundary adjustments

In August 1991, the Director-General advised councils of additional assumed concurrence arrangements under section 81 of the *EP&A Act* relating to boundary adjustments.

The Director-General's concurrence may be assumed in respect of development applications with associated SEPP 1 applications for boundary adjustments between two existing allotments where both are already below the minimum allotment size for the zone, subject to the following conditions:

- (a) that no additional allotments are created;
- (b) that no additional housing entitlement is created and;
- (c) the council is satisfied that any existing or potential agricultural use of the land will not be compromised

Assumed concurrence under the Standard Instrument

In May 2008, the Planning Circular PS 08-003 advised councils that arrangements for the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts clause 4.6 of the Standard Instrument or similar clause, which provide for exceptions to development standards. Notification of this is in the box below.

Notification of assumed concurrence of the Director-General under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument

- (1) Under clause 64 of the Environmental Planning and Assessment Regulation 2000, council is notified that it may assume the Director-General's concurrence for exceptions to development standards, subject to paragraphs (2) and (3), in respect of all applications made under:
- (a) clause 4.6 (or the former clause 24, or any future amended version of this clause) of the Standard Instrument (Local Environmental Plans) Order 2006, or
- (b) any other clause that is based on a substantially similar format and has a substantially similar effect to the clause described in (1)(a), where such a clause is adopted in an environmental planning instrument to provide for exceptions to development standards.
- (2) Council may assume the Director-General's 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:
- (a) only one allotment does not comply with the minimum area, and
- (b) that allotment has an area equal to or greater than 90% of the minimum area specified in the development standard.
- (3) This notification may be varied or revoked by further written notice provided by the Director-General.

Local environmental plans that adopt the Standard Instrument will repeal the application of SEPP 1 for the land to which the plan applies. To avoid any doubt, Planning Circular PS 08-003 provides that the above notification

does not vary existing notifications to councils for assumed concurrence of the Director-General in respect of applications under SEPP 1.

Rural subdivision and the Standard instrument

It should be noted, that Clause 4.6 of the Standard Instrument LEP states:

- (6) Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

This means, variations to these development standards, greater than those set out above, cannot be approved by Council.

Boundary adjustments in LEPs under the Standard Instrument

Clause 2.6 Subdivision – consent requirements – (Please note: proposed to be amended in early 2011) provides that a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings or lots that are smaller than the minimum size shown on the Lot Size Map in relation to the land concerned, is a development for which consent is not required.

What should councils send to the Department when seeking concurrence under SEPP 1?

For matters where the Director-General's assumed concurrence has been given, councils will have to seek the Director-General's concurrence on a case by case basis. When seeking the Director-General's concurrence to the use of SEPP 1, councils are required to provide all the information necessary to enable a decision to be made. This includes:

- a copy of the development application,
- a copy of the report to the council, and
- a copy of the applicant's objection pursuant to clause 6 of SEPP 1.

If the SEPP 1 application is supported by the Director-General (or his delegate) then the Director-General grants concurrence, and advises council. Then the council may not determine the development application by the granting of consent.

If the SEPP 1 application is not supported by the Director-General, the Director-General refuses concurrence and advises council. Then the council is unable to grant consent and must determine the application by refusing consent.

If any further clarification or advice is required either on the broad interpretation of the Policy or on matters of State or regional significance, councils should contact the Department's regional office for their area.

What are council's reporting requirements?

In November 2008, Planning Circular PS 08-14 advised councils that all development applications with SEPP 1 applications with variations greater than 10% must be reporting to council for determination. This was in response to the findings of the Independent Commission Against Corruption investigation into corruption allegations affecting Wollongong City Council.

Councils were required, amongst other things, to:

- Require all development applications where there has been a variation greater than 10% in standards under SEPP 1 to be determined by full council (rather than general manager or nominated staff member); and
- Provide a report to each council meeting on the development applications determined where there had been a variation in standards under SEPP 1.

A small number of councils have obtained limited exemptions to the reporting requirements outlined in (a) by making a written application to the Department of Planning & Infrastructure. These limited exemptions have related to a specific

development type and specific development standard. In addition, as part of the limited exemption, these councils are required to review these specific development types and associated specific development standards as part of the preparation of their new Standard Instrument LEP. These limited exemptions have only been supported in cases where there has been a clearly demonstrated need for and benefit from an exemption.

Effects of varying development standards

In addition to the legislative requirements outlined above, there are additional matters that councils should be aware of when assessing and determining variations to development standards.

Cumulative effects

Councils should consider whether the cumulative effect of similar approvals will undermine the objective of the development standard or the planning objectives for the zone. If the council considers that the decision should be made not to approve others like it.

If the development standard is clearly inappropriate in general terms, the council should review its planning controls by means of a local environmental plan. The new Standard Instrument LEPs which are being prepared by councils should include a review of any development standards that are the subject of frequent SEPP 1 applications.

Consideration when preparing a Standard Instrument LEP

Where a local environmental plan is being prepared under the Standard Instrument LEP, councils should be cautious in using SEPP 1 on the basis of the draft plan, since there is no guarantee that a draft instrument will proceed to finalisation. Repeated application of the Policy under these circumstances can bring about a de facto amendment to the plan. The policy is an administrative rather than a policy-making tool and the distinction needs to be kept clearly in mind.

Standards involving existing uses

Special care needs to be taken when dealing with development applications to extend more than 10% in the floor space of the premises associated with the existing use, as specified

in Clause 41 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*. The underlying purpose of these provisions is to prevent excessive expansion of existing uses and to permit gradual and controlled adaptation of these uses to those which are compatible with the zoning. The Policy should not be used to allow expansion of existing uses in a way which is substantially inconsistent with the intentions of the zone.

Monitoring the use of SEPP 1 & Clause 4.6

In October 1989, the Department's Circular B1 requested that councils monitor the use the Director Generals' assumed concurrence under SEPP 1 on a quarterly basis. In May 2008, Planning Circular PS 08-003 reminded councils to keep accurate records of the use of SEPP 1 and clause 4.6 of the Standard Instrument (or similar provision). An updated reporting form was provided (see **Appendix 6**).

The quarterly reports on SEPP 1 usage are required for the quarters ending March, June, September and December each year. Quarterly reports are to be emailed to developmentstandards@planning.nsw.gov.au. The Department intends to integrate reporting of SEPP 1 usage into the Local Development Performance Monitor.

In response to the findings of an Independent Commission Against Corruption (ICAC) investigation into corruption allegations affecting Wollongong City Council, all NSW councils were advised through Planning Circular PS 08-014 *Reporting variations to development standards* that they were required to adopt a number of additional reporting measures in respect of their SEPP 1 usage and that the Department would be undertaking a number of random audits on such matters. Those measures provide increased transparency and accountability in the making of SEPP 1 decisions.

Monitoring of councils' SEPP 1 returns helps the Department to check whether councils are keeping accurate records of the use of SEPP 1, to assess whether any particular development standards are being regularly varied by a council and may require review, and to detect anomalies (e.g. exceeding of delegations) if they are occurring. In addition, councils are required, amongst other things, to

establish a register of development applications determined with variations in standards under SEPP 1; and make the register available to the public on the council's website.

In 2009, four councils were drawn at random to be audited by the Department: Blue Mountains, Byron, Tenterfield, and Wingecarribee Councils. The audit found that the four councils mostly followed due process in making the SEPP 1 decisions that were audited, although each had some inadequacies in their reporting and/or administrative procedures. A summary can be found at www.planning.nsw.gov.au.

Other information

Complying development

SEPP 1 does not apply to complying development. This means that predetermined development standards for complying development cannot be varied using a SEPP 1 application.

SI Clause 4.6(8)(a) also excludes a development standard for complying development from the application of this clause.

SEPP 1 and Joint Regional Planning Panels

In May 2010, Circular PS 10-009 *Joint Regional Planning Panels – Review and Changes* advised councils that the Joint Regional Planning Panels Operational Procedures now provide information regarding the determination of DAs by a regional panel and consideration of associated SEPP 1 applications.

Obtaining concurrence from the Director General to the SEPP 1 application is a matter for the relevant council. However, where concurrence is assumed there are no additional procedural requirements for council to follow.

As the consent authority, it will be a matter for the regional panel to determine that a SEPP 1 objection is well founded and to form the opinion that granting consent is consistent with the aims of SEPP 1.

Further information

If you are an applicant, enquiries regarding the use of SEPP 1 or the application of SI Clause 4.6 *Exceptions to development standards* should be directed to your local council. Councils with enquiries should direct them to their relevant Department of Planning Regional Team.

General information on the NSW planning system can be found at www.planning.nsw.gov.au

Definitions

Act (or **EP&A Act**) means the *Environmental Planning and Assessment Act 1979*.

development control plan (or **DCP**) has the same meaning as in the EP&A Act and means a development control plan made, or taken to have been made, under Division 6 of Part 3 and in force.

development standards has the same meaning as in the EP&A Act and means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

Environmental planning instrument has the same meaning as in the EP&A Act and means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force.

local environmental plan (or **LEP**)— see section 24 (2) of the EP&A Act.

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 (extract)

5 The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,

State environmental planning policy (or **SEPP**) see section 24 (2) of EP&A Act.

Source Documents

Department of Planning, Additional assumed concurrence arrangements under section 81 of the *Environmental Planning and Assessment Act 1979*, relating to boundary adjustments proposed for the Director's concurrence under State Environmental Planning Policy No. 1 – Development Standards.

Department of Urban Affairs and Planning, Circular No. B1 State Environmental Planning Policy No. 1 – Development Standards. Issued 17 March 1989.

Department of Planning, Planning Circular PS 08-003, *Variations to development standards*. Issued 9 May 2008.

Department of Planning, Planning Circular PS 08-014, *Reporting variations to development standards*.

Department of Planning, Use of State Environmental Planning Policy No. 1: *Development Standards in Rural Areas*.

Environmental Planning and Assessment Act 1979.

Environmental Planning and Assessment Regulation 2000.

Standard Instrument – Local Environmental Plan.

State Environmental Planning Policy No. 1 – Development Standards.

Wehbe v Pittwater Council [2007] NSWLEC 827 (21 December 2007).

Appendix 1: Clause 4.6

Exceptions to development standards [compulsory]

- (1) The objectives of this clause are:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Direction. Additional exclusions may be added.

Appendix 2: SEPP 1

State Environmental Planning Policy No 1—Development Standards

1 Name of Policy

This State environmental planning policy may be cited as State Environmental Planning Policy No 1—Development Standards (hereinafter referred to as **the Policy**).

2 Definitions

In this Policy, except in so far as the context or subject-matter otherwise indicates or requires:

Act means the Environmental Planning and Assessment Act 1979.

development application includes an application for consent referred to in clause 7 (1) of the Miscellaneous Acts (Planning) Savings and Transitional Provisions Regulation 1980.

development standards has the meaning ascribed thereto in section 4 (1) of the Act.

3 Aims, objectives etc

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

4 Application of Policy

(1) This Policy applies to the State, except as provided by this clause.

(2) This Policy does not apply to the land shown edged heavy black and shaded on the map marked “State Environmental Planning Policy No 1—Development Standards (Amendment No 5)” deposited in the head office of the Department of Planning and copies of which are deposited in the office of Wollongong City Council.

4A Policy does not apply to complying development

This Policy does not apply to complying development.

5 Relationship to other environmental planning instruments

This policy prevails over any inconsistency between it and any other environmental planning instrument, whenever made.

6 Making of applications

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

7 Consent may be granted

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

8 Concurrence

The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

- (a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

9 Objections under s 342NA etc

An objection made or purporting to have been made under section 342NA, or 342VA of the Local Government Act 1979 at any time before this Policy takes effect, not being an objection which had prior to 1 September 1980 been referred to the Local Government Appeals Tribunal, shall be deemed to be an objection referred to in clause 6.

Appendix 3: Application Form to vary a development standard

Written application providing grounds for variation to development standards

To be submitted together with the development application (refer to EP&A Regulation 2000 Schedule 1 Forms).

1. What is the name of the environmental planning instrument that applies to the land?

2. What is the zoning of the land?

3. What are the objectives of the zone?

4. What is the development standard being varied? e.g. FSR, height, lot size

5. Under what clause is the development standard listed in the environmental planning instrument?

6. What are the objectives of the development standard?

7. What is the numeric value of the development standard in the environmental planning instrument?

8. What is proposed numeric value of the development standard in your development application?

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Four horizontal lines for text entry.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

Four horizontal lines for text entry.

Note: If more than one development standard is varied, an application will be needed for each variation (eg FSR and height).

12. Is the development standard a performance based control? Give details.

Four horizontal lines for text entry.

Additional matters to address

As outlined in "Varying Development Standards: A Guide" there are other additional matters that applicants should address when applying to vary a development standard.

13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

Four horizontal lines for text entry.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

Four horizontal lines for text entry.

Appendix 4 Schedule 1 Circular B1

Schedule A

Land which, under an environmental planning instrument, is within one of the following zones:

- (a) Environment protection
- (b) Environmental protection
- (c) Rural environment protection
- (d) Rural environmental protection
- (e) Coastal lands protection
- (f) Coastal lands acquisition
- (g) Special Uses (water catchment)
- (h) Municipality of Camden – I.D.O. No. 7, Zone Nos. 7(a) and 7(b) Scenic protection Area
- (i) City of Campbelltown –
 - I.D.O. No. 13, Zone No. 7(b) Scenic Protection Area
 - I.D.O. No. 14, Zone Nos. 7(a) and 7(b) Scenic Protection Area
 - I.D.O. No. 21, Zone Nos. 7(c) and 7(d) Scenic Protection Area
 - I.D.O. No. 23, Zone No. 7(c) Scenic Protection
 - I.D.O. No. 24, Zone Nos. 7(c) and 7(f) Scenic Protection Area
 - I.D.O. No. 25, Zone Nos. 7(a) and 7(d) Scenic Protection
 - I.D.O. No. 27, Zone Nos. 7(d1) and 7(d6) Scenic Protection
 - I.D.O. No. 28, Zone Nos. 7(c) Scenic Protection Area
- (j) City of Gosford – I.D.O. No. 122, Zone No. 7(a) Conservation
- (k) City of Lismore – I.D.O. No.40, Zone No. 5(c) Special; Uses (Flood Liable)
- (l) Shire of Richmond River – L.E.P. No. 3, Zone No. 6(c) Open Space (Waterfront Recreation and Open Space)
- (m) Shire of Wyong – I.D.O. No.58, Zone No. 7(a) Conservation.

Appendix 5: Additional considerations for rural development applications – Does not apply to Standard Instrument LEPs

APPLICATIONS FOR RURAL SUBDIVISION OR ERECTION OF A DWELLING HOUSE IN A RURAL ZONE

In rural areas, most development applications with associated SEPP 1 applications relate to varying development standards that set:

- (a) the minimum area required to allow the subdivision of land; or
- (b) the minimum area required for the erection of a dwelling house in a rural zone.

The minimum area varies from one rural zone to another, and from one council area to another. You will need to identify the particular standard that applies in your case by reading the environmental planning instrument, typically the councils local environmental plan. Should you need any assistance with the councils local environmental plan, please contact your local council in the first instance.

This guide sets out what you must cover in your SEPP 1 application. In addition, a variation to a development standard may also be justified where it can be shown that the proposal for subdivision or erection of a dwelling house is consistent with the existing development pattern for the area and that the necessary services are available.

The use of SEPP 1 may be justified to create a boundary adjustment between allotments which are less than the minimum standard subdivision area. It may also be used to allow a subdivision or dwelling associated with a viable rural enterprise. In this case, the supportive views of NSW Agriculture and Fisheries would assist the application.

An example of a situation where the use of the SEPP 1 might be justified, are in cases where the proposal:

- is clearly consistent with the development pattern of the area.

Examples of situations where the use of the SEPP 1 might not be justified, are in cases where the proposal:

- is clearly inconsistent with the development pattern of the area;
- is based solely on the case of a 'natural' subdivision, where a property is divided by a road or a watercourse;
- would result in an unreasonable demand on services;
- is located on land subject to high environmental hazard – flood, coastal erosion, landslip, bushfire, etc;
- conflicts with existing agricultural practices in the area;
- give rise to an additional dwelling entitlement; or
- would result in fragmentation of rural land with possible adverse economic impacts and inefficiencies in rural productivity.

The following information will help both the council, and the Director General of Planning, to determine your application.

- What is the zoning of your land?
- What are the aims and objectives of the zone where your land is? (Ask council.)
- How is your proposal consistent with these?
- What development standard needs to be varied? What is the reason for the standard? (Again ask council.) Is it important that the standard be maintained?
- Is your application to subdivide land, or to build a dwelling house, or both? This needs to be stated on your application to avoid any misunderstanding or the need for a second application.
- What is the pattern of subdivision and the location of dwelling houses in the locality? (A map of the area showing the size of holdings and locations of houses within 2km will make this clear.) How does your proposal conform to the existing pattern?
- Where is your land located in relation to the nearest town which provides services?

- Is sewage or water supply available to your land? If not is your land suitable for on site sewage disposal?
- Is rainfall adequate to collect potable roof water for domestic use?
- Is overground or bore water available to meet other needs (e.g. bushfire fighting, stock etc)
- What is the condition of the road to the proposed lot or house? Are there any special access problems?
- Is the means of access to the land from a State highway, main road or local road?
- What will be the effect of your proposal on the agricultural potential of the land? (An opinion from a recognised agricultural expert of the NSW Agriculture & Fisheries might help with this.) What sort of agricultural activities are currently being carried out on your land? How will the land be used in the future?
- Are there nearby agricultural uses which could be in conflict with your proposal? (Examples of this are the use of aerial agricultural sprays or the close location of a piggery, cattle feed lot or abattoir.)
- Does your land have high bush fire risk, soil slip/erosion or flooding/ drainage problems?
- Does the proposal give rise to an additional dwelling entitlement?
- Is your proposal consistent with all relevant State environmental planning policies and any regional plan? (Ask your council)

In certain instances, your SEPP 1 application will be referred to the Department of Planning for consideration by the Director General of Planning. If the Director General grants concurrence, then council may determine your development application (see Section 5.3)

CONSIDERATION OF RURAL DEVELOPMENT APPLICATIONS

The council must be satisfied that the SEPP 1 application accompanying the development application satisfies the general requirements for SEPP 1 applications (see Section 5.1.1). In addition, councils should also refer to the advice to applicants regarding additional considerations for rural development applications with accompanying SEPP 1 applications (see Section 4.3).

In certain instances, after council has determined the development application and associated SEPP 1 application, the council will have to refer the SEPP 1 application to the Department of Planning for the Director General's concurrence (see Section 6)

Appendix 6: Reporting Form

General Council Data

COUNCIL INFORMATION

Council name	
Contact name	
Phone	
Email	
Start date	
End date	
Please enter NIL for no variations under SEPP1 or Clause 4.6	



PLANNING circular

PLANNING SYSTEM

Varying development standards

Circular	PS 11-018
Issued	18 August 2011
Related	PS 08-003; PS 08-014

Monitoring and reporting variations to development standards

The purpose of this circular is to remind councils of their responsibilities to complete quarterly returns on variations to development standards under delegations using State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) or clause 4.6 under the Standard Instrument and to raise councils' awareness of relevant audit outcomes.

Background

Circulars PS 08-003 and 08-014 reminded councils of their responsibilities to monitor the use of the Director-General's assumed concurrence under State Environmental Planning Policy No. 1 (SEPP 1) or under Clause 4.6 of the Local Environment Plan (LEP) Standard Instrument (or similar provision) on a quarterly basis. This reporting requirement continues to apply.

Councils were also advised that they were required to adopt additional measures to report SEPP 1 usage and that random audits would be carried out on such matters.

Random audits

Monitoring of councils' SEPP 1 returns provides increased transparency and accountability in the making of SEPP 1 decisions and helps the Department to check whether:

- councils are keeping accurate records of the use of SEPP 1,
- any particular development standards are being regularly varied by a council and may require review, and
- anomalies (e.g. exceeding of delegations) are occurring.

Four councils were drawn at random to be audited by the Department: Blue Mountains City, Byron Shire, Tenterfield Shire, and Wingecarribee Shire Councils. A number of development applications based on variations to development standards were randomly selected from each council and audited.

The audit found that the four councils mostly followed due process in making the SEPP 1 decisions that were audited, although each had some inadequacies in their reporting and/or administrative procedures. A [Summary of Findings](#) of the audit is available on the Department's website at www.planning.nsw.gov.au.

Procedural & reporting requirements

The audit recommended that given the reporting and administrative anomalies in council processes detected by the audit, all councils should be reminded of their responsibilities under SEPP 1 and LEP Clause 4.6, and in particular the procedural and reporting requirements specified in Planning Circular PS 08-014.

It was recommended that the following matters be drawn to councils' attention.

Requirement for written application

The audit revealed that in a few cases, a written application for a SEPP 1 variation in a standard was lodged late or not at all. In one case, a council assessed a variation to a development standard without requiring the applicant to submit a written application seeking the variation under SEPP 1.

Councils should insist on a written SEPP 1 application to vary a development standard where a development application proposes a variation to a standard.

Matters to be addressed in a SEPP 1 application

In some cases, the SEPP 1 applications lodged by applicants did not address the matters required in accordance with the provisions of SEPP 1. Councils should be aware of the minimum criteria that should be included in an application and request that applicants

address these matters when lodging applications to vary a development standard.

Consideration of Clause 8 in SEPP 1

Clause 8 requires councils to assess the following:

- whether non-compliance with the development standard raises any matter of significance for State and regional planning, and
- the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The random audit found that councils did not specifically consider the matters referred to in clause 8 of SEPP 1 in their assessment. However, in most cases the councils had addressed these matters in their assessment of the development applications.

Councils are reminded to ensure that they specifically consider and record considerations of the matters referred to in Clause 8 in their assessment of an application to vary a development standard.

Reporting on the use of variations to development standards

Councils are reminded to keep accurate records of the use of SEPP 1, or Clause 4.6 of the LEP Standard Instrument (or similar provision).

Reports are to be submitted to the Department on a quarterly basis (March, June, September and December). Reports are to be emailed to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter.

Further Information

Monitoring the use of SEPP 1 – Random Audit of Four Councils - Summary of Findings issued by the Department provides further information on the random audits and can be found on the Department's website at:

www.planning.nsw.gov.au/localplanning/varyingdevelopmentstandards.

The Department will continue to undertake random audits on SEPP 1 decisions based on the data received from councils. Failure to submit returns on time will be taken into account when considering appropriate councils to be subject to audit.

The Department has also published Varying Development Standards: A Guide to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards see:

www.planning.nsw.gov.au/localplanning/varyingdevelopmentstandards.

Note: This and other Department of Planning and Infrastructure circulars are published on the web at www.planning.nsw.gov.au/planningsystem

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's Information Centre on 1300 305 695 or email information@planning.nsw.gov.au

Authorised by:

Sam Haddad
Director-General

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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Policy Register



City of Canterbury 26-184
City of Cultural Diversity

Title: Recruitment and Selection Policy, Procedures and User Guide

Category: Human Resources Management

Key words: Recruitment, position description, competencies, interview, testing, reference check, appointment, induction, probation

File number: H-74-1

Policy owner: Human Resources

Authorisation: 12 December 2006 by General Manager

Review date: 31 December 2014

Modification history: Amended policy approved by General Manager 7 February 2012

Related legislation: Local Government (State) Award 2010
Local Government Act 1993
Disability Discrimination Act 1992
Race Discrimination Act 1975
Human Rights and Equal Opportunity Discrimination Act 1986
Sex Discrimination Act 1984

Related policies: Equal Employment Opportunity and Anti Discrimination Policy
Equal Employment Opportunity Management Plan
Learning & Development Policy

Related forms: Authority To Recruit
Declaration of Conflict of Interest Form
Applicant Evaluation Form
Telephone Reference Check Form
Selection Panel Report
Authority To Appoint
Probation Report

Contents:

1. Purpose
2. Context
3. Objectives
4. Scope
5. Definitions
6. Principles
7. Responsibilities
8. Procedures

1. Purpose

The Recruitment and Selection Policy, Procedures and User's Guide assists managers to recruit high quality employees, so collectively we can work to achieve Council's Strategic Plan outcomes. This Policy, Procedures and User Guide provides an overview of the three phases of the recruitment and selection system and a detailed summary of the steps involved in each of the three phases, including setting out the roles and responsibilities of Human Resources, managers and panel members. It is intended to provide managers and panel members with the tools they need to execute their roles in the recruitment process.

2. Context

A review of our recruitment and selection system was conducted to make the recruitment and selection process more robust and dynamic, taking into consideration future challenges including ongoing technological advances and the attraction and retention of high quality staff. To achieve this we have designed and developed supporting recruitment and selection tools, researched and sourced more dynamic tools for measuring a candidate's suitability to a position and designed and developed an interactive workshop for targeted staff involved with interviewing to provide them with the skills and knowledge necessary to conduct behavioural interviewing.

A key component of the new recruitment model is Chandler Macleod's 'CMyPeople', a powerful database that delivers online skills assessment and talent management capability.

CMyPeople has two online skills assessment tools, CMyWorkforce and CMyCandidate.

CMyWorkforce measures ability and aptitude, expressed as a fit for any role. This is calculated based on the evaluation that the candidate receives for Problem Solving Ability, Service Orientation, Task Focus and Work Approach.

CMyCandidate measures an applicant's suitability to a position by measuring ability and aptitude against the competencies for the role.

CMyPeople will assist us to revolutionise our recruitment by:

- increasing the effectiveness of a hiring decision by introducing a method which provides a consistent and structured process to assess talent;
- providing a more streamlined process to screen volume applications to determine an applicant's work attitude and ability;

- providing a practical and detailed evaluation of what an applicant's competencies and personal nature can do in the context of the job requirements; and
- tailoring individual development plans to obtain optimum individual performance levels in the shortest possible time and minimise unwanted employee turnover.

3. Objectives

The recruitment and selection system has been designed to meet the following objectives;

1. Locate and attract the most suitable applicants for the position; and
2. Appoint employees who will support our values and behaviours and strive to achieve Council's Strategic and Operating Plan outcomes.

4. Scope

This policy applies to all employees involved in the recruitment process at any point in time.

5. Definitions

Managers Include all employees who are responsible for the direct supervision of staff. This may include Team Leaders, Co-ordinators, Child Care Centre Directors and Senior Managers.

Panel Members Any person selected to be part of an interview selection panel.

6. Principles

This policy seeks to:

- provide equal opportunity for all candidates;
- represent in our staffing profile the community we serve;
- convene selection panels that are structured to ensure expertise, independence and diversity of backgrounds; and
- maintain applicant confidentiality.

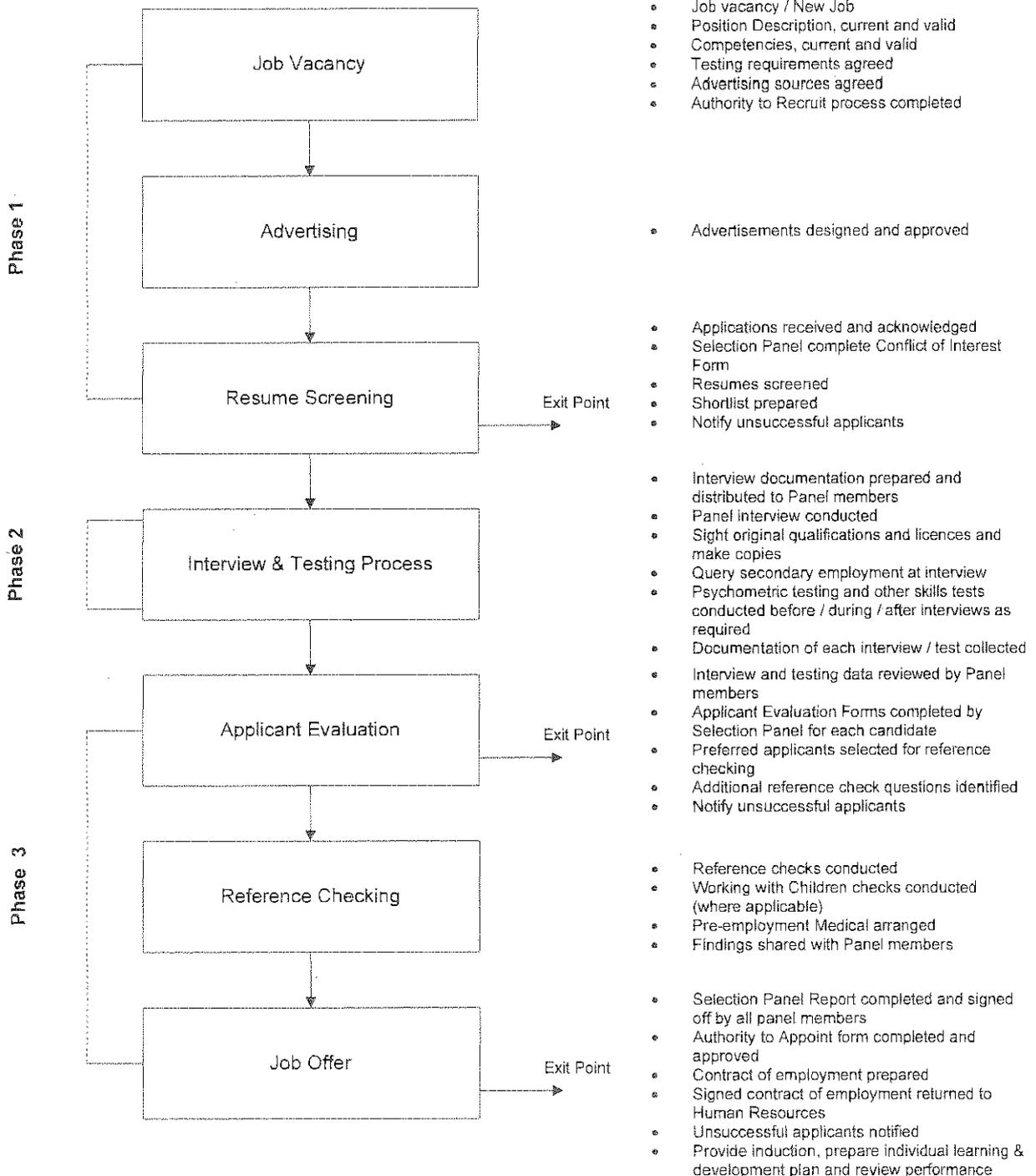
7. Responsibilities

Managers, Human Resources and panel members have a shared responsibility for recruitment. A shared commitment to recruitment is critical to ensure we attract, select and retain our most capable employees.

The responsibilities of Managers, Human Resources and panel members are more specifically outlined in the flowcharts that appear in Section 8, Procedures.

8. Procedure

Overview of Recruitment and Selection Process



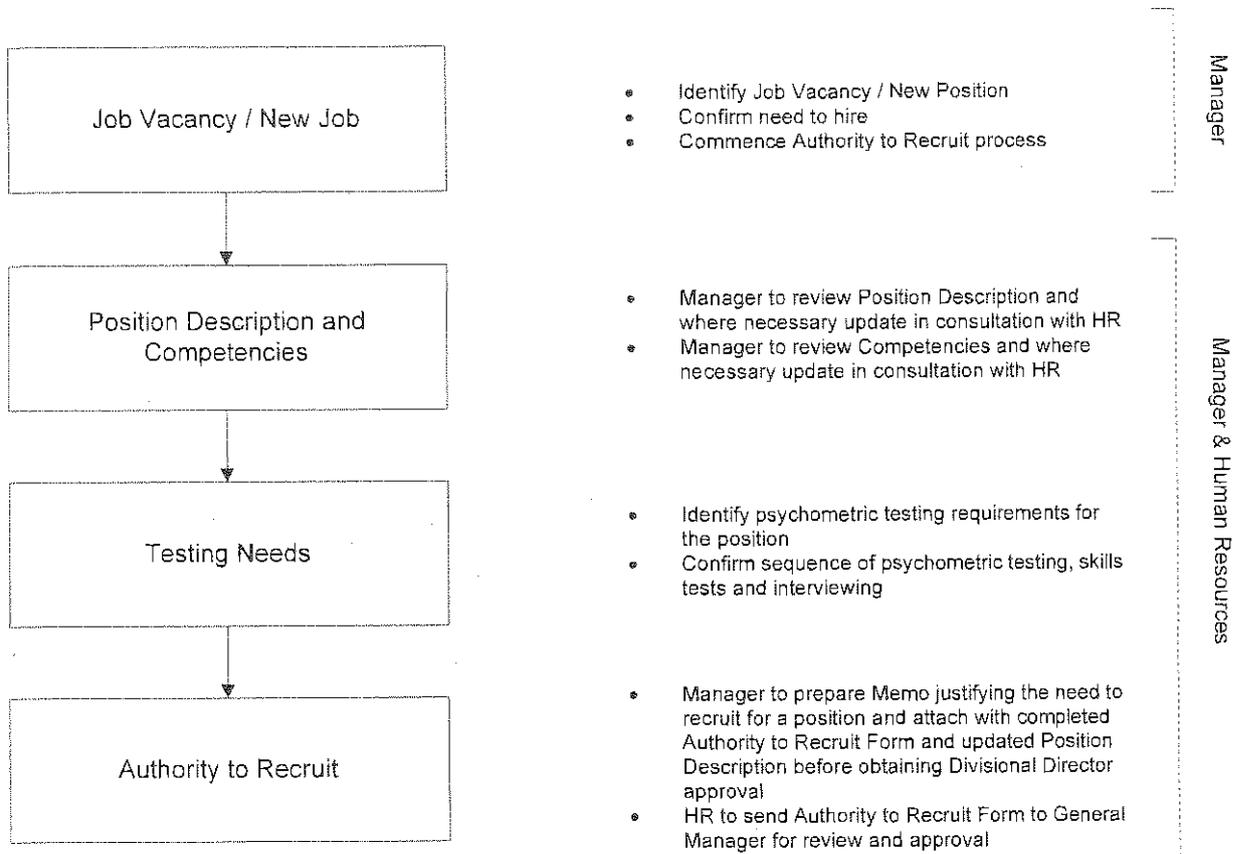
The Recruitment and Selection Process consists of three key phases:

Phase 1 – Job Vacancy, Advertising and Resume Screening

Phase 2 – Interview and Testing Process

Phase 3 – Applicant Evaluation, Reference Checking and Job Offer

Phase 1 - Overview of Job Vacancy Process

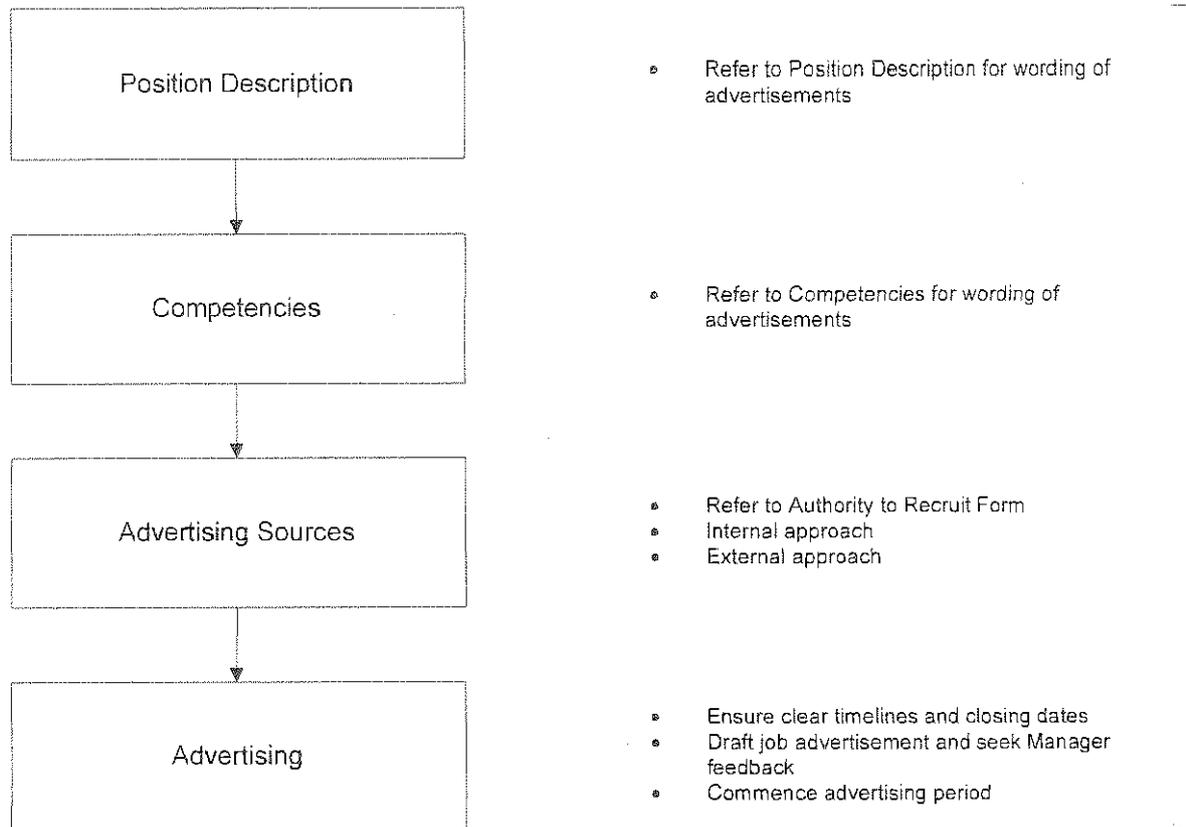


The Job Vacancy Process involves obtaining approval from Executive to recruit for a vacant or new position.

Management in consultation with Human Resources are responsible for reviewing the position description and competencies for the vacant or new position and confirming the testing needs and sources of advertising before completing and sending the Authority to Recruit Form to the General Manager for approval.

Note: Psychometric testing may be used before, during or after interviews. Its positioning will be determined by Human Resources in consultation with Management as part of the Job Vacancy Process.

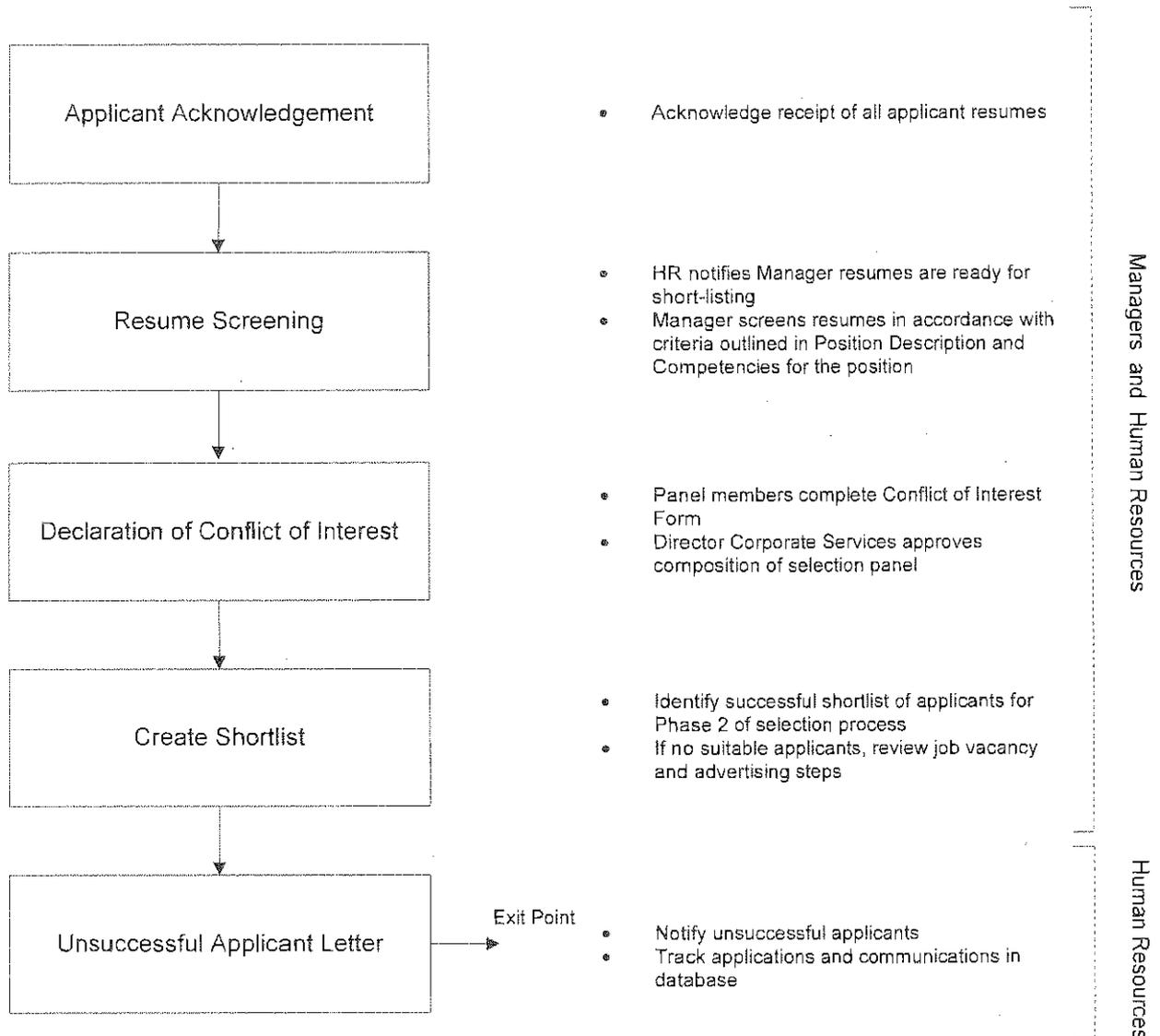
Phase 1 - Overview of Advertising Process



The Advertising Process involves using effective means to locate and attract the most suitable applicants for the position.

Human Resources are responsible for drafting job advertisements using the position description and competencies; posting the advertisements using a range of advertising sources; and communicating with applicants after the closing date.

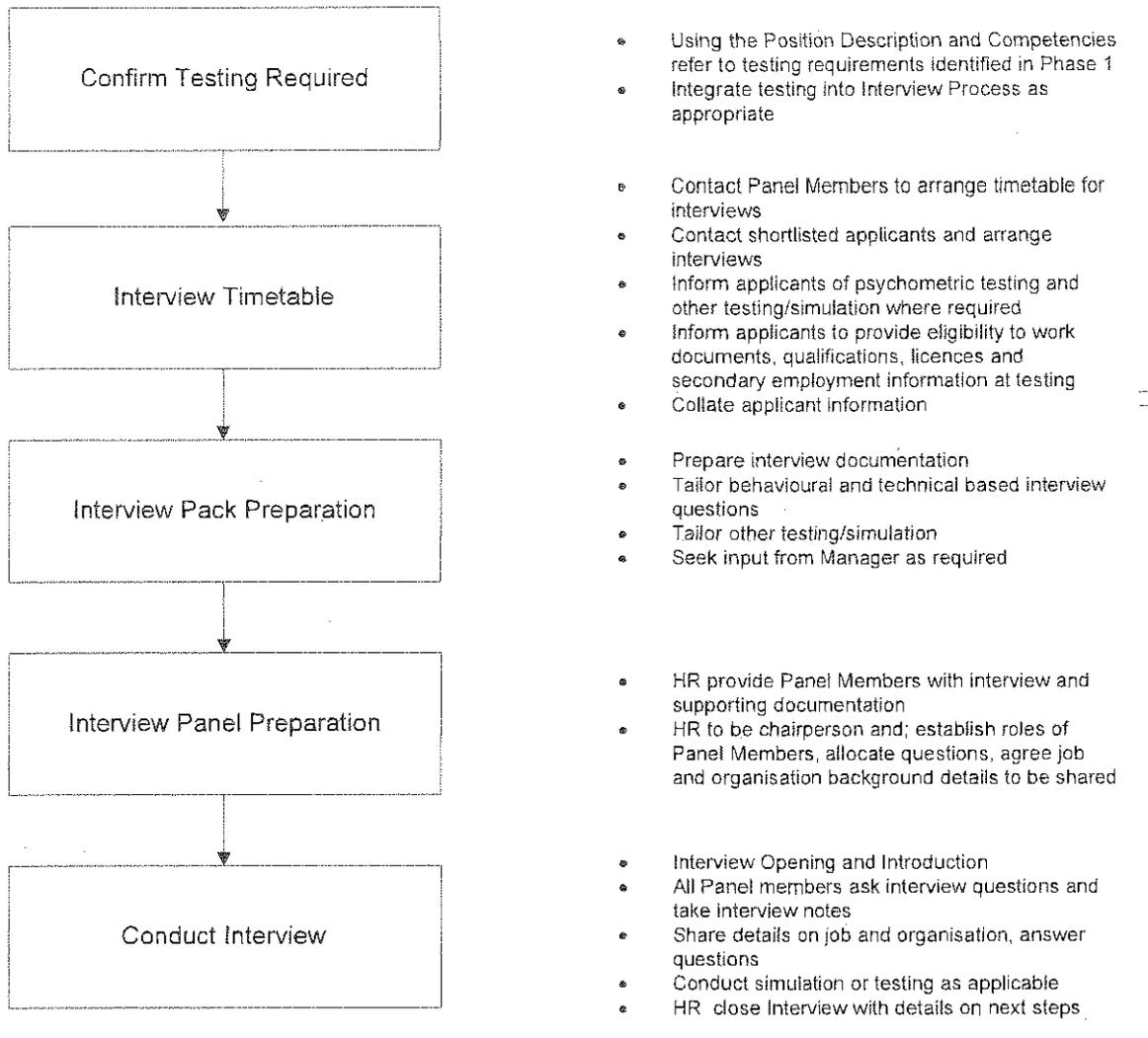
Phase 1 - Overview of Resume Screening Process



The Resume Screening Process involves selecting a shortlist of applicants to progress to Phase 2 of the Recruitment and Selection Process.

Managers in consultation with Human Resources are responsible for shortlisting suitable applicants. Human Resources are responsible for notifying those applicants who have been unsuccessful in this process.

Phase 2 - Overview of Interview & Testing Process

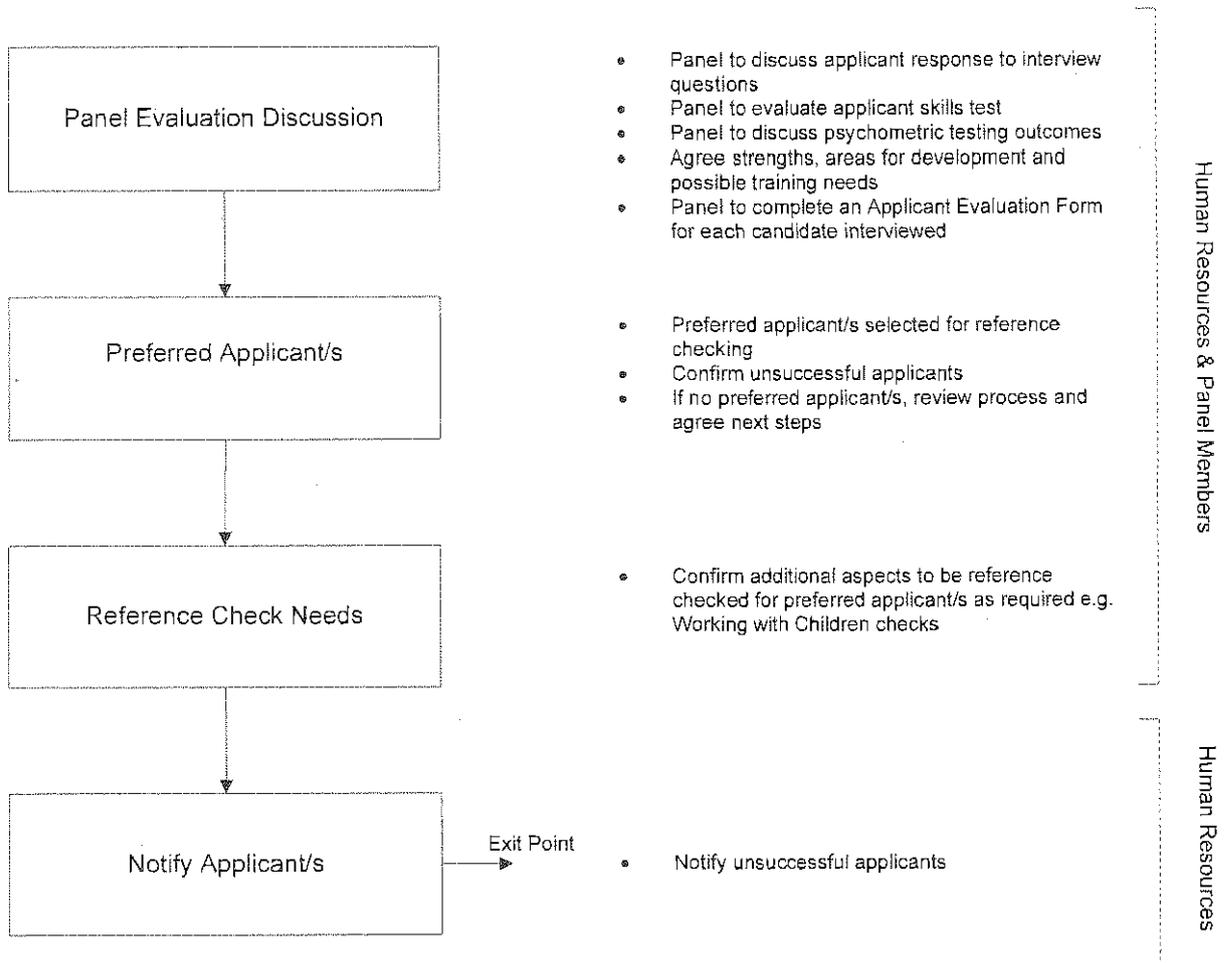


The Interview and Testing Process provides the selection panel with an opportunity to assess an applicant's suitability and competence to the position.

Human Resources are responsible for contacting short-listed applicants and arranging interviews; working with managers to draft interview questions; preparing interview documentation for panel members; and conducting the interview. Panel members are responsible for asking interviewing questions and taking interview notes for each applicant.

Note: Psychometric testing may be used before, during or after interviews. Its positioning will be determined by Human Resources in consultation with Management.

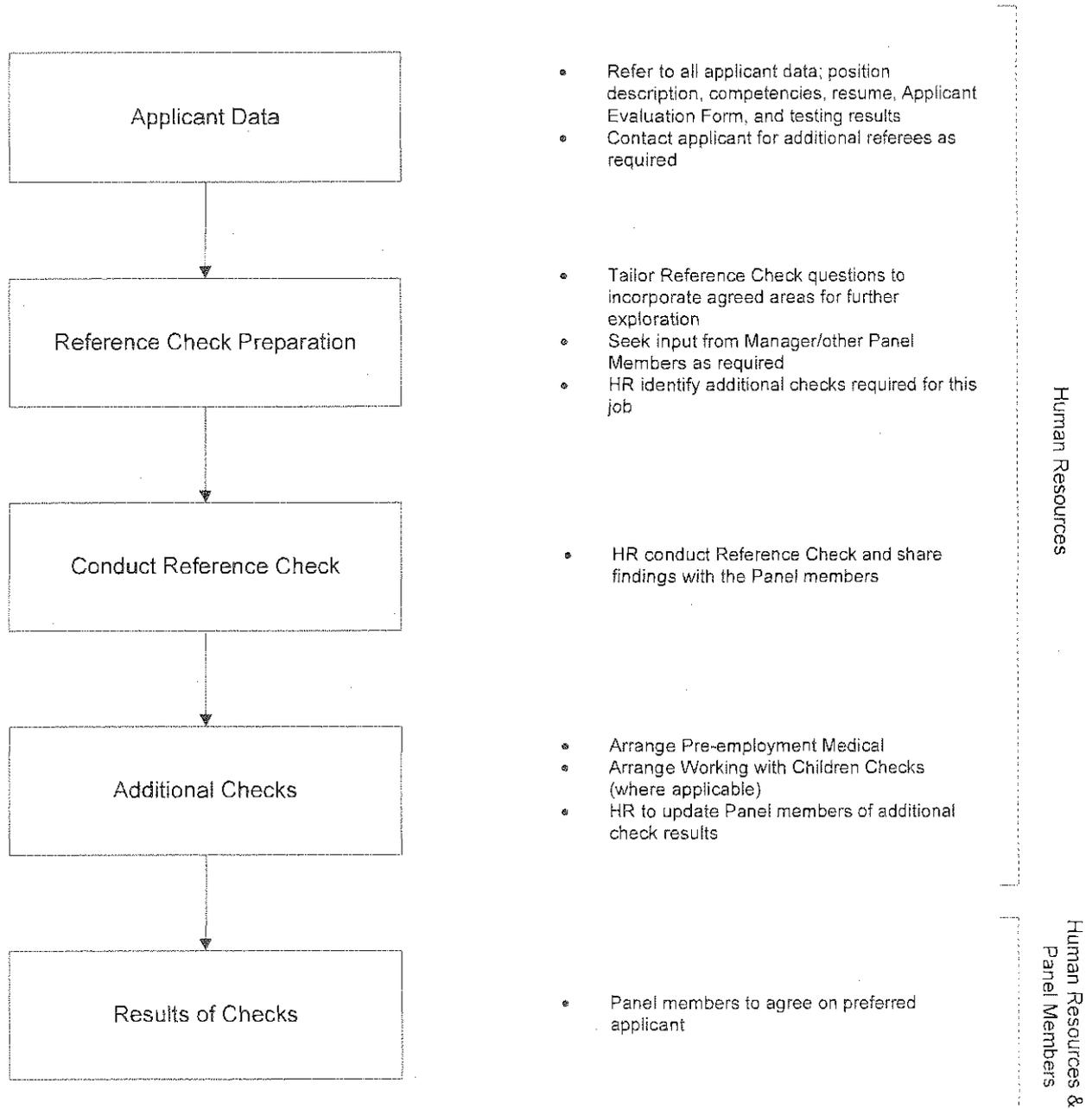
Phase 3 - Overview of Applicant Evaluation Process



The Applicant Evaluation Process requires the selection panel to identify the preferred applicant/s most suitable to progress through the final phase of the Recruitment and Selection Process.

Human Resources with the assistance of the selection panel are responsible for completing an Applicant Evaluation Form for each applicant interviewed by assessing each applicant against their responses to interview questions, psychometric testing and other test/simulation results and identifying any additional aspects to be reference checked. Human Resources are responsible for notifying those applicants who have been unsuccessful in this process.

Phase 3 - Overview of Reference Checking Process

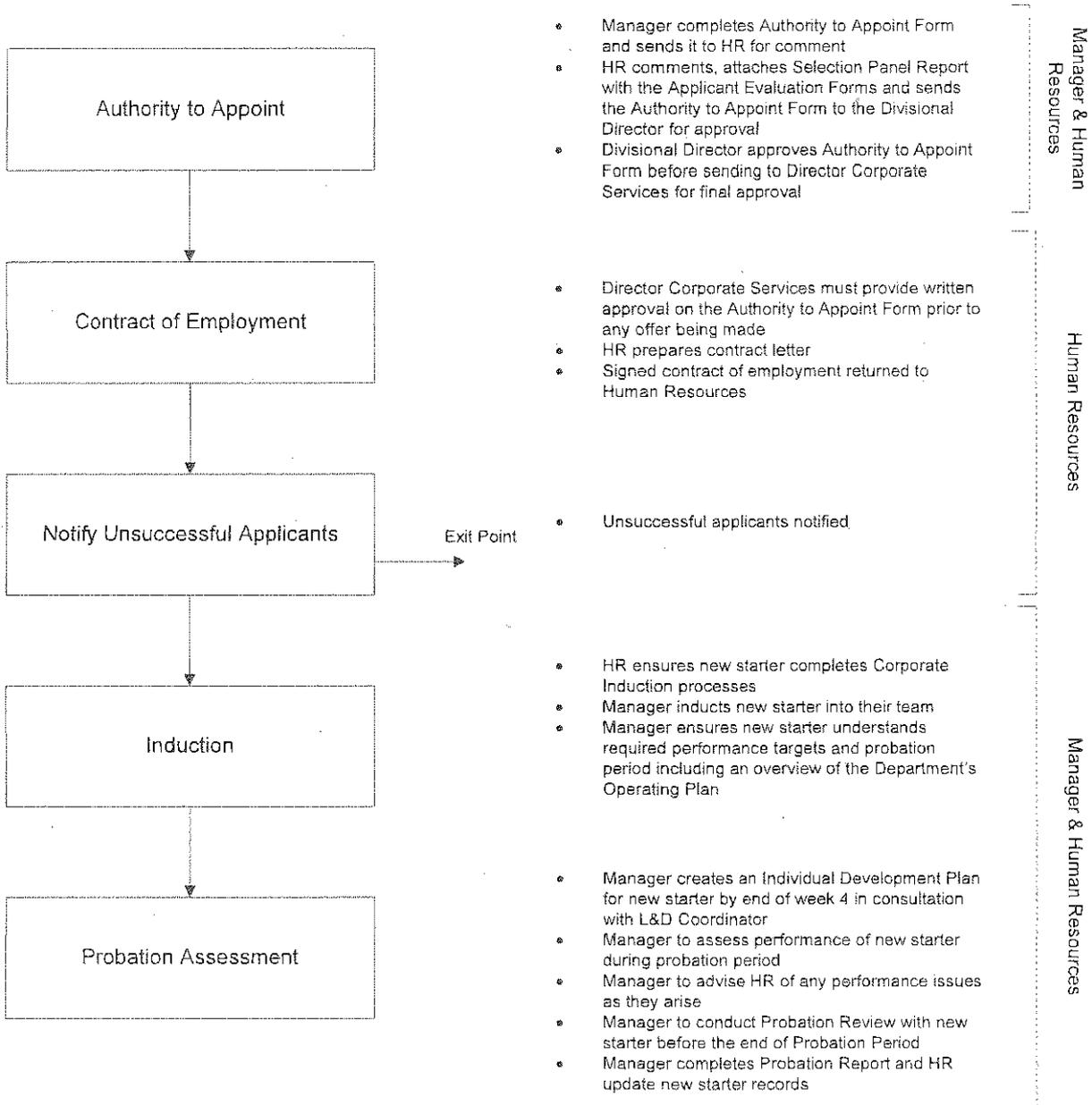


The Reference Checking Process assists the selection panel in confirming their decision regarding an applicant's suitability and competence for a position and thus selecting a preferred applicant.

Human Resources are responsible for conducting the reference checks and additional employment checks and consulting with the interview panel members with the findings of

the checks. Panel members are responsible for agreeing on the preferred applicant before seeking approval to appoint from Executive.

Phase 3 - Overview of Job Offer Process



The Job Offer Process involves obtaining approval from the Director Corporate Services to appoint the preferred applicant to a vacant or new position.

Management in consultation with Human Resources are responsible for preparing the Selection Panel Report and attaching the Applicant Evaluation Forms. This documentation must then be attached to the completed Authority to Appoint Form before obtaining written approval from the Divisional Director and Director Corporate Services to appoint the preferred applicant prior to any offer being made.

Managers also have a combined responsibility with Human Resources to induct the new starter into the organisation, create an Individual Learning and Development Plan, monitor the employee's performance throughout the probationary period and complete a Probation Report.



Premier & Cabinet
Division of Local Government

Local Government
Association of NSW



Shires Association
of NSW



Councillor Handbook

Division of Local Government
Department of Premier and Cabinet
in cooperation with
the Local Government Association of NSW
and the Shires Association of NSW

September 2012

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FOREWORD

FROM THE MINISTER FOR LOCAL GOVERNMENT

Congratulations to all new and returning councillors on your election to council. You are committing to an important public service, which is a fantastic opportunity to make a difference to the local community, both now and into the future.

As a local councillor, you will need to carefully weigh up a wide range of matters and make balanced decisions that are beneficial for the community. The community place great trust in you individually and the council as a whole and your conduct should be ethical and responsible. You are taking up the challenge to be a local leader and oversee the prudent running of a significant and complex business at the heart of the community.

This handbook is designed for both new and returning councillors. It will give you information on how to fulfil your various responsibilities as a councillor. It is important that every councillor understands and absorbs the messages included here. Ideally, you will refer to this handy resource throughout your term.

Being a local councillor is both challenging and rewarding and the learning curve can be steep. This handbook, the councillor workshops run by the Division of Local Government and your own willingness to develop your skills all play a part in ensuring your community has the best possible civic leaders.

I hope this proves to be a useful resource, as you take on the mantle of councillor and live up to the ideal of service to your community implicit in this important role.



The Hon Don Page MP
Minister for Local Government

FOREWORD

FROM THE PRESIDENTS OF THE LOCAL GOVERNMENT AND SHIRES ASSOCIATIONS OF NSW

Local Government is the closest sphere of government to communities and plays a critical role in delivering essential infrastructure and services to residents. As a councillor, you have an opportunity to positively and ethically contribute to your community.

As democratically elected representatives, councillors are advocates for their communities, helping to protect their interests whilst looking at ways to improve their local area through community consultation and engagement. They also communicate the needs and concerns of their community to other levels of government, industry and the media.

As an industry, Local Government is worth \$89 billion in assets and infrastructure, bringing more than \$9 billion into the NSW economy every year and directly employing more than 50,000 people. Councillors have the important role of ensuring their community's needs are adequately met within their budgetary limits.

While being a councillor can at times be challenging, it's an extremely satisfying experience and provides a unique opportunity to not only interact with the community, but also to influence the vision and strategic direction of your council's area.

For many years, the Associations have encouraged the professional development of councillors to ensure their effectiveness both as a member of a governing body and an elected representative. We are very pleased to be working in partnership with the Division of Local Government to create a publication that will guide and support you through your term as a councillor.

The Councillor Guide is a valuable tool for anyone interested in the roles and responsibilities of a councillor, as well as the structure of Local Government. We trust that you will find it useful and informative on your journey as a newly elected councillor.



Cr Keith Rhoades, AFSM
President
Local Government Association of NSW



Cr Ray Donald
President
Shires Association of NSW

INTRODUCTION

Being a councillor is a significant privilege and challenge. As a new councillor there will be a lot to learn as quickly as possible for you to be effective. As an existing councillor, it is important that you keep up to date with changes that impact on the sector and continue to develop your knowledge. This handbook will help you do that.

To help you hit the ground running, here is a summary of the 5 things every councillor needs to know to achieve better outcomes for your community.

5 key things every councillor needs to know

How to achieve better outcomes for your community

Leadership

Be an effective leader of your local community by:

- working with other councillors to achieve better social, environmental and economic outcomes for your community as a whole
- setting the vision and direction for your community and not getting involved in the day to day operations
- balancing short and long term community needs and interests
- fostering and maintaining positive key internal and external relationships

Open decision-making

Ensure effective participation in council business by:

- following your council's Code of Meeting Practice, which sets out the rules and expectations for the conduct of council meetings
- understanding that the role of the GM in council meetings is to provide information and assistance to councillors in making their decisions
- making informed decisions through good preparation and involvement

Conduct

Conduct yourself in a way that enhances and maintains the credibility of your council and local government as a whole by:

- acting lawfully, honestly, transparently and respectfully in line with your council's Code of Conduct
- exercising a reasonable degree of care and diligence in carrying out your functions
- not directing or influencing council staff in the exercise of their role to effectively and efficiently implement your council's decisions

Accountability

Be accountable for understanding and meeting your community's needs by:

- engaging and consulting with your community
- responsibly managing your council's money and assets to meet current and future needs
- considering the long-term consequences of your decisions
- ensuring the requirements of the Integrated Planning and Reporting framework are met

Learning

Take responsibility for your ongoing learning and professional development by:

- regularly assessing your learning needs
- actively seeking opportunities to acquire further knowledge and skills
- contributing your knowledge and skills to the development of local government as a whole.

Purpose of this handbook and how to use it

Whilst the summary of the 5 things you need to know will be a helpful start, it is important that you understand your role and responsibilities as a councillor in detail if you are to be effective. This handbook is the go-to resource for all councillors during their electoral term and includes links to other useful resources when more information is needed in relation to a particular issue. It provides more detail on the issues covered in the Councillor Workshops to be held following the local government elections in September 2012.

This handbook is available on the Division's website electronically for ease of access.

If you have any queries that cannot be answered by reading the relevant part of this handbook, there is a list of key organisations and their contact information in [Appendix 2 - Key organisations](#) which have relevant expertise in the different areas affecting local government.

SECTION 1

AN OVERVIEW OF LOCAL GOVERNMENT IN NSW

1.1 Local Government

Local government in NSW is made up of 152 councils, employs over 50,000 people and spends more than \$9.4 billion annually. The services it provides range from traditional town planning and waste management to community development, environmental protection, economic development and much more.

Councils can order people to do certain things, such as demolish a building or restrain a dog. They can also issue orders to ensure that public amenity is not compromised, for example, to prevent a noise nuisance, or the operation of an inappropriate business in a residential area. Increasingly they are playing a role in not just delivering services to their community but shaping the future of the community by working with local people to develop and deliver a vision for each place.

The over 1,500 councillors that serve on local councils play a vital role in meeting the needs of local communities. They serve their communities by listening to people in the local area and then representing those views on council. They make decisions that can change local communities and environments. The communities that councillors represent are made up of a mix of people with different needs and interests from a diverse range of backgrounds. Effective councils are made up of councillors that reflect this mix.

Local government is often called ‘the third sphere’ of government in Australia. It is an elected system of government directly accountable to the local community.

Each council is an independent, statutory corporation responsible for administering its local government area.

‘The council’ provides leadership to its local community. The council comprises all the elected representatives, or councillors, who work together to govern their local community.



The Three Spheres of Government

(including examples of typical responsibilities)

For further information about the specific services provided by councils, see the *Services and functions that councils provide* section, on page 14.

1.2 Current issues

The New South Wales Government has a plan to make NSW number one. The Government wants to rebuild the economy, return quality services, renovate infrastructure, restore accountability to government, and strengthen our local environment and communities.

Local government has a crucial role to play in delivering these better outcomes for our communities. It has a role to play in ensuring the highest standards of civic leadership to raise the reputation of councils, so it can attract and retain high quality councillors and staff to serve and lead local communities. It has a role to play in driving and supporting economic development in cities, towns and villages. It has a role to play delivering quality services and infrastructure that meet the needs of local people at a level they can afford

It is widely acknowledged that local government needs to change to do this. There are struggling councils now which are unable to deliver all the services their communities require, while maintaining their infrastructure. The three biggest challenges councils have identified that they face are infrastructure and asset issues, financial sustainability and population and demographic change.

The NSW Government and Councils came together last year to develop a plan to tackle these issues.

This was the beginning of Destination 2036; a unique partnership between State and Local Government to develop a long-term reform agenda that will lead us to stronger communities through partnerships.

Out of this came an Action Plan, identifying five key areas where change was needed, with a number of specific actions identified for each:

- Efficient and Effective Service Delivery - Establish frameworks that facilitate and encourage effective, responsive and innovative service delivery.
- Quality Governance - Enhance the governance framework to ensure community confidence in councils and to further enable Local Government to meet community needs and challenges.
- Financial Sustainability - Ensure the financial sustainability of councils.
- Appropriate Structures - Develop a variety of Local Government structural models to suit different environmental contexts.
- Strong Relationships - Improve the relationship between the State and Local Government by working as partners, with a clear understanding of respective roles and responsibilities and for the benefit of our communities.

These issues are being addressed by State and Local Government working in partnership with business, unions, the community and experts.

In particular the Government has set up an Independent Local Government Review Panel to consider issues and solutions around governance, structure and financial sustainability. More information on the Panel, which will report to Government in July 2013, can be found at: www.localgovernmentreview.nsw.gov.au.

The Government is also reviewing the *Local Government Act 1993*, to ensure it can support and enable stronger local government.

1.3 Council's Charter

All councillors should read and be familiar with their Council's Charter, which sets out the principles that guide a council in carrying out its functions.

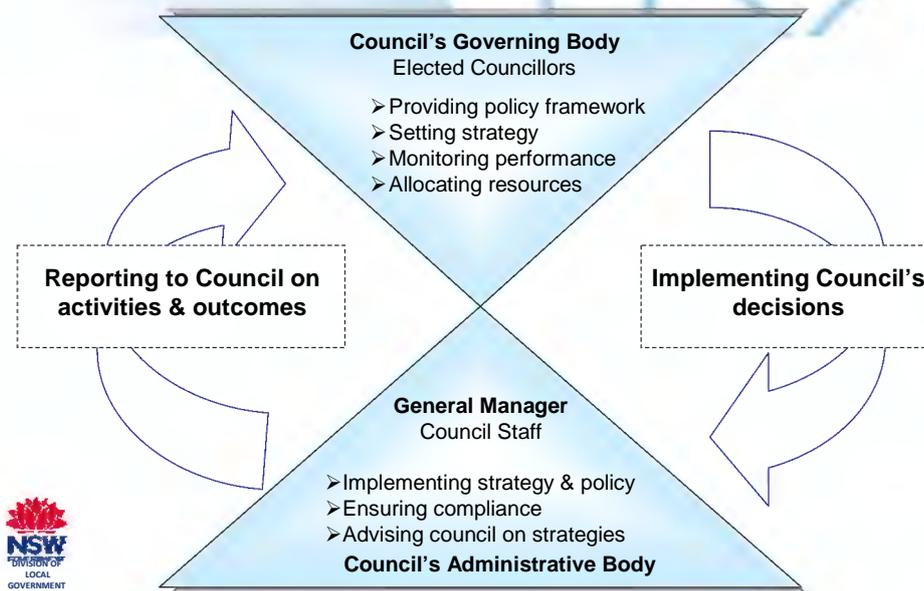
The *Local Government Act 1993* includes a Council's Charter (section 8). This sets out the principles councils need to consider when carrying out their responsibilities. Some examples include:

- providing adequate, equitable and appropriate services and facilities for the community that are managed efficiently and effectively
- exercising community leadership
- exercising its functions in a manner that is consistent with and actively promotes social justice principles of equity, access, participation and rights
- properly managing, developing, protecting, restoring, enhancing and conserving the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- having regard for the long term and cumulative effects of its decisions
- engaging in long term strategic planning on behalf of the local community
- ensuring that, in the exercise of its regulatory functions, it acts consistently and without bias

In practice, councils do much more than just follow this Charter. They pursue their communities' visions and ideas, provide leadership, assist community-based organisations to provide services to local communities, and express local ideas and concerns about important issues to other levels of Government. A community also often looks to its council to protect it from potential natural dangers, and for support in times of need.

1.4 A council's structure

Key Relationships



A council's structure

Between five and fifteen elected councillors hold office as 'the council' for four years. The elected council's role may be compared to that of the board of a public company or a more complex version a board that oversees a local club, in so far as it oversees the activities of the council but is not involved in the day-to-day running of the council. A key difference is that the "shareholders" are the local community. They are larger in number and have more diverse needs and expectations than most public companies.

Many councils also delegate functions to specialist committees that include councillors, council staff and members of the public. These committees provide councillors with the opportunity to participate in council decision-making at a more detailed level.

Councils employ staff to administer the council. The general manager is the most senior member of staff and is responsible to the council for carrying out council decisions and policy and overseeing the day-to-day operation of the council.

The general manager provides the link between the elected council and its employees. While all council staff have a duty to carry out council decisions they are responsible to the general manager, not the councillors. Individual councillors cannot direct staff in their day-to-day activities.

1.5 Services and functions that councils provide

Councils provide a very wide range of services and functions. Broadly, these may be grouped into five categories, as shown below.



Services and functions that councils provide

Examples of services that fall into each of these categories are given below. These represent a sample only.

Providing and maintaining infrastructure

Providing an appropriate and affordable level of infrastructure is one important contribution a council makes to its community. For example, councils provide and maintain local roads, bridges, public car parks, footpaths, sporting fields, parks and art galleries. Outside of metropolitan areas, councils are also responsible for water and sewerage. Councils must consult with their local community about providing and maintaining these public assets.

Planning for sustainable development

Councils have a major role in providing long term strategic planning for a local government area as well as town planning, zoning and subdivisions. They engage communities in key planning decisions that will affect the growth of their communities and seek to integrate planning for infrastructure with the strategic planning of land use so that infrastructure that supports growth is funded and delivered.

In addition, councils are responsible for processing development applications, for building site and compliance inspections, and for ensuring compliance with building regulations.

Protecting the environment

Councils also have a major role in helping to protect the environment. They have responsibilities under the *Protection of the Environment Operations Act 1997* and can issue various protection of the environment notices including clean up, prevention, compliance cost, provision of records and information and noise control notices.

Councils regularly assess the state of their local environment, provide environmental programs and use their regulatory powers to prevent pollution, or restore degraded environments.

Councils also have environmental protection responsibilities under other legislation. For example, councils are responsible for noxious weed control under the *Noxious Weeds Act 1993*. They also carry out activities to preserve access and amenity to the environment, such as recycling, management of vegetation including bush land reserves, street cleaning, regulating parking,

Supporting the community

Councils regularly consult with and assess the needs of their community with a view to supporting the community and its development. They provide a range of services, including some aimed at groups in the community with special needs. Community services include libraries, sport and recreation facilities, home care services such as 'meals on wheels', swimming pools, playground facilities and child care centres.

Supporting economic development

Many councils contribute to economic development by working with local businesses, coordinating economic development groups/activities/events and providing tourism services and facilities.

Safeguarding public health

Councils help maintain high standards of public health and reduce the risk of exposure to a wide range of diseases through activities such as food shop inspections, waste disposal, pest and vermin control and hazardous material containment. They also ensure public safety through controlling dogs and cats (or companion animals).

1.5.1 Why does local service provision vary between councils?

Councils can choose the range and quality of services they provide, based on discussions with their community about their needs and what they want to pay for. This is done through the Integrated Planning and Reporting process, which is explained in more detail later.

1.6 How are councils funded?

On average, councils receive 28% of their regular income from ordinary land rates, which is paid by landowners. Councils can also charge for services such as waste management, and water supply and sewerage (outside metropolitan areas). Charges must be used specifically for the purposes for which they are collected.

Councils can get additional income from fees for things like parking and the use of publicly owned facilities like swimming pools, halls and other user-pays services. Fees can also be charged for giving information, supplying products or processing applications.

All councils receive a financial assistance grant every year, which is paid by the Commonwealth Government through the State Government. The amount of the grant varies from council to council. Councils receive grants from other sources from time to time. For example, Roads and Maritime Services may make a grant for work on a particular road.

Councils may borrow funds for any purpose. Councils may also invest funds and receive income from the interest. Ministerial Investment and Borrowing Orders and associated guidelines provide the framework in which councils may invest and borrow.

Council revenue is discussed in further detail in *Section 6 – Financial Management*.

1.7 Legal framework

Councils work within the laws established by the NSW Parliament. The *Local Government Act 1993* (the Act) provides a legislative framework reflecting modern community expectations and gives councils broad powers to plan for and provide local community services and facilities. The Act is administered by the Minister for Local Government through the Division of Local Government, Department of Premier and Cabinet.

Councillors have a wide range of legislative responsibilities with which they need to acquaint themselves.

As well as the Act, there are a number of other laws which councils are responsible for implementing. For example, councils have responsibilities for animal control under both the *Companion Animals Act 1998* and the *Impounding Act 1993*; for building and development controls under the *Environmental Planning and Assessment Act 1979*; for environmental protection under the *Protection of the Environment Operations Act 1997*; for the control of noxious weeds under the *Noxious Weeds Act 1993*, and for the provision, maintenance and management of roads under the *Roads Act 1993*.

The *Local Government Act 1993* provides councils with broad service powers. At the same time, if a council takes action or makes a decision without the necessary legislative authority, it may be held by a court of law to be acting beyond its power. If a council's power is not exercised in the manner prescribed by Parliament, it may be deemed not to have been exercised at all.

Councils must take care to exercise their powers properly. Otherwise their decisions, and any resultant actions, may be declared void by a court, often with consequent financial loss.

When a council has to make a decision involving a value judgement, it must do so with fairness and justice. Natural justice requires that the decision be unbiased and that everyone whose rights and interests are affected is given an opportunity to express their views before the decision is made. Adequate notice of the decision should also be given so that any right to be heard can be exercised.

A council may be liable for actions carried out negligently that result in damage or injury to persons or property. This liability extends to the actions of employees or other people to whom the council's functions have been delegated. However councillors and employees will not incur personal liability where the matter complained of was done in "good faith" for the purpose of executing any Act. "Good faith" can be broadly defined in this context as something done honestly.

1.7.1 Limited legal protection

The *Local Government Act 1993* provides councillors with a level of protection from civil liability action for undertaking council-related and council-endorsed activities as a councillor.

Protection from civil liability is only provided where a councillor's actions are undertaken in the manner referred to in the relevant sections of the Act, including in good faith and for purposes related to council activities.

Councillors must read and understand sections 731, 732 and 733 of the Act, which provide protection. In the event that a councillor does not understand an issue, it is the obligation of that councillor to seek and be guided by their own legal advice. Councils are required to have an adopted Payment of Expenses and Facilities for Mayors and Councillors policy which may outline the circumstances where Council will reimburse an elected representative's legal expenses.

In relation to defamation action, a council may be sued for defamation, although it cannot itself sue for defamation. Individual councillors and council employees may also be sued for defamation, whether in their private or public capacities.

Generally speaking, councillors at meetings of council (or council committees) are protected from defamation by the defence of 'qualified privilege,' but only to enable them to speak freely and publicly in undertaking their duties in council meetings. Any comment or statement a councillor makes at a council meeting must be relevant to the council business, made in good faith and without malice.

SECTION 2

ROLES, RESPONSIBILITIES AND RELATIONSHIPS

The importance of trust and mutual respect within the council team and between council and senior management cannot be underestimated.

Councillors can have a major and positive impact on the health and well-being of the whole community.

A good working relationship between councillors, the mayor, the general manager and other council staff is fundamental to an effective council. Councillors must also have an understanding of how to manage external relationships, with the community, the media, and other organisations including State Agencies.

The roles of key people in councils, including councillors and the general manager, are defined in the Local Government Act and are discussed in detail below.

2.1 Roles and Responsibilities

2.1.1 Role of a councillor

The Act divides the role of a councillor into two broad categories:

1. As a member of the governing body to:
 - direct and control the affairs of the council in accordance with the Act
 - develop the Community Strategic Plan and other long term planning documents
 - allocate ratepayers' money efficiently in the best interest of the community
 - make sound financial decisions to ensure the long term sustainability of council
 - develop and review council's policies and objectives
 - review council's performance and its delivery of services

As members of the governing body, and in the interests of ensuring the organisation operates effectively to achieve the best outcomes for the community, councillors should endeavour to work constructively with council staff who are responsible for implementing council decisions.

2. As an elected person to:
 - make decisions in the best interest of the whole community and not a particular interest group
 - represent the interests of all residents and ratepayers
 - provide leadership and guidance to the community
 - facilitate communication between the community and the council.

What does a councillor do as a 'member of the governing body'?

One of the most important roles of a councillor is to participate in policy decision-making on behalf of the community.

This involves working as part of a team of councillors to make decisions and policies that guide the activities of the council. Policies can be defined as the principles and intent behind the programs that a council implements.

This includes setting the broad, strategic direction for the local community. To do this councillors have to understand their community, its characteristics and needs, the types of services required to meet these needs.

The key responsibilities of the council's governing body in working with and through the general manager are to:

- prepare and adopt the Community Strategic Plan, Delivery Program and Operational Plan
- develop the policy framework for their council in relation to the council's regulatory functions
- develop and oversee the delivery of the council's strategic plans that shape the future direction for the local area
- make sure that taxpayers' money is spend in the best interest of the community
- make sure that the council is fulfilling its regulatory functions appropriately by developing policies
- make sure that the general manager, through performance measurement in his or her employment contract, carries out all of council's policies, plans and strategies appropriately.
- provide accountability to the community by reporting on the outcomes of council's activities
- monitor and review the performance of the council.

In doing all of these things councillors must consider the Council's Charter as outlined in *Section 1* of this publication.

Council will benefit by analysing its activities from time to time, including asking how is it spending its time, where should its priorities be and does it have the balance of its priorities right?

What does a councillor do as ‘an elected representative’?

A councillor’s role as an elected representative is to provide an essential link between the community and council.

This involves representing the interests of the community, providing leadership, and communicating and promoting the interests of the council to other levels of government and relevant bodies.

Councillors have a responsibility to make decisions in the best interest of the whole community while deciding about the provision of services and the allocation of resources.

Councillors also need to provide leadership and guidance to the community. This is especially important when communities face challenges, such as climate change, drought, high unemployment or skill shortages.

How do councillors balance their dual roles?

Councillors must attempt to find a balance between the obligation to represent the interests of individual constituents and the need to make decisions on behalf of the whole community. This dilemma can cause some interesting debates in council.

Councillors need to display leadership and integrity to help ensure that the decisions they make as a member of the governing body are in the best interest of all the community.

Councillors can best help individual members of the community by satisfying themselves that their council’s policies are being carried out correctly. If a councillor thinks that a policy needs changing they need to debate this in a full meeting of council. It is inappropriate for a councillor to informally attempt to ignore or alter a policy in order to satisfy the demands of special groups.

The community expects every councillor to understand and provide representation on all council activities. So it is important that councillors quickly become familiar with the whole council area and the important issues affecting their community.

Councillors may find [Appendix 1 - Skills and knowledge checklist](#) useful in assisting them to identify the skills and knowledge they need to perform their role effectively.

Appointment and oversight of the General Manager

The *Local Government Act 1993* requires the governing body of council to determine:

- an organisation structure
- the senior staff positions within that structure
- the resources to be allocated towards the employment of staff.

The Act also requires all councils' governing bodies to appoint a person to be general manager.

The Division prepared "Guidelines for the Appointment and Oversight of General Managers" with the assistance of the Local Government and Shires Associations of NSW (LGSA) and the Local Government Managers Association (NSW) (LGMA).

The Guidelines provide a guide and checklist for councillors to refer to when considering:

- the recruitment and appointment of general managers
- re-appointment of general managers or ending contracts
- conducting performance reviews of general managers
- engaging in the day to day oversight of general managers.

The Guidelines aim to promote a consistent approach across NSW councils to the recruitment, appointment, and oversight of general managers. The Guidelines are issued under section 23A of the *Local Government Act 1993* and must be taken into consideration by councillors when exercising functions related to the recruitment, oversight and performance management of general managers. The [Guidelines](#) are available on the Division's website at www.dlg.nsw.gov.au.

2.1.2 Role of the mayor

The mayor is considered to be the voice of the council and the leader of the community.

The mayor has the same role and responsibilities as councillors with a few extra responsibilities. Under the Local Government Act, the role of the mayor is to:

- chair meetings of the council
- exercise urgent policy-making functions, where necessary
- exercise such other functions as determined by the council
- carry out civic and ceremonial functions of the mayoral office.

2.1.3 Role of the general manager

The general manager's role is to implement council decisions without undue delay and carry out functions imposed by legislation

A council's governing body monitors the implementation of its decisions via reports by the general manager to council.

The general manager is the most senior employee of a council and is the only member of staff selected and appointed by councillors. The general manager is appointed on a renewable, fixed term, performance-based contract for a maximum period of five years.

Under the Act the general manager's responsibilities include:

- assisting the council in connection with the development and implementation of the Community Strategic Plan, council's Resource Strategy, Delivery Program and Operational Plan and the preparation of its annual report and state of the environment report.
- efficient and effective operation of the council organisation and day-to-day management. This includes ensuring council decisions and policies are implemented without undue delay
- appointing, directing and dismissing staff in accordance with an organisational structure and resources approved by the council
- ensuring councillors are provided with information and the advice they need in order to make informed decisions and to carry out their civic duties
- implementing council's equal employment opportunity management plan
- exercising other functions as delegated by the council.

A governing body of council may by a resolution delegate certain functions to the general manager. The general manager may, in turn, delegate functions to other staff with some exceptions. However, the general manager still retains responsibility to ensure that any sub-delegated function is carried out appropriately.

2.1.4 Role of council staff

General managers employ council staff to carry out the day-to-day operations of the council and implement council policies and other decisions, as directed by the general manager.

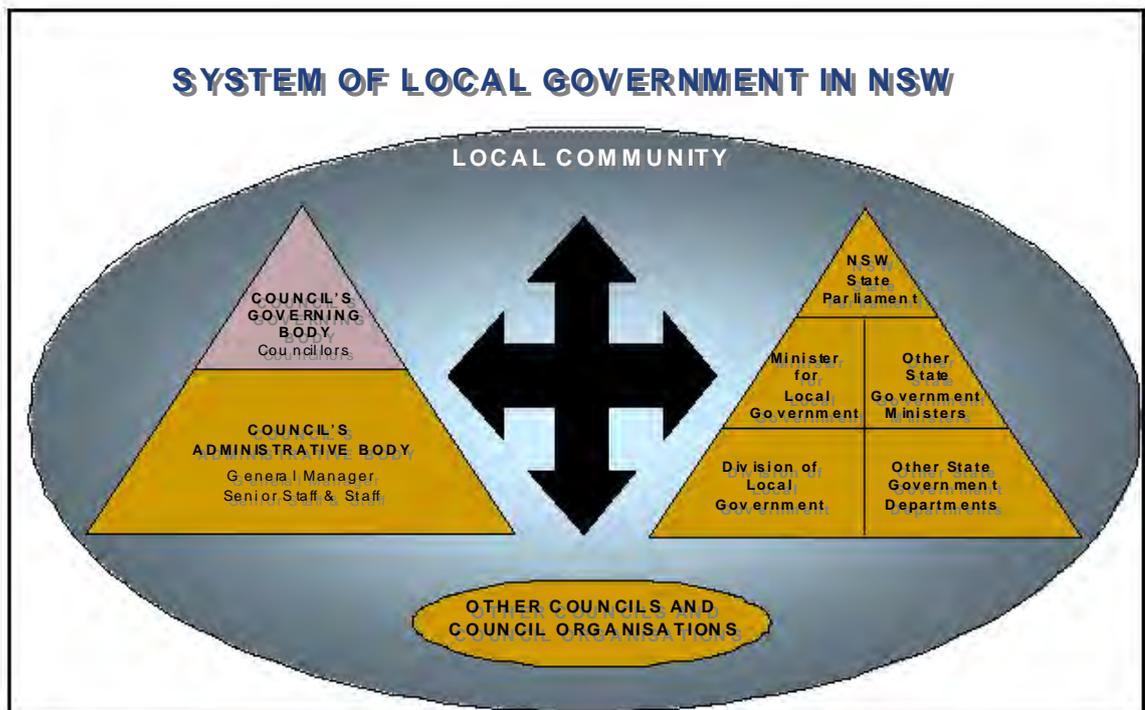
The general manager is the primary link between the elected body and its employees.

Council staff are responsible to the general manager who is responsible for the conduct and performance of council staff.

2.1.5 Role of the Minister for Local Government and the Division of Local Government

The Minister for Local Government is responsible for overseeing local government in NSW, including the administration of the Local Government Act under which local councils and county councils operate. The Minister ensures councils operate within the law and NSW State Government’s policies relating to local government.

The diagram below shows the relationship between NSW State and Local Governments and the community:



System of Local Government in NSW

The Division's purpose is to strengthen the local government sector to achieve the outcome of successful councils engaging and supporting their communities.

The Division of Local Government is the NSW Government agency that carries out the Minister's directions. It fulfils its purpose to strengthen local government through:

- Research and evaluation
- Developing policy and legislation
- Supporting councils
- Monitoring, regulating and responding to emerging issues

The Division is working to strengthen its relationship with councils and their representative bodies through:

- Building a relationship based on developing joint solutions
- Having regular formal and informal dialogue where there is a free flow of strategic information
- Developing a shared vision
- Seeking to understand the impact of its work on the sector
- Being approachable on any issue.

2.1.6 Role of the Local Government Association of NSW and the Shires Association of NSW

The Local Government Association of NSW (LGA) and the Shires Association of NSW (SA) represent 152 general purpose councils, 12 special purpose councils and the NSW Aboriginal Land Council.

Together, the Associations represent the views of their members by presenting councils to State and Federal governments, promoting local government to the community and providing specialist advice and services.

The Associations' annual conferences are important opportunities for councillors to be updated about important issues for local government, to vote on policy directions and to network with other councillors.

In August 2012, in an historic decision by NSW councils, members of the Local Government and Shires Associations of NSW (LGSA) overwhelmingly voted to form a single, united Association to represent the views and policies of Local Government in NSW. The Associations are expected to come together in early 2013. The move will see the creation of one strong cohesive voice for councils across the state.

2.1.7 Role of Local Government Managers Australia (NSW) (LGMA)

Local Government Managers Australia (NSW) is the peak body for local government professionals and managers. It seeks to ensure the organisation and its members are industry leaders and are at the forefront of good practice, change, innovation and the continuous improvement of local government.

The goal of LGMA is to provide advocacy, leadership, learning and support for members. It represents and supports professional practice by upholding a code of conduct and assists its members and councils with a range of products and services.

Further information and contact details for these organisations and other key state government agencies may be found in [Appendix 3 - Key organisations](#).

2.1.8 Role of Regional Organisations of Councils (ROCs)

Most councils in NSW belong to a Regional Organisation of Councils or ROC. These are voluntary alliances of councils. Section 355 of the Local Government Act provides that a function of a council may be exercised by a voluntary Regional Organisation of Councils. Councils may also create a ROC through an incorporated association or other legal structure. There are currently 17 ROCs in NSW. All ROCs undertake a broad range of functions on behalf of member councils in the areas of:

- Regional advocacy and research
- Regional strategic planning
- Service provision (either to the public or to member councils)
- Information sharing and problem solving

However, the balance between these functions varies widely between ROCs. This reflects the resourcing provided by member councils to ROCs, the varied size and geographic location of member councils, and regional priorities as established by member councils.

Further information about ROCs is available for each ROC, in [A Comparative Analysis of Regional Organisations of Councils in NSW and Western Australia](#) as well as the Division's [Collaborative Arrangements - Survey Report](#).

2.2 Managing internal council relationships

A good working relationship between councillors, the mayor, the general manager and other council staff is fundamental to an effective council.

The following section provides an overview of the various relationships between councillors and other internal council officials and staff. This issue is dealt with in greater detail in the Councillor Professional Development Program run by Local Government Learning Solutions.

2.2.1 Relationship between the mayor and the general manager

The relationship between the mayor and the general manager is the most important one in a council and can have a significant impact on the council's performance. As their relationship is often subject to community and media scrutiny it is important for the mayor and general manager to have a transparent and supportive working relationship. Should conflict or significant differences of opinion arise, both the mayor and the general manager should work to ensure that they are resolved in a timely manner, and not in the public eye.

The mayor and general manager also play an important role in ensuring that councillors and officials are acting in an ethical manner. The mayor also has a key role in the appointment of the general manager and therefore requires a full understanding of the general manager's role and responsibilities.

2.2.2 Relationship between councillors and the general manager

The quality of the relationship between a general manager and councillors is vital to a healthy and effective organisation. The experience of public inquiries has been that where this relationship breaks down, the organisation may become dysfunctional with the result that the community loses confidence in the council.

- Councillors who publicly express faith in general managers and staff
- General managers who support councillors in their role and who consider ways to improve their levels of support
- A clear understanding about how councillors ask questions and receive information from staff, and a formal communication protocol which matches everyday practice
- Informal briefings and discussions in which councillors can ask for advice and discuss their position on key decisions
- Opportunities for staff who are experts in their area to put forward their experiences and opinions to councillors to inform key decisions

- Council decisions which are seen as being based on merit rather than "the numbers game"
- Relationships which are characterised by respect, good humour and good faith.

Indicators of good working relationships between councillors and managers

(adapted from material provided by the UTS Centre for Local Government)

The general manager is made accountable to their council principally through their contract of employment. The role of the governing body is to oversee the general manager's performance in accordance with the Standard Contract.

Formally, this relationship is managed through the general manager's contract of employment.

The Division has standardised the contract of employment for general managers in consultation with the local government sector.

The standard contract provides for the performance of the general manager to be formally reviewed at least annually against the agreed performance criteria for the position. The agreed performance criteria are set out in an agreement that is signed within three months of the commencement of the contract. Council may also undertake interim performance reviews as appropriate.

The general manager must sign a performance agreement with the council. Other senior staff must sign a performance agreement with the general manager. These performance agreements should reflect the activities, performance targets and performance measures as outlined in the council's Delivery Program.

Monitoring and reviewing the general manager's performance

Performance management is an essential part of good management practice. It provides not only a means to monitor the council's performance but also a means to recognise and reward good performance and to manage under-performance.

The development and regular review of the general manager's performance establishes links between the council's and the general manager's objectives and priorities, and helps improve council's performance.

It is recommended that the general manager's performance be reviewed by a panel of councillors. Where a panel is formed, it is further recommended that the whole process of performance management be delegated to the panel.

It is also recommended that the role of the review panel should include:

- conducting performance reviews
- reporting the findings and recommendations of those reviews to council
- development of the performance agreement.

This process provides a good forum for constructive discussion and feedback.

Councillors selected to take part in the Panel should have received training on the performance management of general managers.

Although the composition of the panel is up to the governing body, the usual mix is the mayor, the deputy mayor and one councillor nominated by the governing body. The general manager should also have the option of nominating another councillor to the Panel.

All councillors should be notified of relevant dates in the performance review cycle and be kept advised of the panel's findings and recommendations.

Councillors not on this panel should provide comments and feedback to the mayor in the week prior to each review session. The result should be reported to a closed meeting of council or a committee of council.

While there may be instances where immediate action is necessary, it is generally expected that termination of a contract on the basis of poor performance would be the last resort.

The Panel should maintain the confidentiality of the review process, including the paperwork and substance of the review. In some instances the information may be potentially damaging.

[Performance management guidelines](#) developed by LGMA in consultation with the Associations are available for download from the Division's website: www.dlg.nsw.gov.au.

2.2.3 Relationships between councillors and staff

The general manager is the crucial link between councillors and staff. Generally, requests for assistance or information should go through the general manager, except where he or she has authorised another council officer to undertake this role.

Similarly, if a staff member needs to talk with a councillor or the mayor, approval should be obtained from the general manager or the appropriate authorised officer. Where authority is given to another council officer, it is the general manager's responsibility to monitor, as far as practicable, that the policy is being observed.

Individual councillors do not have the right to direct council staff in their day-to-day activities.

Councillors must not contact a member of the council staff 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.

It is sometimes necessary for councillors and staff to interact and work together so that informed decisions can be made and positive outcomes achieved. Mutual respect, sharing of information and open debate are hallmarks for successful relationships between councillors and staff.

Sharing information	Demonstrating respect	Ensuring open debate
<ul style="list-style-type: none"> • Regular meetings between the general manager and councillors • Briefing sessions for councillors which are well attended • Clear protocols about councillor contact with staff which are agreed and implemented, including a systematic approach to responding to councillor requests 	<ul style="list-style-type: none"> • Honouring the Code of Conduct • Meeting behaviour which is characterised by respectful language, even in difficult times • Staff and councillors presenting a united front in public forums • Media statements which refrain from personal criticism • Joint participation in community engagement activities <p>Support for professional development for councillors, managers and staff</p>	<ul style="list-style-type: none"> • Briefing sessions which enable both councillors and staff to contribute freely • Council records which include staff recommendations, council resolutions and a rationale if the two differ

Good working relationships between councillors and staff

(adapted from material provided by the UTS Centre for Local Government)

Personal interaction between councillors and staff

The Division's Model Code of Conduct governs the interactions between councillors and staff that relate to council business while they are undertaking their public duties. However, the Model Code does not prevent councillors and staff communicating. It is a normal part of community life that council staff and councillors would be, from time to time, present at the same social or community events. However, in such situations both parties should ensure that council business is not discussed.

The Model Code of Conduct is discussed in further detail in *section 3.1*.

2.3 Managing external relationships

2.3.1 The importance of community engagement

While participatory democracy is an important part of local government decision-making it is essential that councils have a clear, robust and structured community engagement process in place. This helps ensure that the best decisions are made for the whole community, including “the silent majority”.

Councillors are the representatives of the community. Therefore, they are accountable to the community. It is important that the community is able to contact and meet with councillors to discuss and contribute their views and ideas. Councillors should therefore spend time undertaking formal and informal community engagement. This helps ensure that a council's policies and programs are acceptable to and meet the needs of the community.

When a council is developing important policies, strategies and plans, for example, a council's Community Strategic Plan, Delivery Program or Operational Plan, it is required by law to put the drafts on public exhibition and consider all the comments or submissions received.

The *Local Government Act 1993* also contains important mechanisms to enable a council to more formally engage and consult with its community. For example, a council may conduct a poll on an important issue to get an understanding of the community's views on a matter, such as whether to impose an environmental levy.

Councils may also hold constitutional referendums on some matters such as whether to increase or decrease the number of councillors, whether to divide an area into wards or abolish wards or to change the method of election of the mayor.

Effective engagement

The community engagement process needs to be robust, collaborative, inclusive and sustainable.

Community engagement is a mechanism to assist councillors to understand and incorporate the public will and community concerns into decision-making. Community engagement should not be viewed as a “box ticking” exercise, or something that is only undertaken to pacify the vocal minority.

Good community engagement involves a two-way flow of information. Community engagement can be a very effective way of increasing community understanding of an issue, and a way to increase support for council policies and decisions.

Councils should ensure that the community engagement process is robust, collaborative and inclusive. They can do this by clearly defining the issues in question, identifying all relevant stakeholders and giving them the opportunity to participate, and by allocating sufficient time to the process. Councils should also provide clear feedback to the community on the outcomes of any engagement activities.

This can help councils to ensure the sustainability of community engagement. If community members feel that they have the opportunity to actively participate in engagement activities and that their participation is meaningful, they may be more willing to participate in the process in the future.

More information about effective community engagement is included in *Appendix 6 – Tips for Effective Community Engagement*.

Methods for engaging with the community

While councillors are generally constrained by the inherent costs associated with undertaking large-scale engagement activities, the following information is provided as a guide to the various methods of smaller scale community engagement available to councillors.

Community engagement will only provide the views of a sample of the community. When planning engagement activities, consideration should be given to what is the most appropriate form of engagement for the audience and the circumstances.

Different methods of community engagement include:

- **Face to face** – Public meetings are the most common method of sharing information. They are a useful way to provide members of the community with direct access to the councillors. However, care must be taken to ensure that meetings are held in public venues appropriate to the size and make up of the audience. Meetings should also be well-facilitated and conducted in a structured and orderly fashion. Options include small, targeted meetings; large, open public meetings; or a series of ongoing meetings.
- **Surveys** – Surveys can be useful for collecting information from a small sample of the community on specific issues. However, the usefulness of surveys can be limited for community members who have literacy or language difficulties.

- **Letter writing** – Letters can take the form of formal mass mail outs to a broad cross-section of the community or smaller scale personal letters to targeted groups and individuals. Letters should be well-researched and appropriate in content and style. Like surveys, the usefulness of letter writing can be limited for community members who have literacy or language difficulties.
- **Telephone** – The telephone can be a useful way of directly contacting individual members of the community. It is particularly useful in the case of targeted community engagement, as the more broad scale telephoning of individuals can be a time consuming exercise. Consideration should be given to the timing and appropriateness of phone contact as many people consider this invasive, particularly evening calling. The usefulness of telephone consultation can also be limited for members of the community who experience language and speech difficulties.
- **Digital media** - The internet has opened a new world of community engagement in local government. Most councils now have their own website and offer a range of on-line services, often in a number of community languages. Councils also have Facebook® pages which can be updated continuously to reach community members in real-time to share information, seek feedback or answer questions. Some councils and councillors contribute to public information sharing about various issues and events through Twitter. A number of councils also have You Tube channels and produce clips on various topics including local infrastructure projects. Advances in digital technology have also allowed councils to develop smartphone apps to assist residents and ratepayers interact with them on a range of issues. Links to further information about social media can be found in *Appendix 5 - Dealing with the media*.

Additional resources on community engagement

The Division's Integrated Planning and Reporting webpage contains information and links to additional resources on effective community engagement which can be accessed [here](#).

2.3.2 Accountability

Councillors are accountable to the community through community engagement, open and transparent decision-making, as well as regular planning and reporting.

Ultimately, councillors are accountable to the community on Election Day every four years. However, at all times, council decision-making should be transparent. Fundamentally, community engagement processes are designed to promote a culture of accountability to the local community.

Implicitly, the needs of the community should be reflected in the decisions of council.

Councils must regularly provide information to the public, which demonstrates:

- the council is being administered in accordance with the Act
- the council is allocating resources consistent with its vision and strategic plan as well as the corporate objectives stated in the Community Strategic Plan
- the performance of the council is monitored and reviewed to ensure the council objectives are being pursued
- the interests of all the community is served
- each councillor is acting with integrity.

Further information about reporting requirements for councils can be found in *Section 5 - Sound Planning and Reporting*.

2.3.3 Other external relationships

Building and maintaining good working relationships with other organisations helps to sustain an effective council. Councils should foster relationships with key organisations including other councils, other State and Federal government agencies, representative and industry bodies, and local industry and local community organisations.

The contact details for a number of key organisations and a brief description of their roles are contained in [Appendix 2 - Key organisations](#).

Strategic collaboration

Strategic collaboration is an umbrella term for how councils work together. Collaboration can take many forms including alliances, partnerships and business clusters. Its purpose is to reduce duplication of services, provide cost savings, access innovation, enhance skills development and open the way for local communities to share ideas and connect with others.

The Division of Local Government has produced *Collaboration and Partnerships between Councils – A guidance paper* to assist councils to develop stronger strategic collaborative arrangements that use resources wisely to meet their communities' long term needs. A copy of the [collaboration and partnerships guidance paper](#) can be downloaded from the Division's website: www.dlq.nsw.gov.au.

2.4 Effective Decision Making

The great majority of councillors' work involves making important decisions about council's future desired direction and development. It is critical for all councillors to have the skills and information needed to make well-informed decisions that benefit council and the whole community.

To make effective and well informed decisions councillors must understand how to evaluate the range of plans, proposals, strategies and other matters that will constantly be before council.

All reports before council should:

- enable councillors to assess council's ability to achieve its strategic goals
- provide information which is linked to council approved strategic or project plans and the budgets that support those plans
- assist councillors in assessing the merits of a proposal, or any other matter before council, and make well-informed decisions.

Prior to making decisions councillors should ask four key questions:

- What impact will the decision have on the community (including residents and ratepayers) and the environment in both the immediate and long term?
- What impact will the decision have on council's finances both in the immediate and long term?
- How does this decision fit in with the long-term direction of the council?
- Are all of the relevant materials and facts available to make an informed decision?

In addition, specifically in relation to project proposals before the council, the first step in the process is to ensure that the proposal makes sense and that each part is logically supported with sound analysis and actions.

Some additional questions to ask include:

- Will the performance measures contained in the proposal enable council to adequately monitor its progress and measure if it is achieving the desired outcome?
- Does the proposal provide value for money?
- Is the cost-benefit acceptable?

Other important issues relating to decision-making are also covered in *Section 5 Sound Planning and Reporting* and *Section 6 – Financial Management*.

2.4.1 Meeting papers

Council papers are the ‘tools’ used most often by councillors to make decisions. Meeting or business papers should be of sufficient quantity and quality to allow all councillors to do their job properly and effectively.

All the reports councillors receive should contain sufficient information to allow them to be able to assess council’s performance and make appropriate, well-informed decisions.

Commonly council meeting papers are likely to include the following list (although this may vary from council to council):

- reports from the general manager
- reports from the senior staff in charge of the main functional areas of council such as environmental services, corporate services, engineering, community services, and strategic and commercial services.
- reports on special projects or programs, as well as exceptional events or matters which involve council activities or impact on council business.

The papers may also include copies of minutes from council committee meetings.

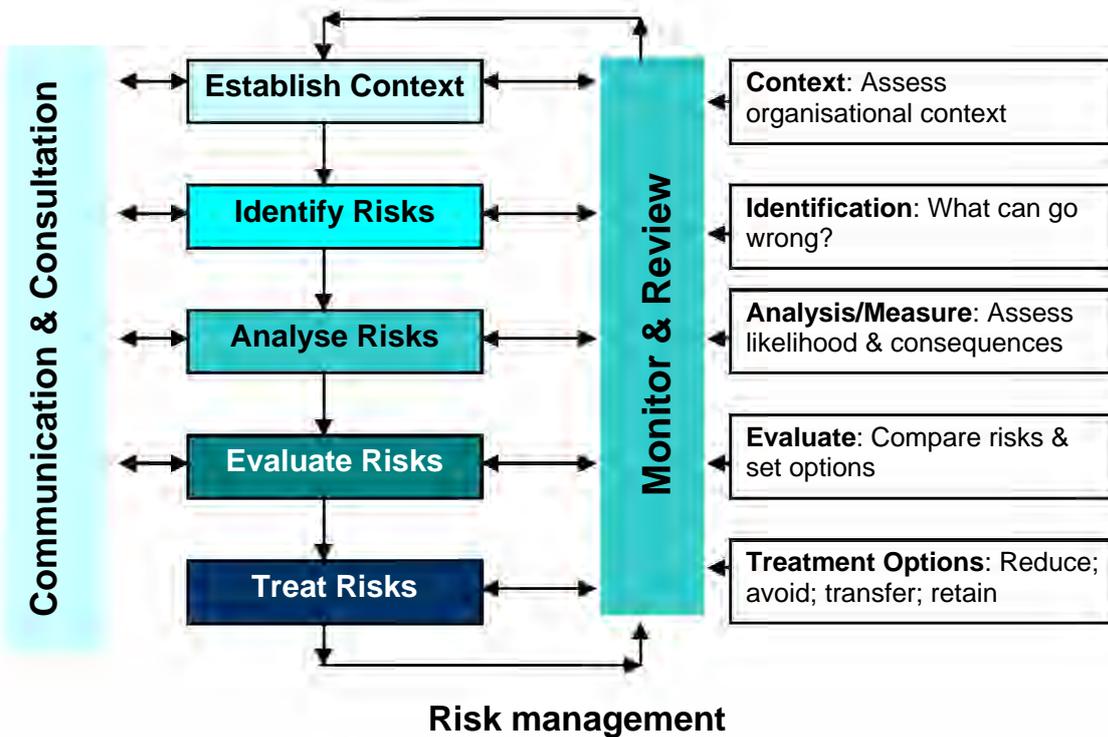
Further information about good meeting practice can be found in *Section 4 – Making the Most of Meetings*.

2.5 Risk Management

The *Local Government Act 1993* was enacted before enterprise risk management was a widely accepted element of good governance. The Act does however require councils to ensure that the services and facilities council provides are managed efficiently and effectively (section 8) and that the general manager is responsible for the efficient and effective operation of the council's organisation (section 335(1)).

The Division's Promoting Better Practice reviews frequently make recommendations to actively encourage councils to undertake risk management reviews. It also encourages councils to plan across all functions of council to proactively identify and manage risk exposures.

It is now well established that risk management is an essential part of effective corporate governance. Risk management is a process through which an organisation can systematically identify the risks to its operation; analyse, evaluate and treat those risks; and implement a systematic process for the ongoing monitoring and review of the management of the organisation's risks.



The diagram above illustrates the cyclical nature of risk management. Councils should continually monitor and review their risk management strategies and practices, and also ensure that effective consultation is undertaken in all stages of the process.

By understanding the potential risks they face, councils are better prepared to take appropriate action to minimise the impact of adverse risks and maximise opportunities to benefit from positive risks.

Good risk management should be forward looking and assist in making good business decisions.

Through proactive risk management treatment the following outcomes can be achieved:

- higher level of service delivery
- more efficient, effective and economic allocation of resources
- improved responsiveness and flexibility
- increased accountability and transparency.

The administrative body of council, led by the general manager, has primary responsibility for the design and operation of the risk management and internal control framework of the council. However, good governance in local government relies on the robust independent review of management, finances, risks and operations by council's governing body and a properly constituted audit committee which reports regularly to council's governing body.

As members of the governing body responsible for deciding the direction of council, councillors are responsible for determining the amount of risk exposure that the council is prepared to take. By having a risk management process in place councillors are able to make these decisions in a more accountable and transparent way.

Consequently, residents and ratepayers can be better informed about the reasons underpinning council decisions and will result in a greater confidence and trust in council's decisions.

The benefits for councillors of risk management include:

- assistance in assessing proposals and allocating resources
- assurance that the council has appropriate controls in place and is managing its compliance obligations appropriately
- consequently freeing the councillors to focus on the key strategic business of council.

Risk management is a very valuable support to good governance. It provides the community with confidence that council is being managed in a responsible and accountable manner.

2.6 Other resources

The Governance Health Check (GHC) is a self-audit guide to good governance in local government. The GHC was jointly developed by the Independent Commission Against Corruption and Local Government Managers Australia NSW (LGMA). The GHC is designed to give councils a simple tool to identify key elements of corporate governance in a NSW local government context and to measure their progress in relation to each of these elements. It is accompanied by a Manual that assists councils to better understand good corporate governance, additional resources and identify best practice.

Councillors should check with their general manager to see if council has access to the *Governance Health Check*, which is available to LGMA members.

SECTION 3

CODE OF CONDUCT AND ACTING ETHICALLY

The role of a councillor is a public one. Whenever councillors appear in public, even though they may not be doing anything related to their council position, they are usually seen as acting in their councillor role and judged in this light. This means the position of councillor is really a “24/7” one.

Councillors need to act at all times in a way that does not bring disrepute to either themselves or their council. Some general conduct, special obligations and protocols they must follow are outlined in a council’s Code of Conduct, which the *Local Government Act 1993* requires every council to adopt.

Acting ethically is not just about avoiding or managing conflicts of interests. It also applies to the interactions of councillors with council staff, members of the public, use of resources and any personal benefits councillors might obtain.

3.1 The Code of Conduct

The adoption of a Code of Conduct is an important means of ensuring councillors are responsible for their own conduct, for making decisions ethically and for being accountable to their communities.

Councillors need to make difficult decisions that do not always have unanimous support in the community. In order to maintain the confidence of the community, councillors must ensure that these decisions are made in an ethical and impartial manner.

The Division of Local Government’s *Model Code of Conduct* provides the foundation for ethical decision-making in local government, and all councils must make and adopt a code of conduct based on this document. The Model Code of Conduct sets the minimum standards of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation. It is underpinned by procedures for dealing with breaches of the Code and provisions in the Act to impose sanctions.

A revised Model Code was introduced in 2012, following calls from councils for a stronger Code of Conduct, more efficient and effective procedures for dealing with complaints and stronger sanctions to deter poor behaviour.

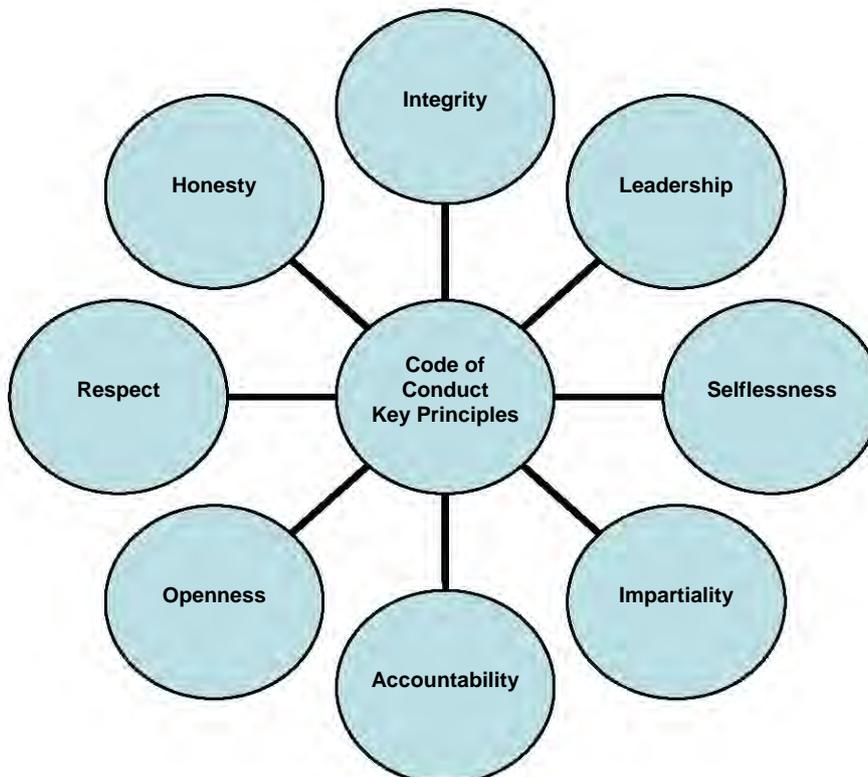
The Code is necessarily a complex document that has been built as a result of feedback from councils and to tackle risks of corruption or other damaging behaviour. To help councillors understand their obligations, the Division of Local Government has developed a summary document, explaining the standards of behaviour expected and what happens when these are not met. This is contained in [Appendix 8 - Standards of conduct for council officials](#).

Councillors are however expected to comply with all the provisions in their council's code of conduct, which is based on the Division's [Model Code of Conduct](#) (available on the Division's website at www.dlg.nsw.gov.au). A Better Conduct Guide is also available which provides more information on how you can act appropriately and ethically.

3.1.1 General obligations

The Model Code of Conduct sets the standards of ethical and appropriate conduct for council officials in relation to their general conduct, conflicts of interests and personal benefit, relationships between council officials, access to council resources and information, and maintaining the code's integrity.

The obligations of council officials under the Model Code are based on eight key principles: integrity, leadership, selflessness, impartiality, accountability, openness, honesty and respect.



Key principles of the Model Code of Conduct

Councillors have certain general conduct obligations under the Model Code of Conduct. Specifically, councillors must:

- act lawfully, honestly and with care and diligence in carrying out their functions
- not conduct themselves in a manner that is likely to bring the council into disrepute
- treat others with respect
- consider issues consistently, promptly and fairly
- not harass or discriminate against others
- ensure that development decisions are properly made
- not participate in binding caucus votes except in relation to nominations and elections.

In relation to binding caucus votes, councillors are permitted to discuss a matter before a meeting with other councillors and voluntarily agree to a shared position on a matter. However, they must retain their individual discretion and remain free to determine a matter on its merits.

3.1.2 Ethical decision-making

Key questions that councillors should ask themselves to ensure that their decisions are ethical and sound are:

- 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?
-

If councillors are uncertain about an action or decision, they should seek advice from the general manager. They may also wish to seek their own independent legal advice.

Councillors should exercise due care in undertaking their functions by acquainting themselves with the requirements of the *Local Government Act 1993*, their council's Code of Conduct, the details of the matters they are dealing with, and any factors which may affect their involvement in decision-making.

3.1.3 Conflicts of Interests (pecuniary, non-pecuniary and political donations)

A conflict of interests exists where a reasonable and informed person would perceive that a councillor could be influenced by a private interest when carrying out their public duty.

The importance of following the principles of ethical decision-making cannot be underestimated. There is significant potential for conflict of interests to arise in the course of a councillor's role as an elected person, resident of the local area they represent and member of the governing body of council. Conflict of interests must be managed appropriately.

Councillors must consider how a reasonable person who is informed about the situation would view it.

- ***Pecuniary conflicts of interests***

Pecuniary conflicts of interests arise where councillors, or certain persons or entities that are associated with a councillor, are reasonably likely to make or lose money because of a decision the council might make. In such a case the Act requires the councillor to declare the interest and withdraw from the meeting while the matter is being debated and voted on.

Councillors also need to submit an annual written return of interests to the council including information on real property (meaning land and anything attached to it, including buildings), gifts, interests and positions in corporations, sources of income, and debts. These may give rise to a pecuniary interest at a meeting and are made publicly available to make sure councillors are seen to be acting openly and honestly in the decisions they make.

- ***Non-pecuniary conflicts of interests***

Non-pecuniary conflicts of interests commonly arise out of family or personal relationships, through an association a councillor, or someone close to them may have, through involvement in a sporting, social or other kind of group or association. The political views of a councillor do not constitute a private interest.

The greater a councillor's involvement with the club or organisation, the greater the likelihood of a real or perceived conflict of interests.

The Model Code recognises two forms of non-pecuniary conflict of interests: *Significant* and *Less than significant*. An example of a significant non-pecuniary conflict of interests could be where the councillor is an active member and involved in the running of a sporting club that submits a development application to the council for a major extension of its facilities.

In this instance there may be a public perception that the councillor's activities with the club would make it difficult for the councillor to view the matter before the council impartially. When the matter comes before council the councillor needs to consider whether or not he or she has a significant conflict of interests, and if so, must disclose the nature of the conflict and refrain from participating in the discussion or voting on the matter.

By contrast, if a councillor is merely a member of a large club and utilises its facilities via membership it is unlikely that this membership alone would conflict with their role as a councillor representing the views of the residents and ratepayers generally.

However, a councillor should still consider if this raises a less than significant conflict of interests and if so, he/she should disclose this, as well as the nature of the interest and a brief explanation of why no further action is required in the circumstances. It always remains open for councillors to take additional steps to manage any perception of a conflict of interests.

- ***Political donations***

Councillors should be aware that matters before councils involving political campaign donors may give rise to a non-pecuniary conflict of interests. The recently revised Model Code contains a number of provisions to assist councillors to manage conflict of interests that may arise as a result of political donations and their obligations to disclose.

The Model Code requires councillors to consider the perception of influence created by any political donations and take reasonable steps to identify circumstances where this may arise. Where a donor has a matter before council, councillors have specific obligations if they have received or knowingly benefited from a donation from the donor of \$1,000 or more in the last four years, or where they have been a candidate at a State or Federal election and their campaign has received or knowingly benefited from such a donation.

If these circumstances apply, then the councillor must have no involvement in the matter, by absenting themselves from and not taking part in any debate or voting on the issue.

This applies to all councillors, regardless of whether they are independent councillors or a member of a political group or party.

3.1.4 Gifts and benefits

Councillors may find they are offered things such as free tickets to major sporting or other events. These gifts could be offered innocently and in good faith or they could be an attempt to influence. The Model Code requires that councillors do not accept gifts or benefits of more than token value. However, these may often be attractive and there are circumstances where they can be difficult to refuse.

Councillors need to think about how the community might perceive their acceptance of these gifts. Feelings of obligation can arise by accepting a gift. Members of the public might think a councillor's ability to make impartial decisions has been compromised.

In circumstances where a gift or benefit cannot reasonably be refused or returned, councillors are required to surrender it to council and ensure that it is recorded in the council's gifts register.

3.1.5 Access to information and resources

Councillors are entitled to such information necessary for the performance of their functions. However, this is counterbalanced by the obligation to use this information appropriately and to maintain the integrity and security of confidential information.

A council's Code of Conduct also discusses how a councillor can get access to information and other council resources such as the expertise of council staff. Access to council staff expertise must happen through the general manager, or in accordance with a system that is put in place to facilitate and coordinate councillor requests for information or action.

3.1.6 Appropriate lobbying

The Model Code and the Local Government Act recognise that appropriate lobbying of councillors is a normal part of the democratic system and that councillors have a representative role in considering the views of their constituents and communicating with them.

Councillors would be aware that they are at some time likely to be lobbied by a wide range of people including individuals, organisations, companies and developers. It is essential that councillors understand the difference between appropriate and inappropriate lobbying, and do not undermine the public's confidence by engaging in lobbying which could be considered inappropriate or unlawful.

Inappropriate lobbying usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter.

The ICAC has produced a brochure which contains specific information about all aspects of lobbying local government councillors.

Appropriate vs inappropriate lobbying

Examples of appropriate lobbying:

- Keeping records of meetings with lobbyists or objectors
- Holding meetings in appropriate locations such as council offices
- Ensuring other people are present
- Making sure that any information obtained when being lobbied is available to council staff and other councillors.

Examples of inappropriate councillor conduct that could occur during lobbying include:

- Disclosing confidential information while being lobbied
- Accepting a political donation in return for a favourable exercise of discretion during decision-making
- Giving undertakings to an interested party prior to consideration of all the information relevant to a decision.

3.1.7 Reporting breaches

Code of Conduct

Any person, whether or not a council official, may make a complaint alleging a breach of the Code of Conduct.

Suspected breaches of the Code of Conduct by councillors, members of staff of council (excluding the general manager) or delegates should be reported to the general manager in writing. Where it is believed that the general manager has breached the Code of Conduct, the matter should be reported to the mayor in writing.

Councillors should not make allegations of suspected breaches of the Code at council meetings or in other public forums.

Pecuniary interest

Complaints regarding non-disclosure of a pecuniary interest may be made by anyone to the Division of Local Government and these may be investigated and referred to the Local Government Pecuniary Interest and Disciplinary Tribunal for adjudication. Significant penalties may apply to councillors who don't meet their obligations in this area.

Public Interest Disclosures

The *Public Interest Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. The purpose of this Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.

3.1.8 Respecting the code of conduct

For a council's code of conduct to be effective, people need to be confident about its integrity and to respect its processes. Certain types of conduct have the effect of undermining confidence and respect in the code of conduct and code of conduct processes. Examples of conduct of this type includes:

- publicly making allegations without going through the proper code of conduct process
- making complaints for political or improper purposes
- leaking information about an investigation to embarrass someone or to attack the investigation process
- taking reprisal action against the complainant or a person who has dealt with a complaint.

Where respect and confidence in a council's code of conduct is lost, it becomes difficult for a council to promote and enforce appropriate standards of conduct. This often results in a council becoming unable to govern itself and the loss of community confidence in the council.

For this reason, the Division of Local Government views conduct of this type seriously. Under proposed amendments to the misbehaviour /misconduct provisions of the Local Government Act, this may result in councillors being suspended from civic office or disqualified from holding office for up to 5 years.

3.2 Councillors and public comment

It is common for councillors to be asked by journalists to comment on council policy or decisions. There are certain protocols that councillors must follow when responding to the media on council policy or decisions. Many councils have a policy which permits only the mayor, the general manager or the Public Officer to speak on behalf of the council. In such cases individual councillors remain free to make personal comments to the media but not to speak on council's behalf.

When speaking publicly, councillors should ensure that they clarify whether or not they are acting on behalf of council and/or as an individual councillor.

A level of qualified privilege applies to councillors under the law, which recognises that councillors may need to speak freely and publicly in the discharge of their civic duties. However, this ought to be treated with great caution. It covers only statements made at a council or committee meeting in the discharge of a councillor's duties which are pertinent to the business of local government. Such statements also need to be made in good faith and must not be made maliciously. Councillors are subject to defamation law and it is contrary to law to injure another person's reputation in the eyes of society through the written word, pictorially or in speech.

If a councillor becomes aware of media interest in a particular aspect of council business that could be contentious, they should consider bringing it to the attention of the general manager.

To help create a positive, safe and harmonious organisational culture, councillors should endeavour to work out any issues or differences of opinion privately, not publicly, and especially not through the media.

Further information about the relationship between councillors and the media can be found in *Appendix 5 – Dealing with the Media*.

SECTION 4

MAKING THE MOST OF MEETINGS

4.1 How councils debate and make decisions

Council meetings are important because they are the mechanism through which councillors make decisions regarding policies and programs of the council to meet the needs of the community. Decisions of a council can only be made by resolution at a properly convened meeting.

Councillors are expected to attend all council meetings and all meetings of any committee of which they are a member, unless leave is sought and approved. Councillors need to do a good deal of reading in preparation for meetings.

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 the council.

As all council decisions are made on a majority basis, councillors need to understand the meeting process and the need to work as a team to get the best outcome for the community. For this, councillors need good communication skills to state their position as well as a willingness to listen to diverse views and compromise when necessary.

The success of meetings depends on working as a team, respecting diverse opinions and allowing all points of view to be heard. Meeting success also depends on following good meeting practices.

4.2 How often council meetings are held and how they are conducted

Council meetings must be conducted in accordance with the, Local Government Act and Regulation, and council's Code of Meeting Practice, if it has one.

How and when council meetings are held is up to each council to decide, although the *Local Government Act 1993* requires every council to meet at least 10 times a year, each time in a different month.

Some councils meet only once a month. Many larger councils meet more frequently because they have a higher volume of business. Councillors should be given at least three days notice of regular meetings, unless there are extraordinary circumstances that make it important to have a more urgent meeting.

All formal council meetings must be held in accordance with requirements in the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* and the council's Code of Meeting Practice, if it has one, and Code of Conduct.

This is because meeting procedures contribute to good public decision-making and increase council's transparency and accountability to its community.

The public has the right to see the agenda and business papers for each meeting, free of charge, and attend all council meetings and council committee meetings except in special circumstances outlined in the Act (see the section below on *Closing Meetings*).

Role of the mayor or chairperson at meetings

The mayor is usually the chairperson unless he or she is absent or wishes otherwise. The chairperson maintains order at the meeting and keeps discussions to the point and to the agenda, amongst other things. This helps ensure meetings are conducted with decorum and decisions are made in an open, transparent way.

While councillors have one vote each, the chairperson has a casting vote if there is a split decision. Therefore, it is particularly important that the chairperson sees that the debate is conducted in a fair and orderly manner, regardless of his or her own views about the issue under discussion. The chairperson may exercise their second or 'casting' vote as he or she sees fit.

Role of the general manager and staff at meetings

The general manager can attend council meetings but is not permitted to vote. However, the council may resolve to exclude the general manager from a meeting if it is dealing with matters relating to the general manager's employment or standard of performance.

Some councils also have other senior staff attend meetings for the purpose of answering any technical questions that arise out of the council's business papers. This can be an effective way of ensuring that councillors understand the issues before them.

The presence of council staff at meetings should not be used to raise matters that are not on the meeting agenda or that do not reasonably arise from the business papers. Such conduct does not promote a positive and healthy working relationship between the governing body and the administrative arm of council.

The Regulation allows questions to be put to council staff at meetings through the general manager. However, the staff are entitled to reasonable notice of the question and sufficient time to respond. A staff member is entitled to refuse to reply to a question. The chair of the meeting is expected to make sure these questions are put succinctly, directly and without debate.

Quorums

There must be a quorum for a council meeting to take place (section 368 of the Act). A quorum is the majority of councillors who hold office at the time of the meeting and therefore does not include councillors who are suspended from office. For example, if a council has 9 councillors then the quorum will be 5 councillors.

Agendas

It is important that meetings only deal with matters listed on the agenda in the order in which they are listed. This allows councillors and members of the public to follow the items being debated and the decisions being made. If the order of the agenda is to be changed it should be done so by a resolution at the beginning of the meeting.

The Regulation requires that the only business to be transacted at a council meeting is the business that is already before the council, business that relates to a matter already before the council and business of which the required notice has been given.

A matter for which required notice has not been given can only be dealt with if the chairperson rules it is of great urgency and a motion is passed to have the matter dealt with.

Motions

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.

The number of motions put forward by a councillor cannot be limited. As long as notice and other procedures are followed, a councillor can put forward as many motions as they wish.

When putting forward motions councillors need to balance their civic responsibility for representing the interests of the community with their obligation to use council's resources effectively and efficiently.

Voting

In order to vote at a meeting a councillor must be present. There is no available mechanism for proxy voting.

If a councillor is present at a meeting during voting they are taken to have voted whether they intended to or not. Clause 251 of the Regulation states that a councillor who is present at a meeting but fails to vote is taken to have voted in the negative.

The only way for a councillor to abstain from voting is to leave the meeting.

Closing meetings

All meetings of a council are open to the public unless they have been closed in the limited circumstances set out in section 10A of the Local Government Act. It is important that councillors familiarise themselves with the details of this section of the Act, which states that the only circumstances in which a meeting can be closed are:

- Personnel matters are being discussed – this does not include matters relating to councillors
- Personal hardship of residents or ratepayers
- Commercial in confidence information
- Material which if disclosed would prejudice the maintenance of law
- Security matters
- Legal advice
- Information regarding items of Aboriginal significance.

Section 10B of the Local Government Act further limits the powers given to a council by section 10A to close its meetings to the public. Section 10B provides that a council meeting should only be closed to preserve the relevant confidentiality, privilege or security. In determining whether the discussion of a matter in an open meeting would be contrary to the public interest, embarrassment to the council, councillors or its employees is irrelevant.

Apart from the circumstances defined for closing meetings meets, it is expected that council's decisions will be made in an open and transparent manner. It also helps inform the community about their council's activities and encourages community participation in the decision-making process.

Resolutions or recommendations made at a closed part of a council meeting must be made public by the chairperson of the meeting as soon as practical after the closed part of the meeting has ended. For example, the chairperson would read out the resolutions passed in the closed part of the meeting when the meeting is re-opened and the minutes of the ordinary meeting would record the words of the resolution passed in the closed part of the meeting.

A resolution or recommendation should be phrased in such a way as to protect any confidential detail. This allows the public to know what the council or committee has decided at the closed part of the meeting without revealing confidential information.

The committee of the whole

The committee of the whole is where the rules of debate are suspended while a specific matter is debated. The only advantage of a council forming a committee of the whole is to overcome the limits on the number and duration of councillor speeches referred to in clause 250 of the Local Government (General) Regulation.

For example, clause 250 states that a councillor must not speak on a matter for more than five minutes. A council resolving to move into a committee of the whole to consider a matter would then allow a councillor to speak for more than five minutes on that matter.

Where a council resolves to move into a committee of the whole this does not also close the meeting to the public. However, where a council closes part of a meeting under section 10A of the Act, the council may also move into committee of the whole if it wants to suspend the rules of debate for that part of the meeting.

A committee of the whole makes recommendations which should be put to the council meeting when the rules of debate are resumed. The committee of the whole's recommendations must be included in the council's minutes.

In a closed meeting that has resolved into a committee of the whole, the committee's recommendations as well as the resolutions passed in the closed part of the council meeting must form part of the council's minutes of the meeting.

Mayoral minutes

Clause 243(1) of the Regulation states that the mayor may put to a meeting, without notice, any matter which the council is allowed to deal with or which the council officially knows about. This covers any council function under the Act or other legislation, or any matter that has been brought to the council's attention, for example, by letter to the mayor or the general manager.

The mayor may move that a mayoral minute be adopted without the motion being seconded. Mayoral minutes should not be used to introduce, without notice, matters that need research or a lot of consideration by the councillors before coming to a decision. These types of matters would be better placed on the agenda, with the usual period of notice being given to councillors.

4.3 Different types of council meetings

There are three main types of formal council meetings which must be conducted in accordance with the Local Government Act and Regulation, and the Code of Meeting Practice, if a council has one:

Ordinary council meetings

These meetings are the forum where the governing body conducts its core business. The general manager is responsible for giving each councillor and the public at least three days notice of the time and place of each meeting as well as the agenda and business papers for that meeting. It should be noted that if a councillor is absent from three or more consecutive ordinary meetings without leave their office automatically becomes vacant.

If a councillor is going to be absent from an ordinary meeting of council that councillor must apply for a leave of absence. Merely offering or accepting an apology is not enough.

Extraordinary council meetings

These meetings may be called on occasion to address business that cannot be postponed. Three days notice is not required for these meetings. Extraordinary meetings should only be called in an emergency (section 367(2) of the Act).

Council committee meetings

In addition to council meetings, councils can establish committees to oversee specific functions, projects or programs and report back to the council on those matters. A council committee is one where all the members of the committee are councillors. The committee must be chaired by the mayor or a Chair elected from its membership or by the council. The mayor does not have to be the Chair of the committee.

The meetings of council committees should also be conducted in accordance with the council's Code of Conduct, the provisions of the Act and Regulation and council's Code of Meeting Practice, if the council has adopted one.

Each councillor, whether a member of a committee or not, is entitled to attend and speak at a meeting of a council committee. However, only councillors who are members of the committee are entitled to put business on the committee's agenda, move or second a motion at the committee meeting, or vote at the meeting.

Code of Meeting Practice

Both ordinary and extraordinary council meetings must be conducted in accordance with the council's Code of Conduct and the Local Government Act and Regulation. Council may choose to adopt its own code of meeting practice. The Code must incorporate the provisions of the Act and Regulation and may not be inconsistent with them (section 360 of the Act). If council has adopted a Code of Meeting Practice then the meetings must comply with its provisions as well. A Code of Meeting Practice must be developed in consultation with the community and be made publicly available.

Other meeting types

The following meeting types may involve councillors but they are not formal meetings in that they do not have to be conducted in accordance with the Local Government Act and Regulation, and the Code of Meeting Practice, if a council has one:

- ***Advisory Committees***

These are different from council committees and their membership can include non-councillors. While the meeting procedures in the Act and the Regulation do not apply, good meeting protocols should be maintained.

- ***Workshops or briefing sessions***

Councils may hold workshops for the purpose of conducting in-depth discussions on certain topics. Formal decisions are not made at workshops but these sessions provide the time needed to explore more important or complex issues in detail. A workshop may involve councillors, council staff and invited participants.

Workshops should not be used for detailed or advanced discussions where agreement is reached and/or a de-facto decision is made. Any detailed discussion or exchange of views on an issue, and any policy decision from the options, should be left to the open forum of a formal council or committee meeting.

The Division recognises the value of workshops or information sessions in developing councillor knowledge and expertise, and in assisting their role as public officials. However, where briefing sessions are held in relation to development applications or business enterprises, council needs to remember its obligations and responsibilities under its Code of Conduct, and community perceptions in terms of unfair advantage and transparency of process.

4.4 Other resources

Division of Local Government – Meetings Practice Note No. 16

The Division has produced *Meetings Practice Note No. 16* to help councils run their meetings. It is not meant to be a complete guide to meeting procedures but it does cover frequently asked questions.

Meeting procedures contribute to good public decision-making and increase council's transparency and accountability to its community. While legislation sets out certain procedures that must be followed in council and committee meetings, beyond this meeting procedures vary between councils. These differences usually reflect local cultural practices and priorities.

The Practice Note is a guide for councils, councillors and members of the public. It does not give legal advice. Councils may seek their own legal advice on issues of concern.

A copy of the [Meetings Practice Note](http://www.dlg.nsw.gov.au) can be downloaded from the Division's website: www.dlg.nsw.gov.au.

Other publications

Publications such as *Joske's Law and Procedures at Meetings in Australia* give general guidance on running meetings. However, councillors should be mindful that such publications may provide information which is different to that outlined in this section. Where such contradictions exist, the Local Government Act and Regulation, and the council's Code of Meeting Practice should be followed.

SECTION 5

SOUND PLANNING AND REPORTING

Planning decisions affect communities, the environment and quality of life and usually have long-lasting consequences.

Councillors are involved in overseeing the development, carrying out of and reporting on many council plans and activities. Councils are responsible for different types of planning, including community strategic planning and land use planning. Some council plans and reports have strict legal requirements about what needs to be included in them and how and when a council needs to consult with its community during their development.

5.1 Community Strategic Planning

Community strategic planning is the process by which a council, with its community, establishes a vision for the future of the local government area, and develops goals, objectives, strategies and actions to achieve that future. To perform their role effectively, councillors need to actively participate in determining the strategic direction for the community and the planning process supporting it.

Councils develop a hierarchy of plans which fall out of the Community Strategic Plan, known as the Integrated Planning and Reporting framework. The diagram below illustrates the framework:



Integrated Planning and Reporting Framework

The plans councils prepare under the Integrated Planning and Reporting framework must adequately address the quadruple bottom line:

- social and community considerations
- economic considerations
- environmental considerations
- civic leadership and governance considerations.

The plans must also prepare council for a sustainable future, one that ensures that future generations aren't left with an unsustainable legacy as a result of irresponsible decisions made now. The Integrated Planning and Reporting framework recognises that councils don't exist in isolation, but are part of a larger natural, social, economic and political environment that influences and shapes their future direction. Nor do council plans exist in isolation: land use and infrastructure planning has social, environmental and economic outcomes, and vice-versa.

The Integrated Planning and Reporting framework opens the way for councils and their communities to have important discussions about funding priorities, service levels, preserving local identity and planning in partnership for a more sustainable future.

5.1.1 An overview of the Integrated Planning and Reporting framework

Community Strategic Plan

The Community Strategic Plan is the highest level plan that a council will prepare. The plan identifies the community's main priorities and aspirations for the future (at least 10 years), and plans strategies for achieving these goals. While councils prepare the Community Strategic Plans on behalf of their communities, they are not wholly responsible for implementing the Plan. Other partners such as State agencies, community groups and business may also be engaged in delivering the long-term objectives of the Plan. The Community Strategic Plan is reviewed and updated by each new Council following its election.

Community Engagement Strategy

Councils must prepare and implement a Community Engagement Strategy for engagement with the local community in the development and review of the Community Strategic Plan. The Community Engagement Strategy must be based on the social justice principles of access, equity, participation and rights.

Delivery Program

The Delivery Program is where the Community Strategic Plan goals are translated into actions. It is each newly elected Council's commitment to the community, outlining what it intends to do toward achieving the goals of the Community Strategic Plan. It becomes the single point of reference for all principal activities undertaken by Council during that term of office. All plans, projects, activities and funding allocations must be directly linked to the four-year Delivery Program.

Operational Plan

The Delivery Program is supported by an annual Operational Plan. This document spells out the details of the Delivery Program, identifying individual projects and activities that will be undertaken in that year to achieve the commitments of the Delivery Program. The Operational Plan is supported by a detailed budget and a Statement of Revenue Policy, which also sets the fees and charges for that year.

Resourcing Strategy

The Resourcing Strategy resources the implementation of the Community Strategic Plan, Delivery Program and Operational Plans. It consists of three components:

- long-term financial planning (see 6.2.1 for further information)
- workforce management planning
- asset management planning (see 6.4.1 for further information)

Long-Term Financial Plan

Each council must prepare a Long-Term Financial Plan (at least 10 years), which is used to inform decision-making during the development and review of the Community Strategic Plan and the Delivery Program. The Long-Term Financial Plan is updated annually as part of the development of the Operational Plan, and is reviewed in detail as part of the review of the Community Strategic Plan following each local government election.

Workforce Management Strategy

A council must develop a Workforce Management Strategy to address the human resourcing requirements of its Delivery Program. The Workforce Management Strategy, therefore, has a four-year minimum timeframe.

Asset Management Planning

Councils must account for and plan for all the existing assets it owns, and plan for any new asset solutions proposed in the Community Strategic Plan or Delivery Program. To achieve this, councils must prepare an Asset Management Strategy, incorporating an Asset Management Policy, as well as Asset Management Plans for each class of assets under Council's control. The strategy and plans must have a minimum 10-year timeframe.

Asset Management Plans must identify service standards, and contain long-term projections of asset maintenance, rehabilitation and replacement costs. Councils must report on the condition of their assets in their annual financial statements, in line with the Local Government Code of Accounting Practice and Financial Reporting.

Annual Report

The Annual Report is one of the key points of accountability between a council and its community.

It is not a report to the Division of Local Government or the NSW Government; it is a report to the community.

The annual report focuses on council's implementation of the Delivery Program and Operational Plan because these are the plans that are wholly the council's responsibility.

The report also includes some information that is prescribed by the Local Government (General) Regulation 2005. This information has been included in the Regulation because the Government believes that it is important for community members to know about it – to help their understanding of how council has been performing both as a business entity and a community leader.

The annual report in the year of a local government election also includes a report as to the state of the environment in the local government area, specifically in relation to the objectives established for the environment by the Community Strategic Plan.

An outgoing Council will table a report at its final meeting, for inclusion in that year's annual report, which reports on the progress of implementing the Community Strategic Plan.

5.1.2 Roles and responsibilities of the mayor and councillors in strategic planning

The success of the planning process relies heavily on the commitment of the mayor and the general manager as well as all councillors. Without strong support and commitment, council will find it difficult to develop and implement a meaningful plan.

The mayor, as spokesperson for council, is the public face of the planning process. The mayor is responsible for explaining the purpose of the Community Strategic Plan to the community and for encouraging public support for the planning process. The mayor and the councillors' ability to capture a vision for the community's future and to inspire others to participate in that future will be fundamental to the success of the process. It is important that all councillors support and are fully committed to the value of strategic planning.

Similarly, the general manager has a pivotal role to play in mapping out the council's approach to the planning process and ensuring the community receives the information it needs to participate in a meaningful way.

The general manager will also be responsible for guiding the preparation of the Community Strategic Plan and council's response to it via the Delivery Program. She or he is responsible for implementing the Delivery Program and will report regularly on progress and ensure that it becomes a living document with regular updates and reviews, as required.

The general manager's clear understanding of the planning process and the way the various components are integrated will be fundamental to its success. He or she has an important leadership role to play in ensuring that each member of council's staff understands how their particular work activity contributes to achieving the objectives of the Community Strategic Plan and what is expected of them in delivering its outcomes.

5.1.3 Assessing strategic plans

One of the most important roles of the governing body of council is to endorse strategic plans. As well as the Community Strategic Plan, councils may prepare other strategic plans which are not required by legislation but which may assist in implementing the Community Strategic Plan. These may include cultural plans, public health plans, economic development plans, environmental management plans and crime prevention plans.

In order to endorse strategic plans councillors must be able to assess their appropriateness. Councillors should first be satisfied that the plan as a whole makes sense and that each part is logically supported with sound analyses and actions.

The questions in *Section 2.4 "Effective Decision Making"* and in *Section 6.2.1 "Long term financial planning"* provide a starting point for councillors when assessing strategic plans. However, a framework such as the "integrity model" may also assist councillors.

The Integrity Model asks the following questions:

- *Comprehensibility*: Can you understand the plan and explain it to the community?
 - *Appropriateness*: Does the plan fit with the council's strategic direction and comply with its legislative and policy framework?
 - *Sustainability*: Are the assumptions underlying the plan valid and based on adequate financial, social and environmental analyses?
 - *Feasibility*: Is the council able to successfully respond to any challenges contained in the plan? Are council's resources sufficient to support the plan?
 - *Accountability*: Does the plan contain adequate performance measures so that management can report on the progress of the plan in a timely manner?
-

5.2 Land use planning

Land use planning refers to the long term development or conservation of an area and the establishment of a relationship between local objectives and regional goals.

The NSW Department of Planning and Infrastructure is responsible for the administration of the *Environmental Planning and Assessment Act 1979* (EPAA), which provides the framework for development decisions made by local government in NSW. The objects of the Act include encouraging "the proper management, development and conservation of natural and man-made resources" and ecologically sustainable development.

The NSW Government is reviewing the EPAA to create a new planning system that addresses the challenges of the 21st century, focuses on the public interest and places people and their choices at the heart of planning decisions about their future.

The NSW Government *Green Paper—A New Planning System for New South Wales* responds to and builds on the work undertaken by the Independent Planning System Review and its report, *The Way Ahead for Planning in New South Wales*.

The intent is to move from an overly regulated and prescriptive system to a simpler, strategic and more flexible performance based system. The new planning system will be based on transparency in process and decision making. The new planning system will deliver sustainable outcomes and improve people's quality of life.

The NSW Government's proposed change to the planning system is based around four fundamental reforms:

- **Community Participation**

The major shift in the new planning system is to engage communities as an integral part of making key planning decisions that will affect the growth of their communities.

- **Strategic Focus**

A major shift to evidence based strategic planning in terms of planning effort, community and stakeholder engagement and decision making.

- **Streamlined Approval**

A shift to a performance based system in which duplicative layers of assessment have been removed, decisions are fast and transparent, and code complying development is maximised.

- **Provision of Infrastructure**

A genuine integration of planning for infrastructure with the strategic planning of land use so that infrastructure that supports growth is funded and delivered.

The current responsibilities of councils under the EPAA are briefly outlined below. However, the Department of Planning and Infrastructure can provide further advice on this issue. Contact details for the Department of Planning and Infrastructure, and further information about the EPAA and ecologically sustainable development can be found in [Appendix 3 - Key legislation](#).

5.2.1 The role of local government in development control

Local government is usually the consent authority for local development in NSW. The Minister for Planning and Infrastructure is the consent authority for state significant development, usually so declared under a State Environmental Planning Policy or a Regional Environmental Plan.

The principal local government planning instruments, Local Environmental Plans (LEPs) and Development Control Plans (DCPs), are made under the EPAA.

Local Environmental Plans (LEPs)

An LEP may be made for all or part of a local government area. It determines the development status of any site within the area it has effect for. The EPAA outlines the processes that a council must follow if it decides to prepare a draft LEP or is directed to do so by the Minister for Planning. This includes the council undertaking an environmental study for the land in question and the public exhibition of the draft LEP and environmental study (if prepared) for at least the prescribed period of 28 days, following approval by the Director General of the Department of

Planning and Infrastructure.

Councils may then consider public submissions and, if warranted, hold public hearings. The draft LEP may be amended as a result of this process. If so, it may be re-exhibited prior to being submitted to the Department of Planning and Infrastructure, which will assess the Plan's compliance with State planning policies and instruments. If the Department makes a favourable recommendation, the Minister for Planning and Infrastructure may then make the LEP and cause it to be published in the Government Gazette.

The NSW Government has introduced a [Standard Instrument \(Local Environmental Plans\)](#) as part of its ongoing reform of the State's planning system. Councils are able to add to the template to set out detailed local planning rules that address local issues within their area. The standard instrument is not in itself an environmental planning instrument under the EPAA. The provisions set out in the standard instrument only have the legal force of an environmental planning instrument once they are adopted as part of a council's gazetted LEP.

The Department of Planning and Infrastructure has produced a [frequently asked questions document about the standard instrument](#). This, and further information about the LEP process can be found on the Department of Planning and Infrastructure's website: www.planning.nsw.gov.au.

Development Control Plans (DCPs)

DCPs provide a detailed guideline that illustrates the controls that apply to particular types of development or particular areas in a council's area. To be valid, DCPs must generally conform to the provisions of the relevant LEP. Similar requirements exist for public exhibition as for LEPs.

Councils may choose to develop DCPs in order to:

- Identify development as advertised development, which then allows for notification of the proposal to adjoining owners/occupiers and notice being given in the local newspaper. Submissions on the proposal may then be made to Council prior to consideration of consent
- Provide additional notification requirements for certain types of developments
- Specify additional matters to be taken into account in making orders.

Environmental Impact Statements (EIS)

A development application for a project, identified as a designated development under the Regulations or another planning instrument, must be accompanied by an environmental impact statement (EIS). Such projects are usually in the nature of major works such as industrial facilities, extractive industries and the like. In such cases, public exhibition of the application and any accompanying information for at least 30 days is required. Objections to the proposal may be taken to the Land and Environment Court if consent is granted subsequent to public submissions being received and considered by council as part of the evaluation process. If consent is refused, the applicant may also appeal the decision of council.

Conditions of consent

Council may choose to allow a development subject to certain conditions. These must generally be imposed for a planning purpose, fairly and reasonably relate to the development and be reasonable. They may be tested by appeal to the Land and Environment Court.

5.2.2 Public land management

Councils have responsibilities under the Local Government Act for the management of public land in their areas. The Act defines public land as “any land (including a public reserve) vested in or under the control of the council”. However, public land does not include a road, Crown land, commons (as defined under the *Commons Management Act 1989*), land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or a regional park under the *National Parks and Wildlife Act 1974*.

Public land management is a complex issue and council decisions relating to this issue can often be the subject of intense public interest and scrutiny. It is therefore important that councillors have an understanding of the issue.

The Division has prepared *Practice Note No.1 - Public Land Management* to assist councils in their management of public land under the *Local Government Act 1993*. The Practice Note focuses on the requirements of the Act and related issues and covers areas such as the classification and reclassification of public land; plans of management; and leasing, licensing and the granting of other estates over community land.

A copy of the [Public Land Management Practice Note](#) can be downloaded from the Division's website: www.dlq.nsw.gov.au.

Management of Crown land

Crown land comprises approximately half of all land in NSW and is managed primarily by the Department of Primary Industries, Catchments and Lands. However, councils are also responsible for the management of some parcels of Crown land retained or acquired by the State and set aside for specific public purposes, known as Crown reserves. Crown reserves are often managed by reserve trusts and these trusts are charged with the responsibility for the care, control and management of Crown land for the community.

Reserve trusts are established under the *Crown Lands Act 1989* and often a local council is the reserve trust manager. As reserve trust manager, a council has all the functions of a council under the *Local Government Act 1993* in relation to public reserves. However, Crown land is specifically exempt from the land classification requirements in the Local Government Act. This means that a council does not have to classify Crown land as either operational or community land.

The *Crown Lands Act 1989* and the Crown Lands Regulation 2006 control the management of Crown land. The Crown Lands Act provides for plans of management for Crown reserves to be prepared in consultation with the community. As a reserve trust manager, a council may initiate the preparation of a plan of management in consultation with the Department of Primary Industries, Catchments and Lands. A draft plan of management needs to be placed on public exhibition for at least 28 days.

Public comments are taken into account before the Minister for Primary Industries considers adopting the plan. If adopted, the plan becomes a regulatory instrument, which binds the reserve trust and can give statutory authority to other types of plans, such as conservation management plans for heritage components.

The Department of Primary Industries, Catchments and Lands updated the Trust Handbook in 2009. This Handbook and further information about the responsibilities of councils as Crown reserve trusts on its website: http://www.lpma.nsw.gov.au/trusts/trust_handbook.

5.3 Natural Resource Management (NRM)

Natural Resource Management (NRM) is the management of natural assets including vegetation, land, water and soil in a manner consistent with the principles of ecologically sustainable development. Councils make a significant contribution to the management and protection of natural resources in NSW.

Councils have a range of functions, powers and responsibilities that can influence NRM, on both private and public land. These include:

- *Strategic and statutory planning:* including settlement or land use strategies, land use zonings and provisions or clauses in LEPs/DCPs.
- *Plans of management:* including mapping natural assets or hazards.
- *Development assessment:* including conditions of consent and development contributions.
- *Incentive programs:* including rate rebates, free tree giveaways and acquisition programs for environmentally significant lands.
- *On-ground works:* including site-based rehabilitation projects, tree planting/revegetation projects/bush regeneration, roadside vegetation management, noxious & environmental weed control, wetland and/or water body restoration, water quality monitoring and stormwater management and control.
- *Community engagement:* including information (brochures, website, and factsheets), community feedback, community focus groups, community standing advisory committees, and partnerships with local community groups.

Local Government is encouraged to incorporate relevant national, state wide and catchment priorities and targets into its land use and corporate planning processes in order to deliver an effective and coordinated approach to NRM.

In NSW NRM is delivered on a regional basis through a variety of stakeholders, including all levels of government; Catchment Management Authorities; Landcare, Bushcare and Coastcare Networks; landholders; and the general community.

There are 13 catchment management areas (CMAs) in NSW and a strategic plan (Catchment Action Plan) for each area ensures a coordinated regional approach to meeting state-wide and catchment targets for NRM. These plans identify priority actions in a region which may assist councils to determine key NRM activities and possible funding opportunities.

The *NSW State Plan: a New Direction for NSW* also incorporates 13 state-wide targets for NRM, and the NSW standard for Quality Natural Resource Management. The State Plan is the overarching document informing the development of regional strategies which then provide a regional planning framework for local councils to apply through their new Local Environmental Plans.

SECTION 6

FINANCIAL MANAGEMENT

The responsibility and accountability for the financial management of a council rests with the governing body.

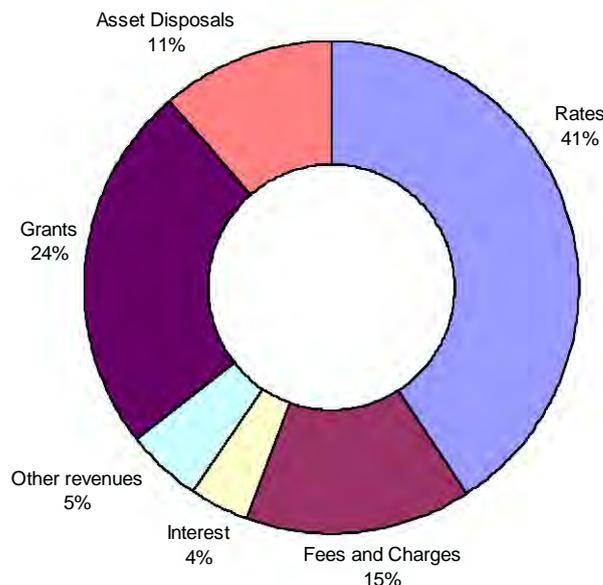
This does not mean that councillors should be involved in the detailed assessment of complex financial figures. Rather, councillors are responsible for making strategic decisions in relation to the financial management of the council that determines or affects the types of services, level of services and the strategic direction of the council.

Councillors need to know:

- How does council get revenue to support its operations?
- Are there restrictions on how this money can be spent?
- What activities does council fund?
- What information is required to assess the financial health of council?

6.1 Sources of revenue

As discussed briefly in Section 1, councils obtain revenue from four main sources: rates and annual charges, user charges and fees, grants and other sources.



Sources of revenue for NSW Councils for 2010/11

6.1.1 Rates

Generally, a council's main source of revenue is from rates. Rates are local taxes that are levied on the basis of property values, issued by the Valuer General, within the local government area. Growth in each council's total rates income is capped to a percentage each year roughly in line with inflation, which is announced by IPART. Council staff will prepare the rates structure on this basis and it will form part of the revenue policy that the governing body will be required to approve.

Special Variations

The council may seek to increase the rates above the allowed percentage with IPART approval through an application for a Special Rates Variation under section 508(2) and 508A of the *Local Government Act 1993*.

In considering the decision to apply for a special variation, councillors should consider the purpose of the special variation, the impact that the decision will have on the community and council's finances.

The decision of a council to apply for a special variation should be a strategic decision and should be endorsed by the council prior to application. Councils should also consider whether the decision fits with the strategic direction of the council and whether all the relevant materials and facts are available to make an informed decision.

When considering an application for a Special Variation IPART takes into account issues such as how the variation will assist the council in meeting its long term strategic objectives, the level of community engagement undertaken by council about the proposal, the community's response to the proposal, and the financial position of the council.

6.1.2 Fees and Charges

Annual charges

Under section 496 of the *Local Government Act* a council must make and levy an annual charge for the provision of domestic waste management services for every parcel of rateable land for which the service is available.

Under section 496 (a) and 496 (b) of *Local Government Act* a council may make and levy an annual charge for the stormwater management services and for the provision by the council of coastal protection services.

In addition, under section 501 councils can levy annual charges on each parcel of rateable land for water supply services, sewerage services, drainage services and waste management services. There is also scope to allow annual charges on other services prescribed by the Local Government (General) Regulation 2005.

Fees

Councils can get additional income from fees for the use of publicly owned facilities like swimming pools, halls and other user-pays services. Fees can also be charged for giving information, supplying products or processing applications.

Setting of fees and charges

The amount of fees and charges are set by the council each year through the approval of the revenue policy, contained in the operational plan, by the governing body of the council.

Fees and charges should generally be set at a level that reflects the cost to council of providing those services.

A council cannot make and implement a rate or charge until:

- *it has given public notice in its draft operational plan*
- *it has considered any submissions on the draft operational plan and resolved to adopt the plan.*

6.1.3 Grants

Each year all councils receive a financial assistance grant, which is paid by the Commonwealth Government through the State Government's Grants Commission. For 2012-13 the NSW Grants Commission will make recommendations on the distribution of an estimated \$684.89 million in grant entitlements to councils in NSW. The amount of the grant varies from council to council. The financial assistance grant may be used for any council purposes.

Councils receive grants from other sources from time to time and may apply for specific grants for specific purposes or programmes. These grants are usually through the State and Commonwealth Governments. For example, the NSW Roads and Maritime Services may make a grant for work on a particular road.

6.1.4 Other revenue sources

Other sources of income include interest on investments, contributions and any gains made from the sale of assets.

Investments

Section 625 of the Local Government Act allows councils to invest money that is not, for the time being, required by council. Investments must be in line with the current Ministerial Investment Order and any guidelines issued by the Division of Local Government.

Each month an investment report must be presented at a council meeting by the Responsible Accounting Officer (RAO). The RAO must take a 'prudent person approach' to investing council's money.

As the role of the council is to direct and control the affairs of the council in accordance with the Local Government Act, councillors should ensure that council:

- has an appropriate investment policy that guides the investment of ratepayers' funds in accordance with the council's charter
- approve the investment policy by resolution
- ensure that the policy is reviewed each year
- ensure that there is open and transparent reporting of the council investments to the council and to the ratepayers.

Borrowings

Section 621 of the Local Government Act allows council to borrow at any time for any purpose allowed. Borrowings can take the form of an overdraft or loan and a council may give security for borrowings. Councils are required to adhere to the Ministerial Borrowing Order when borrowing. The borrowings are set by the governing body of the council each year through the approval of the revenue policy, contained in the operational plan.

6.2 Financial planning

A council's operational plan contains its revenue policy, which sets out how a council plans to pay for its activities. It gives details of council's estimated income and expenditure for the next year; sets out the rates, charges and fees; outlines council's pricing policy; and announces proposed borrowings.

It is very important that councillors are aware of what they are approving when they adopt the revenue policy. Councillors should encourage the general manager to recommend options for cost-effective service delivery and strategies for raising revenue. Similarly, councillors should make suggestions and ask the general manager to report on their viability.

6.2.1 Long term financial planning

A long term financial plan is an important part of council's strategic planning process. This is where long term community aspirations and goals are tested against financial realities.

The strategic planning and reporting system reinforces the importance of the long term financial plan as a key decision-making and problem-solving tool for councillors. The modelling that occurs as part of the long term financial plan provides information for councillors to consider financial issues at an earlier stage and to gauge the effect of these issues in the longer term, when making financial decisions for the council.

The following is an overview of the long term financial planning component of the proposed strategic planning and reporting system:

What are the general requirements for long term financial planning?

- Each council must prepare a long term financial plan.
- The long term financial plan must be used to inform decision making during the finalisation of the Community Strategic Plan and the development of the Delivery Program.

What is the minimum timeframe for the long term financial plan?

- The long term financial plan must be for a minimum of 10 years.

How often must the long term financial plan be reviewed?

- The long term financial plan must be updated at least annually as part of the development of the Operational Plan. The long term financial plan must be reviewed in detail as part of the four yearly review of the Community Strategic Plan.

What is the basic structure of the long term financial plan?

- The long term financial plan must include:
 - Projected income and expenditure, balance sheet and cash flow statement
 - Service standards to be provided
 - Planning assumptions used to develop the Plan
 - Sensitivity analysis - highlights factors/assumptions most likely to affect the Plan
 - Financial modelling for different scenarios e.g. planned/optimistic/conservative
 - Methods of monitoring financial performance

6.3 Allocation of revenue

While the general manager is accountable to the governing body for the council's financial performance, as members of the council's governing body councillors are accountable to the residents and ratepayers for the appropriate allocation of council monies.

In order to discharge this responsibility it is essential that councillors receive from the general manager adequate financial reports so that they can assess the financial health of council and ensure that finances have been properly accounted for.

Similarly, in making decisions and assessing the sustainability of council, it is essential that councillors are provided with sufficient information to determine if council can afford to undertake the activity, assess the cost-benefit of any proposed activity or project, and monitor that council activities and projects are being undertaken within budget.

Key questions for councillors when assessing plans and projects

- Is the strategy in the best interests of the community?
 - How does it address community wants and needs?
 - How does it fit with council's vision and goals?
 - What would be the impact of demographic, social or environmental change on the proposal?
 - Will the performance indicators contained in the proposal enable council to adequately monitor the progress of the plan and measure if it is achieving the desired outcome?
 - Does it provide value for money? Is the cost-benefit acceptable?
-

6.4 Asset management

When making investment decisions about assets councillors need to consider their full lifecycle cost, not simply the immediate construction/purchase price.

An asset is defined as “a resource controlled by a council as a result of past events and from which future economic benefits are expected to flow to the council.”

NSW local government is the custodian of approximately \$50 billion of community assets. These assets include roads, water and sewerage assets, drains, bridges, footpaths, public buildings, recreational facilities and parks and gardens. These assets enable councils to provide services to the community.

As custodians, councils are responsible for effectively accounting for and managing these assets and having regard to the long term and cumulative effects of their decisions. This is a core function of the council under the Charter in the Local Government Act.

The term “asset management” describes the process for “whole of life” asset management from planning, purchase, operation, maintenance to disposal of assets. It also encompasses integration of asset and service outcomes.

6.4.1 Asset management planning

A strong and sustainable council requires a strong asset management planning process to ensure that its assets are managed in the most appropriate way to deliver the services that the community needs. To ensure that this is achieved council’s asset management planning must be integrated with all of its strategic planning processes.

Asset management decisions should be informed by the evaluation of alternative means of service provision, full life cycle costing, and performance measurement and monitoring.

Informed decision-making recognises the long-lived character of infrastructure assets and the need to plan and budget for them on a full life cycle basis beginning with the identification of a service need and the means to meet that need.

The strategic planning and reporting system reinforces the importance for councillors to consider all aspects of their council's services and programs when undertaking asset management planning. Asset management planning should not be done in isolation.

The following is an overview of the asset management planning component of the strategic planning and reporting system:

What are the general requirements for asset management planning?

- Each council must account for and plan for all of the existing assets under its ownership, and any new asset solutions proposed in its Community Strategic Plan and Delivery Program.
- Each council must prepare an Asset Management Strategy and Asset Management Plan/s to support the Community Strategic Plan and Delivery Program.

What is the minimum timeframe for the Asset Management Strategy and Plan/s?

- The Asset Management Strategy and Plan/s must be for a minimum timeframe of 10 years.

What is the basic structure of the Asset Management Strategy?

- The Asset Management Strategy must include an overarching council endorsed Asset Management Policy.
- The Asset Management Strategy must identify assets that are critical to the council's operations and outline risk management strategies for these assets.
- The Asset Management Strategy must include specific actions required to improve council's asset management capability and projected resource requirements and timeframes.

What is the basic structure of the Asset Management Plan(s)?

- The Asset Management Plan(s) must encompass all the assets under a council's control.
- The Asset Management Plan(s) must identify asset service standards.
- The Asset Management Plan(s) must contain long term projections of asset maintenance, rehabilitation and replacement costs.

How should councils assess the condition of their Assets?

- Councils are encouraged to adopt the following five-category model for assessing the condition of their assets.

Level	Condition	Description
1	Excellent	No work required (normal maintenance)
2	Good	Only minor work required
3	Average	Some work required
4	Poor	Some renovation needed within 1 year
5	Very poor	Urgent renovation/upgrading required.

Asset management condition assessment model

What Asset Management reporting must councils do?

- Councils are encouraged to use the five-category assessment model for reporting on the condition of their assets in their annual financial statements in line with the Local Government Code of Accounting Practice and Financial Reporting.
-

6.5 Capital expenditure

As councils are responsible for the prudent management of community resources, it is important that before committing to any major capital projects that councils undertake a capital expenditure review as part of council's normal planning processes.

Prior to commencing any capital expenditure that is expected to cost in excess of 10% of Council's annual ordinary rate or \$1 million, whichever is the greater (GST exclusive); the council will need to consider the following:

- The need for the additional facilities – is it identified in the Delivery Program and Asset Management Strategy?
- Capacity of council to conduct the project – does the Long-Term Financial Plan indicate financial capacity?
- Priority of the project in relation to existing capital commitments and future works – does it achieve an objective of the Community Strategic Plan?
- Alternatives to the proposed works
- All financial implications of the project
- Community support for the project – does it achieve a desired community outcome?
- Accountability for project through regular reporting to Council.

Councillors are required to vote on capital projects and they should make sure that they are satisfied that the above requirements have been reported adequately to enable them to make an informed decision.

In addition to the minimum requirements for capital expenditure projects, projects forecasted to exceed \$10 million council will also be required to complete:

- A Business/Management Project Plan
- A Risk Management Plan
- A Probitity Plan
- A Tender Evaluation

For more information councillors can read the [Capital Expenditure Projects guidelines](#) on the Division of Local Government website: www.dlg.nsw.gov.au. Further information on effective decision making can be found in *Section 2 – Roles, Responsibilities and Relationships*.

6.6 Financial reporting

Council's governing body should regularly receive a number of financial reports including:

- Budget, with a comparison to the actual results on a quarterly and yearly basis
- Forecasts – projections of council's financial position into the future
- Balance sheet – statement of financial position showing the current value of council's assets ie. cash, receivables (debtors), inventory (stock), any prepayments, and the current state of council's liability ie. creditors, borrowings, provisions, and unearned income
- Profit and loss – statement of financial performance detailing council's income and expenses
- Cash flow – shows cash receipts and cash payments. It enables councillors to assess council's ability to pay its debts as and when they fall due and as such is a good measure of council's solvency

These reports might be accompanied by commentary advising the governing body of any exceptional or unexpected items and explaining any anomalies that might be evident in the reports, as well as ratio analysis of council's performance. There are three types of ratios commonly used to analyse and assess financial performance:

- Liquidity ratios that allow assessment of the organisation's ability to pay debts – current ratio and quick ratio
- Operating ratios that help assess efficient management of working capital and assets – “days debtors” and “days creditors”, which respectively measure the number of days on average that accounts receivable are owing and the average time it takes to pay creditors
- Financing ratios that help in assessing comfortable use of liabilities compared with level of equity ie, interest cover, debt to equity

It is important that councillors are able to understand the financial reports presented to them in the council meeting papers so that they can properly monitor council's performance and discharge their responsibilities as members of council's governing body. It is not sufficient for councillors to solely rely on the assurances of the staff.

While the general manager is accountable to the governing body for the council's financial performance, councillors must feel appropriately informed and comfortable before signing off financial reports or agreeing to financial commitments.

Councillors must make sure that they ask enough questions to enable them to understand the financial situation of council. If the council's governing body feels that it has insufficient information on which to base a decision or monitor or assess a project or proposal it is important that the general manager is asked to provide further information.

Important questions to ask when evaluating financial reports include:

- are the council's results above or below the benchmarks?
 - are the results improving or declining?
 - if they are declining, what are the reasons for this and what is council doing to improve this in the future (what does the long term financial plan show?)
-

The financial ratios discussed above can provide councillors with valuable information to assist them in assessing one aspect of council's financial health. The Division of Local Government has a number of benchmarks for various indicators that it uses to assess the financial health of councils.

6.7 Other financial management issues

6.7.1 Goods and Services Tax (GST)

Councils are required to complete a GST compliance certificate each year that is submitted to the Division of Local Government.

The council is required to sign the GST compliance certificate for the period 1 July to 30 June and forward it to the Division of Local Government by 31 July each year. The statement is to be signed by the general manager and responsible accounting officer.

6.7.2 Formation of companies

Section 358 of the Local Government Act allows for the formation of corporations and other entities by councils, but only with the Minister's consent.

An entity for the purposes of section 358 means any partnership, trust, joint venture, syndicate or other body (whether or not incorporated). It does not include any such entity that is of a class prescribed by the Local Government (General) Regulation 2005 as not being within this definition. To date, the Regulation has not prescribed any class.

In applying for the Minister's consent under section 358, the council must demonstrate that the formation of, or the acquisition of the controlling interest in, the corporation or entity is in the public interest.

Applications are assessed by the Division of Local Government and referred to the Minister for approval. As part of the Division's assessment of a council's application, regard is given to the following:

- Is the proposal consistent with the functions of the council or an existing service that the council provides? Councillors should ensure that the application is consistent with the functions of the council or an existing service that the council provides.
- Will the proposed entity be legally separated from the council?
- Is the council currently financially viable?

Further details on the formation of companies can be found on the Division of Local Government website at the link below:

<http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Circulars/07-49.pdf>.

6.7.3 Public Private Partnerships (PPP)

A public-private partnership (PPP) is defined as an arrangement between a council and a private person for the purposes of providing infrastructure or facilities, or delivering services in accordance with the arrangement or both. Legislative provisions relating to PPP are set out in section 400B to 400N of the Local Government Act.

A council must not enter into a PPP unless the council has provided the Division of Local Government with an assessment of the project to be carried out. If the project is a significant project (defined as where the cost is more than \$50 million or council's contribution is more than 25% of the council's annual revenue that is available for such projects) or if the Division considers the project to have a high risk the project will be referred to the Project Review Committee. The Minister may also refer any project to the Project Review Committee.

If their council is considering a PPP councillors should consult the Division's guidelines that provide information on the processes that councils are to follow. The [PPP guidelines](#) are available on the Division's website: www.dlg.nsw.gov.au.

SECTION 7

SUPPORT FOR COUNCILLORS

7.1 Annual fees paid to councillors

Being a councillor is an important commitment to the local community but in NSW it is not a full time job. As such, councillors are not entitled to wages, workers compensation or sick pay etc. However, under the *Local Government Act 1993* councillors are entitled to receive an annual fee for carrying out their duties. This is paid in monthly instalments in arrears.

The fee paid will depend on the size of the council, the number of people it serves and the assets it manages. A councillor in a small rural council will generally get paid less than a councillor in a big city council. For 2012/13 the fees range from \$7,740 per year to \$34,100 per year. The mayor gets an additional fee for the additional duties he or she carries out.

The Local Government Remuneration Tribunal decides each year what councillor fees will be. Councils are not allowed to pay councillors more than the set councillor fee.

The fee is subject to tax, so councillors need to consider how it might affect their assessable income for tax purposes.

Councillors can request that they are paid below the fee fixed by the Tribunal if the full fee will adversely affect their entitlement to a pension, benefit or other allowance.

The Australian Tax Office (ATO) has now made a definitive ruling (ATO ID 2007/205) that allows for councillors to redirect their annual fees into superannuation on a pre-tax basis. Councils need to determine for themselves, by council resolution and/or within an appropriate council policy, whether and how councillors may do this. Further information about this ruling can be obtained on the ATO's website: www.ato.gov.au or by calling ph: 13 10 12.

A council may decide to reduce or withhold fees from a councillor if they do not attend meetings for more than three months. Councillors are not entitled to receive a fee if they are suspended from office.

Further information about fees can be found in the latest determination on fees from the Remuneration Tribunal, contact details for which are contained in [Appendix 2 - Key organisations](#).

Councillors are also encouraged to seek independent financial advice about issues relating to the fees they are paid.

7.2 Expenses and facilities

The *Local Government Act 1993* allows councils to cover some of the expenses that councillors incur in carrying out their duties. This includes training, travel and telephone expenses.

Councils must also provide some facilities to assist councillors to carry out their duties such as access to cars, computers, internet, fax machines, mobile phones, stationery or administrative assistance.

Councillors may only use the facilities provided to them for performing official duties. For example, a councillor cannot make personal calls from the mobile phone that the council gives them unless there is a mechanism for declaring and reimbursing private usage.

The range of expenses and facilities provided to councillors varies between councils. Each year, the council decides what expenses it will cover and what facilities it will provide as well as limits on these. This must be set out in a councillor expenses and facilities policy that is adopted at an open council meeting.

Council policies on the provision of expenses and facilities to councillors should ensure that councillors are not left out-of-pocket for performing their civic duties. They should also ensure that expenses and facilities are reasonable, appropriate and are provided in a transparent and accountable way.

There are guidelines about what councils can include in their policies. Councillor expenses covered by councils may include:

- training courses
- conferences
- travel to and from meetings, conferences and training
- accommodation, meals and refreshments
- phone calls or internet use associated with councillor duties
- the cost of providing care for children or other dependants while performing council duties.
- facilities such as mobile telephones, laptops, facsimile machines, stationery etc

Councils are also encouraged to provide equipment and facilities to assist councillors with disabilities and special needs to access the services and information they need in order to perform their roles.

Further information about this issue can be found in the [Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW](#) available on the Division of Local Government's website: www.dlg.nsw.gov.au.

Councillors should acquaint themselves with their council's councillor expenses and facilities policy.

7.3 Training and professional development

The roles and responsibilities of councillors are wide and varied, and there is a lot to learn. Councils should identify the training needs of their councillors and ensure that they have access to ongoing training and professional development throughout their term.

It is the responsibility of individual councils to identify the training and professional development needs of councillors, and to plan and deliver this training. The Division of Local Government and the Associations also provide a wide range of support for councillors, including training and induction programs.

7.3.1 Councils

As soon as possible after the elections councillors should be briefed by council staff on the key tasks to be undertaken by the new council at its first meeting.

All councils should prepare and deliver an induction program that introduces new councillors to the council, its main policies and protocols and key staff.

Individual councils are strongly encouraged to develop and implement induction and continuing professional development programs for councillors based on a systematic training needs analysis. The nature of these programs will vary from council to council, as the analysis will identify different needs.

As a new councillor, you are encouraged to tell your council about your personal training needs.

For assistance in the development of these programs councils should refer to the Division's [Councillor Induction and Professional Development - A Guide for Councils](#), available from: www.dlg.nsw.gov.au.

7.3.2 Division of Local Government

The Division of Local Government is implementing the Councillor Development Strategy to assist councillors. Elements of this Strategy include:

- councillor workshops organised by the Division of Local Government in partnership with the Local Government Association of NSW and Shires Association of NSW, and Local Government Managers Australia (NSW). All councillors, including councillors who have served a previous term, are strongly encouraged to attend a councillor workshop after the local government elections

- a guide to assist councils in the development of a council-based induction and ongoing professional development program (mentioned above).

7.3.3 Local Government and Shires Associations of NSW

As a service to their members, the Local Government and Shires Associations of NSW provide professional development and training specifically catering to the needs of councillors and council staff. The Associations have developed a comprehensive program to assist councillors to understand their role and enhance their skills. The workshops are delivered in large regional centres as well as in metropolitan areas or on the council's own premises.

The Associations' Councillor Professional Development Program includes the following modules:

1. Elected life – An essential Induction for NSW Local Government Councillors
2. Asset Management for Councillors
3. Climate Change Training for Councillors
4. Conflict of Interest and the Model Code of Conduct
5. Community Leadership
6. Councillors as Change Initiators
7. Development Approvals – the Heritage Perspective
8. Dynamic Presentation Skills
9. Effective Chair in Local Government (half day)
10. Effective Meeting Skills
11. Engaging with the Community
12. Financial Issues in Local Government
13. Good Governance
14. Handling Difficult People for Councillors
15. Long Term Strategic and Financial Planning
16. Managing Time and Stress
17. Media Skills (basic and advanced programs available)
18. Mediation Skills for Councillors
19. Performance Management of Senior Staff
20. Pitching for Success
21. Planning Legislation Skills and Knowledge
22. Preventing Bullying and Harassment for Councillors
23. Speed Reading Skills for Councillors
24. Strategic Management
25. Understanding Sustainability for Councillors

Information on the program can be obtained by contacting the Associations, the contact details for which are in [Appendix 2 - Key organisations](#).

7.3.4 Local Government Managers Australia (NSW)

Local Government Managers Australia (NSW) provides e-connect, an on-line information portal covering strategic management information on integrated planning and reporting, long term financial planning and strategic asset management.

7.4 Other information and resources

New councillors may also benefit from establishing informal support networks and informal mentoring arrangements with more experienced councillors either in their council or in other councils. Many experienced councillors are often happy to mentor new councillors and share their knowledge and experience and provide advice.

Publications, such as *Bluett's Local Government Handbook NSW* by David Clark (17th edition, Lawbook Company, 2012) may also provide a handy reference for new councillors. This guide explains in detail how councils operate in NSW, their services and regulatory functions and gives an overview of relevant local government and planning laws. Many councillors have found it to be a valuable resource.

APPENDIX 1

SKILLS AND KNOWLEDGE CHECKLIST

The most important attribute for you to possess in your role as a councillor is a desire help people and meet the current and future needs of your local community as a whole.

While you do not require any special formal qualifications to be a councillor, having or being able to develop the following skills, knowledge and attributes will help you to be effective in your role.

Councillor Skills

You may wish to use this checklist to identify areas where you require training or assistance. However, it is also important to recognise that many of these skills can be learned and developed over time:

Good communication skills

This includes good listening and interpersonal skills, public speaking skills, the ability to accept alternative points of view as well as the ability to negotiate, mediate and resolve conflict.

Ability to engage with the community

Effective councillors inform residents about important local issues or council policies and seek their views. Councillors should also have an understanding of why this is important and the various ways to consult, such as through meetings, the media, the Internet, public forums, debates and surveys.

It is important for councillors to consult with as wide a cross-section of the community as possible. Developing networks within the local community can provide a sounding board against which the impact of council policies can be assessed.

Problem solving and analytical skills

This includes being able to get to the bottom of an issue and to think of different ways to resolve it, including advantages and disadvantages of each. It is also important for councillors to be able to think strategically and consider the long term impacts of council policies.

□ **Teamwork skills**

This includes being able to work with others in meetings and on committees and being able to complete any tasks on time that councillors agree to do.

Other councillors can be a valuable resource. Assuming they are not also newly elected, other councillors will already have a good idea of the main issues in the area and should have contact with key groups and individuals. They can show new councillors the ropes and introduce them to useful people.

□ **Organisational skills**

This includes being able to plan and manage time, keep appointments and deadlines, make priorities and manage stress. Practical ways to do so include:

- Developing a filing system for paperwork and emails
- Learning to use existing council record keeping systems so as to prevent the duplication of information
- Prioritising what is needed to be read and responded to
- Having an effective diary management system

□ **Leadership qualities**

This includes, for example, attributes such as energy and optimism, motivation, resilience, confidence, assertiveness, strategic thinking, advocacy, networking, active listening and negotiating.

□ **Ethical accountable behaviour**

This includes being able to follow a code of conduct that involves, amongst other things, acting in the best interests of the community as a whole, transparent decision-making and accountability.

Councillor Knowledge

Effective councillors understand the broader local government picture. It is important that councillors understand the structure of their council and its responsibilities to the community. This Handbook is a useful reference tool for building that knowledge.

You should also remember that specialist council staff can provide information and advice on a wide variety of issues, but this must happen through the general manager, except where he or she has authorised another council officer to undertake the role.

Knowledge or understanding of strategic planning and financial reporting processes

This includes an understanding of the importance and role of strategic planning and a comprehensive understanding of budgets, the budgetary process and financial reports.

Knowledge or understanding of social justice principles

This includes having an understanding of why it is important to make sure all people in the community are treated equitably, have the right to be heard and are able to participate in public forums and events if they choose to. Groups of people whose voices are not always heard include Aboriginal people, people with a disability, people from culturally and linguistically diverse backgrounds, older people, women and young people.

Knowledge and understanding of local government functions

This includes, for example, land use planning, environmental management and community development and services.

Understanding of relevant State Government legislation

This includes, for example, the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*. For further relevant legislation see [Appendix 2 - Key legislation](#).

To develop your skills, do take the opportunity to attend the various training opportunities offered by the Division of Local Government, the LGSA and other bodies. This further development can be in the form of face to face training, conferences and seminars on councillor interest topics, industry webinars, and eLearning modules.

TIPS FOR DEVELOPING SKILLS AND KNOWLEDGE

(adapted from: Improvement and Development Agency (I&DEA) UK - Councillor Guide 2011-12)

- talk to the mayor and other councillors
 - talk to the general manager
 - take up training courses offered by the council or other training bodies
 - read the council's strategic and operational plans to gain an overview of the council's agenda and priorities
 - learn how the council makes decisions and how you can influence these on behalf of the people you represent
 - take on new responsibilities with care – don't take on too much too soon
 - learn to manage the paperwork – learn what you need to read and what you don't, and don't hoard outdated or irrelevant material
 - set up a good filing system
 - concentrate on matters that interest you and learn them thoroughly
 - set up a schedule for visiting the key groups in your area over your first year – including faith groups, voluntary groups, major employers, schools, youth centres, tenants' and residents' associations
-

APPENDIX 2

KEY ORGANISATIONS

Further information on local government can be obtained from the following organisations or their websites.

DIVISION OF LOCAL GOVERNMENT

Street address: (Nowra Office)

Level 1, 5 O'Keefe Avenue

NOWRA NSW 2541

Phone: (02) 4428 4100

TTY: (02) 4428 4209

Postal address: (Nowra Office)

Locked Bag 3015

NOWRA NSW 2541

Fax: (02) 4428 4199

Street address: (Sydney Office)

Level 9, 6 O'Connell Street

SYDNEY NSW 2000

Phone: (02) 9289 4000

Email: dlg@dlg.nsw.gov.au

Postal address: (Sydney Office)

Locked Bag A5045

SYDNEY SOUTH NSW 1235

Fax: (02) 9289 4099

Website: www.dlg.nsw.gov.au

LOCAL GOVERNMENT ASSOCIATION OF NSW AND THE SHIRES ASSOCIATION OF NSW

Street address:

Level 8, 28 Margaret Street

SYDNEY NSW 2000

Phone: (02) 9242 4000

Email: lgsa@lgsa.org.au

Postal Address:

GPO Box 7003

SYDNEY NSW 2001

Facsimile: (02) 9242 4111

Website: www.lgsa.org.au

Councillor Professional Development Program:

Phone: (02) 9242 4181/4081

Email: learning@lgsa.org.au

Facsimile: (02) 9242 4188

Website: www.lgsa.org.au

LOCAL GOVERNMENT MANAGERS AUSTRALIA (NSW)**Street address:**

Level 10, 22 Market Street

SYDNEY NSW 2000

Phone: (02) 8297 1200**Facsimile:** (02) 9262 6705**Email:** lgmansw@lgmansw.com.au**Website:** www.lgmansw.com.au**UTS CENTRE FOR LOCAL GOVERNMENT****Street address:**

Level 6, Building 10

235 Jones Street

BROADWAY NSW 2007

Phone: (02) 9514 7884**Email:** clg@uts.edu.au**Postal Address:**

PO Box 123

BROADWAY NSW 2007

Facsimile: (02) 9514 2274**Website:** www.clg.uts.edu.au

The UTS Centre for Local Government is an autonomous unit within the University of Technology, Sydney. It was established in 1991 and promotes a cooperative approach to local government education, research and development. The Centre's activities are diverse and include professional development programs for local government personnel and associated professionals, research into various aspects of local government and governance and international programs and projects.

AUSTRALIAN CENTRE OF EXCELLENCE FOR LOCAL GOVERNMENT**Street address:**

Level 11, Building 10

235 Jones Street

BROADWAY NSW 2007

Phone: (02) 9514 3885**Email:** acelg@acelg.org.au**Postal Address:**

PO Box 123

BROADWAY NSW 2007

Facsimile: (02) 9514 4705**Website:** www.acelg.org.au

The Australian Government has contributed funding for the Australian Centre of Excellence for Local Government, and the Centre's mandate is to enhance professionalism and skills in local government, showcase innovation and best practice, and facilitate a better-informed policy debate. The Centre aims to:

- Build on existing local government programs and networks

- Encourage innovation and best practice across local government
- Foster good governance and strategic leadership
- Support action to improve local government workforce capability to address skill shortages and attract and retain skilled staff
- Stimulate and inform debate on key issues for local government in coming decades.

COUNCIL WEBSITES

Most NSW councils have their own website. These may be accessed by searching by the council's name, or via the website of the Local Government and Shires Associations (under 'Council websites') or from the Division of Local Government's website (under '[Local Government Directory](#)').

INDEPENDENT COMMISSION AGAINST CORRUPTION

Street address:

Level 21, 133 Castlereagh Street
SYDNEY NSW 2000

Phone: (02) 8281 5999**TTY:** (02) 8281 5773**Email:** icac@icac.nsw.gov.au**Postal Address:**

GPO Box 500
SYDNEY NSW 2001

Facsimile: (02) 9264 5364**Toll Free:** 1800 463 909**Website:** www.icac.nsw.gov.au

The Independent Commission Against Corruption (ICAC) was created by the *Independent Commission Against Corruption Act 1988* to promote the integrity and accountability of public administration in NSW by:

- investigating, exposing and preventing corruption involving or affecting public authorities or public officials, and
- educating public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community.

The ICAC is a public authority, but is independent of the government of the day, and is accountable to the people of NSW through the NSW Parliament.

NSW OMBUDSMAN**Street address:**

Level 24, 580 George Street
SYDNEY NSW 2000

Phone: (02) 9286 1000

TTY: (02) 9264 8050

Email: nswombo@ombo.nsw.gov.au

Website: www.nswombudsman.nsw.gov.au

The NSW Ombudsman is an independent and impartial watchdog whose job is to make sure that the agencies they watch over fulfil their functions properly and improve their delivery of services to the public. The Ombudsman helps agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration. The Ombudsman is independent of the government of the day and accountable to the public through the NSW Parliament.

NSW DEPARTMENT OF PLANNING AND INFRASTRUCTURE**Street address:**

23–33 Bridge Street
SYDNEY NSW 2001

Phone: (02) 9228 6111

Email: information@planning.nsw.gov.au

Website: www.planning.nsw.gov.au

The Department of Planning and Infrastructure is responsible for the administration of the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977*.

OFFICE OF ENVIRONMENT AND HERITAGE (OEH)**Street address:**

59–61 Goulburn Street
SYDNEY NSW 2000

Phone: (02) 9995 5000

Email: info@environment.nsw.gov.au

Website: www.environment.nsw.gov.au

OEH is responsible for the administration of the *Protection of the Environment Operations Act 1997* and the *Waste Avoidance and Resource Recovery Act 2001*.

TRANSPORT FOR NSW, ROADS AND MARITIME SERVICES (RMS)**Street address:**

Level 9, 101 Miller Street
NORTH SYDNEY NSW 2060

Phone: 131 782

Postal address:

Locked Bag 928
NORTH SYDNEY NSW 2059

Fax: (02) 8588 4105

Website: www.rta.nsw.gov.au

The RMS is responsible for the administration of the *Roads Act 1993* and the *Road Transport (Safety & Management) Act 1993*.

DEPARTMENT OF PRIMARY INDUSTRIES (DPI)**Street address:**

161 Kite Street
ORANGE NSW 2800

Phone: (02) 6391 3100

Postal address:

Locked Bag 21
ORANGE NSW 2800

Fax: (02) 6391 3336

Website: www.dpi.nsw.gov.au

DPI is responsible for the administration of the *Noxious Weeds Act 1993*, *The Crown Lands Act 1989* and various other pieces of legislation relevant to local government.

Other Key Bodies**LOCAL GOVERNMENT GRANTS COMMISSION****Postal address:**

Locked Bag 3015
NOWRA NSW 2541

Phone: (02) 4428 4132 **Fax:** (02) 4428 4199

Email: dlg@dlg.nsw.gov.au

Website: www.dlg.nsw.gov.au

The primary function of the Local Government Grants Commission is to make recommendations to the Minister for Local Government on the allocation to local governing bodies in NSW of general-purpose grants under the provisions of the Commonwealth *Local Government (Financial Assistance) Act 1995*.

The Commission may also report on any matter referred to it by the Minister.

LOCAL GOVERNMENT BOUNDARIES COMMISSION**Postal address:**

PO Box R1772

ROYAL EXCHANGE NSW 1225

Phone: (02) 9289 4000**Fax:** (02) 9289 4099**Email:** boundaries@dlg.nsw.gov.au**Website:** www.dlg.nsw.gov.au

The Local Government Boundaries Commission is a statutory authority constituted under section 263 of the *Local Government Act 1993*. It has the function of examining and reporting on any matter referred to it by the Minister for Local Government regarding the boundaries of local government areas and the areas of operation of county councils. Section 263(3) specifies factors that the Boundaries Commission must have regard to when considering amalgamation or boundary alteration proposals.

LOCAL GOVERNMENT PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL**Postal address:**

PO Box A190

SYDNEY SOUTH NSW 1235

Phone: (02) 9267 9216**Fax:** (02) 9267 2314**Email:** pidt@dlg.nsw.gov.au**Website:** www.dlg.nsw.gov.au

The Local Government Pecuniary Interest and Disciplinary Tribunal is constituted under Chapter 14, Part 4 of the *Local Government Act 1993* to hold hearings into and decide allegations of contraventions of Part 2 of that Chapter (which deals with duties of disclosure of pecuniary interests) and to perform such other functions as are conferred or imposed on it by the Act (section 489).

LOCAL GOVERNMENT REMUNERATION TRIBUNAL**Postal address:**

GPO Box 5341

SYDNEY NSW 2001

Phone: (02) 9272 6006**Fax:** (02) 9228 3578**Email:** Sarah.Bradshaw@psc.nsw.gov.au**Website:** www.dlg.nsw.gov.au

The Local Government Remuneration Tribunal is constituted under Chapter 9, Division 4 of the *Local Government Act 1993*. The member of the Tribunal is appointed by the Governor for up to three years and is assisted by two Assessors. It is responsible for categorising councils, county councils and mayoral offices to determine the range of annual fees to be paid to mayors, councillors, members of county councils and chairpersons in each category.

The Tribunal is required to make a determination by no later than 1 May each year and make a report to the Minister within 7 days of making that determination. The Report is to be published in the Government Gazette and also tabled in each House of Parliament.

APPENDIX 3

KEY LEGISLATION

1.1 Key Legislation

It is important that councillors have an understanding of the legislation under which councils have responsibilities. The following legislation falls within the portfolio responsibilities of the Minister for Local Government:

Local Government Act 1993

This is the primary piece of legislation governing councils and county councils in NSW. The Act provides the legal framework for an effective, efficient, environmentally responsible and open system of local government in NSW.

The Act also regulates the relationships between the people and bodies comprising the system of local government and encourages and assists the effective participation of local communities in the affairs of local government.

The Act gives councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public. It also gives councils the responsibility for administering some regulatory systems and a role in the management, improvement and development of the resources of their areas

The Local Government (General) Regulation 2005 supports the powers of councils under the Act.

Section 23A of the Act provides that the Director-General may prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions. A council must take any relevant guidelines issued under section 23A into consideration before exercising any of its functions.

The following guidelines have been issued by the Director-General or their delegate under section 23A:

- Guidelines for Council Administered Elections 2012, September 2011
- Guidelines for the Appointment and Oversight of General Managers, July 2011
- Capital Expenditure Guidelines, December 2010
- Internal Audit Guidelines, September 2010
- Investment Policy Guidelines, May 2010
- Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW, October 2009
- Tendering Guidelines for NSW Local Government, October 2009

- Guidelines for Council When Notification of an Intention to Use Fireworks is Received, October 2008
- Stormwater Management Service Charge Guidelines, July 2006

Companion Animals Act 1998

The principal object of this Act is to provide councils with powers to ensure the effective and responsible care and management of companion animals (cats and dogs).

The Act also requires councils to promote awareness within its area of the requirements of this Act with respect to the ownership of companion animals, and to take such steps as are appropriate to ensure that it is notified or otherwise made aware of the existence of all dangerous and restricted dogs that are ordinarily kept within its area.

The Companion Animals Regulation 2008 supports the powers of councils under the Act.

Swimming Pools Act 1992

This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a moveable dwelling, a hotel or a motel is located. It does not apply to swimming pools that are situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority.

The Act requires councils to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area. The Act also requires councils to promote awareness within their area of the requirements of this Act.

The Swimming Pools Regulation 2008 supports the powers of councils under the Act.

Impounding Act 1993

This Act empowers councils and other authorised persons to impound and deal with animals and articles in public places and places owned or under the control of certain public authorities if, in the case of animals, they are unattended or trespassing or, in the case of articles, they have been abandoned or left unattended. It also provides for the release of impounded animals and articles that are claimed by their owners, and for the disposal of impounded animals and articles that are not claimed by their owners and, if they are disposed of by sale, to provide for the disposal of the proceeds of sale.

The Impounding Regulation 2008 supports the powers of councils under the Act.

1.2 Other key legislation under which councils have responsibilities

Environmental Planning and Assessment Act 1979 (EPAA) - Minister for Planning and Infrastructure

Councils have a responsibility under the EPAA to encourage the proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community and a better environment. The Act also requires councils to promote and co-ordinate the orderly and economic use and development of land.

Under the EPAA councils also have responsibility for:

- consulting with relevant bodies in land use plan preparation
- assessing and weighing the interests and demands of different sections of the community with those of the development applicant in the determination of planning policies and development applications
- ensuring that Local Environmental Plans (LEPs) and development control decisions are related to the sound management of the environment and its resources
- identifying local planning needs
- developing policies addressing issues in the LEP
- ensuring that responsibilities for Environmental Impact Assessment are met.

The Environmental Planning and Assessment Regulation 2000 supports the powers of councils under the Act.

Protection of the Environment Operations Act 1997 (POEO) - Minister for the Environment

This Act provides councils with powers to protect, restore and enhance the quality of the environment, while having regard to the need to maintain ecologically sustainable development. The POEO Act also provides increased opportunities for public involvement and participation in environment protection, and to rationalise, simplify and strengthen the regulatory framework for environment protection.

The Act also aims to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote pollution prevention and improve the monitoring and reporting of environmental quality on a regular basis.

The Protection of the Environment Operations (General) Regulation 2009, Protection of the Environment Operations (Clean Air) Regulation 2010, Protection of the Environment Operations (Noise Control) Regulation

2008 and Protection of the Environment Operations (Waste) Regulation 2005 support the powers of councils under the Act.

Waste Avoidance and Resource Recovery Act 2001 – Minister for the Environment

This Act provides councils with powers to achieve integrated waste and resource management planning, programs and service delivery. The overall aim of the Act is to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development. The Act also aims to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the reuse and recycling of waste.

Threatened Species Conservation Act 1995 – Minister for the Environment

This Act protects threatened species in NSW. It places significant obligations on local councils due to cognate provisions in the EPAA in relation to councils assessing impacts of development proposals on listed threatened species, populations and ecological communities and their habitats. The Threatened Species Conservation Regulation 2010 and the Threatened Species Conservation (Biodiversity Banking) Regulation 2008 support the powers of councils under the Act.

Noxious Weeds Act 1993 - Minister for Primary Industries

This Act provides councils and county councils with powers to assist in reducing the negative impact of weeds on the economy, community and environment of NSW by establishing control mechanisms to prevent the establishment of significant new weeds, restrict the spread of existing significant weeds, and reduce the area of existing significant weeds. It also provides for the monitoring of and reporting on the effectiveness of the management of weeds.

The Noxious Weeds Regulation 2008 supports the powers of councils and county councils under the Act.

Australian Road Rules – Minister for Roads and Ports

This is the primary piece of legislation relating to parking control, including signage and road markings.

Road Transport (General) Act 2005 – Minister for Roads and Ports

This Act includes provisions for issue, service and payment of penalty notices; the liability of vehicle owners in relation to offences (including parking); and inclusion of parking offences in contravention of any regulation made under the *Road Transport (Safety and Traffic Management) Act 1999*.

Road Transport (General) Regulation 2005 – Minister for Roads and Ports

This Regulation defines different classes of persons as authorised persons within the meaning of the Local Government Act for the purposes of s679 of the LGA (Penalty notices for certain offences).

Road Transport (Safety and Traffic Management) Act 1999 - Minister for Roads and Ports

This Act allows for the making of regulations regarding the parking of vehicles and parked or stopped vehicles on roads and road-related areas, including pay parking.

Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999 – Minister for Roads and Ports

This Regulation provides for the use of pay parking schemes including meters, tickets and coupons, parking permits and mobility parking scheme authorities. The application of monies raised from parking may be applied by councils at its discretion, but it is also subject to the requirements of the Local Government Act. The parking authority must also meet all costs associated with administering and maintaining a pay-parking scheme.

The offences relating to parking are contained in this Regulation. It also gives councils the ability to reach agreement with other councils in relation to common pay parking schemes and pass a resolution in relation to fixed fees in accordance with guidelines set by the RTA.

Roads Act 1993 - Minister for Roads and Ports

Local councils derive their powers as roads authority from the *Roads Act 1993*. In this capacity, they are responsible for the management of all public roads within their area, other than freeways, Crown roads or public roads controlled by another public authority, and private roads.

The Roads Regulation 2008 supports the powers of councils under the Act.

Transport Administration Act 1988 – Minister for Roads and Ports

This Act includes the power to delegate functions of the Roads and Traffic Authority and powers to regulate traffic management and safety, including traffic control devices and special event parking schemes, as well as the interrelationship with laws relating to local government.

Community Relations Commission and Principles of Multiculturalism Act 2000 – Minister for Citizenship

This legislation requires councils to implement the principles of multiculturalism. This is reinforced in a council's charter under section 8 of the Local Government Act which requires councils to carry out their functions in a way which is consistent with the principles and to actively promote the principles.

The Division of Local Government and the Community Relations Commission for a multicultural NSW have produced *Implementing the Principles of Multiculturalism Locally: Information Kit for Councils* to assist councils in meeting their obligations under the Act.

This is an important planning tool to assist councils to develop and implement multicultural strategies in a flexible way best suited to the needs of their local community and to their existing planning and reporting structures.

The Kit is available for download on both the [Commission's](#) and the [Division's](#) websites.

1.3 Legislation under which councillors have personal responsibilities

Councillors also have personal responsibilities to comply with the requirements of other Acts and Regulations. The following are only some of the legislation with which councillors must comply. The Local Government Association and Shires Association can provide more detailed support to assist councillors meet their compliance obligations. Councillors should also seek advice and be guided by their general manager in compliance matters.

State Records Act 1998

This Act regulates the manner in which councils are required to manage their records. All correspondence received by a council and councillors in their official capacity could be considered records under this legislation.

It is unlikely that correspondence to councillors about a councillor's personal affairs would be included in the definition of a record. However, correspondence to councillors from residents and ratepayers about the personal matters of the residents and ratepayers as they relate to a council's business may be included.

Councils should have policies in place for the good management of council's records to assist councillors comply with this legislation. Compliance with the *State Records Act 1998* will also assist in complying with related legislation such as the *Freedom of Information Act 1989* and the *Privacy and Personal Information Protection Act 1998*.

The State Records Regulation 2010 prescribes councils as State collecting institutions in relation to private records in a local studies or similar collection.

Government Information (Public Access) Act 2009 and Privacy and Personal Information Protection Act 1998

All New South Wales state and local government agencies are subject to important reforms that change the way government-held information is provided to members of the public.

The Government Information (Public Access) Act 2009 (GIPA Act) is now in effect, having commenced on 1 July 2010. It replaced the Freedom of Information (FOI) laws.

The new right to information system is a complete re-think of public access to information. It requires councils and other government agencies to proactively release documents to improve openness, transparency and accountability in government.

The Office of the Information Commissioner (OIC) has produced a range of specialised knowledge updates and other resources to help council staff understand the new system.

To access these resources or find out more about the reforms, visit the Office of the Information Commissioner [website](#) or call 1800 INFOCOM (1800 463 626).

Information about *the Privacy and Personal Information Protection Act 1998* can be found on the website of the [Office of the NSW Privacy Commissioner](#).

Work Health and Safety Act 2011

It is important that councillors ensure that they are familiar with the key provisions of the *Work Health and Safety Act 2011* (WHS). Councillors must comply with the local WHS arrangements at council and have an WHS induction. Councils should have local policies dealing with arrangements for accessing workplaces and building sites.

For more information about WHS Act visit the WorkCover NSW website at www.workcover.nsw.gov.au

Anti-Discrimination Act 1997

This legislation prohibits discrimination against any person on the basis of their race, gender, disability, religious beliefs, age, marital status, sexuality and carer's responsibilities.

For further information about the Anti-Discrimination Act 1997 visit the Anti-Discrimination Board website <http://www.lawlink.nsw.gov.au/ADB>.

A range of Anti-Discrimination publications are also available for download on the Division of Local Government website

www.dlg.nsw.gov.au, including the [Anti Discrimination Guidelines for Local Government Councillors](#).

There are also specific EEO requirements in the Local Government Act.

For further information about EEO see the Department of Premier and Cabinet's EEO home page www.eeo.nsw.gov.au.

1.4 Further information about NSW legislation

The *Local Government Act 1993* and all other NSW Acts and regulations may be accessed on the website of the Parliamentary Counsel's Office at www.legislation.nsw.gov.au.

APPENDIX 4

USEFUL RESOURCES

1.1 Roles, responsibilities and relationships

- [Division of Local Government's Directory of Policy Advice for Councils](#)

This contains policy advice provided to councils by the Division through circulars, guidelines and practices notes. It covers a variety of common topics and also includes answers to Frequently Asked Questions. It is aimed primarily at council staff, but may serve as a useful information tool for councillors.

1.1.1 Personal responsibilities of councillors

- **Work Health and Safety Act 2011**

It is important that councillors ensure that they are familiar with the key provisions of the *Work Health and Safety Act 2011* (the WHS Act). For more information about the WHS Act visit the [WorkCover NSW website](#).

- **Social Justice**

As leaders of the community it is essential that councillors promote the social justice principles of equity, access, participation and rights for all people. This is consistent with the requirement in the *Local Government Act 1993* for councils' Community Strategic Plans and Community Engagement Strategies to be based on social justice principles.

To promote social justice councillors also need to be aware of and comply with personal responsibilities in relation to the following matters:

- **Anti-Discrimination**

[A Fact sheet for local government councillors - August 2011](#) is available to assist councillors to understand their responsibilities under anti-discrimination legislation. More detailed [Anti-Discrimination Guidelines for Local Councils - August 2011](#) have been prepared for councillors and council managers to assist councils comply with anti-discrimination legislation. These resources were prepared by the Anti-Discrimination Board in conjunction with the Division of Local Government. For further information about the Anti-Discrimination Act 1997 visit the [Anti-Discrimination Board website](#).

- **Equal Employment Opportunity**

There are Equal Employment Opportunity (EEO) requirements specifically included in the *Local Government Act 1993*. For further information about EEO see the Department of Premier and Cabinet's [EEO home page](#).

- **Principles of multiculturalism**

Councillors should also be aware of their council's responsibility to implement the principles of multiculturalism set out in the Community Relations Commission and Principles of Multiculturalism Act 2000. For further information about this Act see the [Community Relations Commission for a multicultural NSW website](#).

1.1.2 Relationships

- **Collaboration and Partnerships between Councils: a guidance paper - Division of Local Government**

This guide assists councils develop stronger strategic collaborative arrangements, which use resources wisely to meet their communities' long-term needs.

- **Criteria for applications under section 358 of the Local Government Act - Formation of corporations or other entities**

This circular sets out the criteria for applications by councils under section 358 of the *Local Government Act 1993* to obtain the consent of the Minister for Local Government to form a corporation or other entity.

1.1.3 Managing performance

- **Local Government Reform Program – Promoting Better Practice Reviews**

Contains information about the Division's Promoting Better Practice program which aims to improve the governance and operation of councils.

- **Local Government General Manager Performance Management Guidelines – Local Government Managers Association (LGMA)**

These guidelines provide an overview of the general manager performance management process. Councillors can use these guidelines if participating in a formal assessment of the performance of their council's general manager.

- **Local Government Managers Australia (LGMA) resources:**

The LGMA produces a number of "health check" documents which are available to its members. Councillors should check with their general manager to see if council has access to the following documents:

- [Governance Health Check](#)

The Governance Health Check (GHC) is a self-audit guide to good governance in local government. Jointly developed by the Independent Commission Against Corruption and LGMA, the GHC is designed to give councils a simple tool to identify key elements of

corporate governance in a NSW local government context and to measure their progress in relation to each of these elements. It is accompanied by a Manual that provides a useful reference tool to assist councils to better understand the elements of good corporate governance, find additional resources and identify best practice.

- [Sustainability Health Check](#)

The Sustainability Health Check can be used to provide a robust assessment of council performance and organisational systems and is compatible with the Governance Health Check.

1.1.4 Appointment of General Manager and senior staff

- Practice Note No. 5: Recruitment of the General Manager and Senior Staff - Division of Local Government

These guidelines have been prepared to assist councils to meet the requirements of the *Local Government Act 1993* in relation to the recruitment of the General Manager and other senior staff and to adopt best practices.

- [Standard Contract of Employment: General Managers of Local Councils in NSW](#) - Division of Local Government

1.2 Code of Conduct and acting ethically

- **Model Code of Conduct - Division of Local Government**

The Model Code of Conduct is made for the purposes of section 440 of the *Local Government Act 1993* which requires every council to adopt a Code of Conduct that incorporates the provisions of the Model Code.

- **Guidelines for the Model Code of Conduct for Local Councils in NSW - Division of Local Government**

These guidelines have been developed to assist councils to review and enhance their Codes of Conduct.

- **Pecuniary Interest Guidelines - Division of Local Government**

These guidelines assist councillors to become aware of their roles and the requirements of the pecuniary interest provisions of the *Local Government Act 1993*.

Decisions of more recent pecuniary interest cases can be found on the Local Government [Pecuniary Interest and Disciplinary Tribunal website](#).

- **Self-Help Guide For The Completion Of Returns Disclosing Interests Of Councillors And Designated Persons Required Under Section 449 Of The Local Government Act 1993**

This self-help guide has been developed to assist in completing the section 449 return of interests form in order to comply with the provisions of the *Local Government Act 1993* and the Local Government (General) Regulation 2005.

- **ICAC resources:**

The Independent Commission Against Corruption (ICAC) provides a variety of resources on appropriate councillor conduct and corruption prevention.

- [No Excuse for Misuse](#)

- An ICAC discussion paper on the misuse of council resources.

- [Providing advice on corruption issues](#)

- This guide will help you give accurate and informed advice about corruption issues to members of your community.

- [Lobbying local government councillors](#)

- This brochure defines inappropriate lobbying and provides best practice examples of appropriate lobbying.

1.3 Making the most of meetings

Practice Note No. 16: Meetings - Division of Local Government

This Practice Note will help councils run their meetings. It is not meant to be a complete guide to meeting procedures, but it does include frequently asked questions.

1.4 Financial Management - Integrated Planning and Reporting

Further information about financial management, long-term financial planning and asset management can be found at the [Division's Integrated Planning and Reporting](#) webpage. LGMA (NSW) also provides [e-connect](#), an on-line information portal covering strategic management information on integrated planning and reporting, long term financial planning and strategic asset management (check if your council subscribes).

1.5 Support for Councillors

- [Councillor Induction and Professional Development - A Guide for Councils](#)

This Guide provides information to assist councils develop and implement councillor induction and continuing professional development programs,

including their content. Councils are strongly encouraged to implement such programs.

- [Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW 2009](#) – Division of Local Government

These guidelines assist councils review and prepare their policies on the payment of expenses and the provision of facilities for mayors and councillors.

APPENDIX 5

DEALING WITH THE MEDIA

The following information has been developed by the Communications Division at the Local Government and Shires Associations of NSW.

The Associations' Local Government Learning Solutions team also presents handling the media and social media training courses, which are highly recommended for both new councillors and as a refresher for councillors who have served previously.

Dealing with the media

Media regularly contact councils for comment on local issues, and councils rely on media to promote upcoming events and projects, and to voice their views on certain issues.

The media and councils need each other, but it is a sensitive relationship fraught with risk.

Most councils have media guidelines and the mayor is often the official spokesperson.

There are, however instances where a councillor is best placed to comment– either because the mayor isn't available, or it is an issue of particular interest/expertise to the councillor.

Below are some tips on getting the most out of the media and avoiding the pitfalls.

General

- Be accessible and responsive – journalists are simply doing their job and are the gateway to communicating council views, events and projects.
- Follow council policies and guidelines on media contact
- ! Nothing is really 'off the record' so be prepared for everything you say to a journalist to be used.
- ! Only say 'no comment' if you have a reasonable excuse (like the issue is in court). It is better to provide a general statement than nothing at all.
- ! Stick to matters of official council business – avoid personal comments about other issues and individuals.

If you are approached for an interview

- Know your subject and have an understanding of the likely questions and angle of the journalist's story.
- Ask yourself who the audience is and what you want to communicate to them.
- Devise a set of key messages that are short and precise and get your messages across.
- Practice! Even the most seasoned media performers have to prepare to get it right.
- If you don't know the answer to a question, do not make something up or guess. Simply say "I will have to get back to you", "I'll have to confirm" or repeat one of your key messages.
- Don't be afraid to pause while you think of the correct, and best, answer.
- Don't be persuaded to say something that isn't true, isn't your view or isn't appropriate for you to comment on.

For TV

- Avoid wearing dark or very bold colours - keep your outfit simple.
- No sunglasses!
- Don't fidget or shift your eyes.
- Keep your sentences short and sharp.
- Don't be afraid to show passion or some emotion, but control it.
- Repeat your key messages as much as possible.

Press releases

- Keep them to one page.
- Make the heading catchy and interesting.
- Make sure the first sentence captures the most newsworthy information.
- Keep sentences and paragraphs short and to the point.
- Make sure there are contact numbers for further comment at the bottom of the release.
- Ensure that spelling and grammar are accurate.

Social Media

There is an emerging trend of using Twitter, FaceBook®, LinkedIn®, Pinterest® and other social media to engage local communities. As an elected member you will need to find out what social media policies and guidelines exist for your council, and apply them accordingly.

[Connected Councillors](#) (Local Government Group, UK 2011) is a general guide for councillors in the United Kingdom and sets out the benefits of social media to support local leadership, how to get started using social media and on-line etiquette.

APPENDIX 6

TIPS FOR EFFECTIVE COMMUNITY ENGAGEMENT

The following checklist has been adapted from the NSW Government Regional Communities Consultative Council's "A summary guide to consulting with rural and regional communities".

Identify the issue	<ul style="list-style-type: none"> • What is the nature of the issue? • What needs to be discussed? • What are the possible options or contentious issues?
Identify the objective of the engagement activity	<ul style="list-style-type: none"> • What are you aiming to achieve? • Why are you talking to the community? • What information do you need to find out?
Identify who you need to talk to	<ul style="list-style-type: none"> • Who is affected by the issue? • Can target groups be identified? • What are the particular needs of different groups? • What particular activities should be included to ensure that all relevant stakeholders are able to be included (eg: Aboriginal community members, young people, families, and people with disabilities)?
What techniques will be needed	<ul style="list-style-type: none"> • Are the techniques appropriate for the audience? • What other methods could be utilised to reach the target audience?
Allocate sufficient resources to the process	<ul style="list-style-type: none"> • Would a neutral facilitator assist? • Is consensus decision making a goal? • Has sufficient time been allocated to the engagement activity?
Involve participants in the process	<ul style="list-style-type: none"> • Has sufficient information been provided to participants to enable informed participation? • Is written information concise and jargon free? • Are there appropriate aids to assist communication (eg interpreters and hearing loops), are special interests respected, and is the process understood?

<p>Maximise the ability of the community to participate</p>	<ul style="list-style-type: none"> • What are the most appropriate methods to contact participants? • Is the activity resourced sufficiently to take into account distance, travel time etc? • Is the location appropriate for the participants (not just the council)? • Is childcare, aged care and disabled access provided? • Has adequate notice been given? • Have participants been encouraged to participate through personal contact? • Have cultural protocols been observed (eg: welcome to country)? • Can the expenses of low income participants be met? • Is a meeting the best way to achieve the desired outcome?
<p>Realistic timetables</p>	<ul style="list-style-type: none"> • Is the community engagement activity a one-off or ongoing? • Is the timetable practical and realistic? • What are the time barriers and what strategies are in place if they cannot be met to the community's satisfaction?
<p>Resource management</p>	<ul style="list-style-type: none"> • What resources are needed? • Is training or are external personnel needed? • Are existing community resources being used? • Can this engagement activity or meeting be undertaken within an existing community meeting process?
<p>Outcomes</p>	<ul style="list-style-type: none"> • Are the desired outcomes clear to everyone? • Are the outcomes agreed? • How will the outcomes be documented? • How will the information be used? • How will decisions be reached? • How will the community be informed of the outcomes?
<p>Evaluation</p>	<ul style="list-style-type: none"> • How will success be defined and measured? • How can the community participate in the evaluation process? • How is the evaluation recorded? • How are the results of the evaluation provided back to the community participants and wider community?

APPENDIX 7

STANDARDS OF CONDUCT FOR COUNCIL OFFICIALS

Council officials play a vital role in serving local communities.

To do this effectively you will want to uphold the highest standards of behaviour to ensure the public has trust and confidence in local government.

What are the expected standards of behaviour?

The following standards of behaviour are expected of council officials. You must:

- not conduct yourself in a manner that is likely to bring the council into disrepute
- act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions
- treat others with respect at all times
- consider issues consistently, promptly and fairly
- not harass, discriminate against, or support others who do so
- ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly
- not participate in binding caucus votes
- disclose and appropriately manage any conflict of interests
- disclose and appropriately manage conflicts of interest arising from reportable political donations
- not accept money or gifts of value and avoid situations that give rise to the appearance of securing favourable treatment
- in the case of councillors, not direct council staff or influence staff in the exercise of their role
- in the case of staff, ensure efficient and effective operation of the council's organisation and ensure the implementation of the decisions of the council without delay
- use and secure information appropriately and do not disclose confidential information
- use council resources ethically, effectively, efficiently and carefully in the course of official duties
- not make complaints improperly, take detrimental action in response to complaints about standards of behaviour or disclose information about code of conduct matters.

Council officials include councillors, members of staff of council, administrators, members of council committees, conduct reviewers and delegates of council.

These standards are described in detail in the Model Code of Conduct for Local Councils in NSW. The code is a legal document that all officials are obliged to understand and follow. The Model Code forms the basis of each council's own code of conduct.

What happens if the standards are not met?

In the very small number of cases where council officials fail to follow this code, this will be dealt with in accordance with the procedure for administration of the Model Code.

Complaints about a breach of these standards by anyone other than the general manager are to be made at first instance to general manager. Complaints about the general manager are to be made to the Mayor. Non-serious complaints will be resolved informally. Where the complaint cannot be resolved informally, a complaint may be formally investigated by an independent conduct reviewer. The process for dealing with complaints is summarised in the flowchart below.

Breaches of these standards by delegates or council committee members may result in the following action:

- censure
- requirement of apology
- prosecution
- removal or restriction of delegation

Breaches by council staff may result in disciplinary action, termination or such other penalty permitted under the relevant industrial award.

Breaches by the general manager may result in the following action:

- requirement for training
- counselling
- requirement for apology
- findings of inappropriate conduct made public
- action under the general manager's contract

Breaches by councillors may result in the following action:

- requirement for training
- counselling
- requirement for apology
- findings of inappropriate conduct made public
- censure
- referral to the Division of Local Government for disciplinary action including but not limited to suspension for up to 3 months

- referral by the Division to the Pecuniary Interest and Disciplinary Tribunal for suspension of up to 6 months or disqualification from holding civic office.

A guide to preparing planning proposals



DISCLAIMER

These guidelines are provided for general guidance and information only. The guidelines are made available on the understanding that the NSW Department of Planning and Infrastructure ('department') is not providing legal advice. The Department has compiled the guidelines in good faith, exercising all due care and attention.

The guidelines do not affect or replace relevant statutory requirements. Where an inconsistency arises between the provisions of the guidelines and relevant statutory provisions, the statutory requirements prevail.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document. The guidelines are not intended to give rise to any rights, claims, benefits, privileges, liabilities or obligations with respect to matters the subject of the guidelines.

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 to preparing planning proposals

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Introduction

This guideline is issued under s55 (3) of the *Environmental Planning and Assessment Act 1979* (*the Act*) and provides guidance and information on the process for preparing planning proposals.

1.1 What is a planning proposal?

A planning proposal is a document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan. It will be used and read by a wide audience including those who are responsible for deciding whether the proposal should proceed, as well as the general community. It must be concise and written in language that is clear and easy to understand. It must also be technically competent and include an accurate assessment of the likely impacts of the proposal. It should be supported by technical information and investigations where necessary.

The preparation of a planning proposal is the first step in preparing an LEP. Throughout the course of preparing the proposed LEP, the planning proposal itself may evolve. This is particularly the case for complex proposals.

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. The purpose of the Gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal. It enables planning proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed.

The Gateway determination will confirm the information (which may include studies) and consultation required before the LEP can be finalised. The Gateway determination will also establish the timeframe in which the required steps are to be carried out. As the necessary information is gathered and consultation undertaken, the planning proposal may need to be updated by including additional documentation.

This document provides guidance on the matters that should be included in a planning proposal to satisfy the requirements of the Act. This guideline should be read in conjunction with other relevant guidelines/guidance documents issued by the department which are available on the department's website. Together, these guideline documents explain the plan making process and the role of planning proposals in the process.

1.2 Who can prepare a planning proposal?

The Act does not say who must prepare the information needed for a planning proposal. In practice, the planning proposal document can be prepared by a council, a landowner or developer seeking to change the planning controls relating to a particular site, or by a third party on behalf of a landowner or council.

Whoever prepares the background information must ensure the level of detail provided is sufficient to respond to the statutory requirements of the Act and the supplementary information requirements set out in this guideline (refer to Section 2 of these guidelines).

Once the document is prepared, it must be forwarded to the Minister for Planning and Infrastructure (the Minister) by the relevant planning authority (RPA) for consideration. In most instances, the RPA will be the council for the local government area to which the planning proposal relates. In exceptional circumstances the RPA may be the Director-General of the Department of Planning and Infrastructure (the department) or another public body, such as a joint regional planning panel (regional panel).

The RPA is responsible for the content of the planning proposal and the quality of the information provided in support of the proposal. The RPA must ensure the information is accurate, current and sufficient for issuing a Gateway determination and detailed enough for the purposes of consulting with agencies and the general community.

A guide to preparing local environmental plans provides an overview of the plan-making process.

1.3 How much information should be in a planning proposal?

A planning proposal must demonstrate the strategic merit of the proposed amendment to the LEP proceeding.

A planning proposal must provide enough information to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan-making process. The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment. The planning proposal should contain enough information to demonstrate that relevant environmental, social, economic, and other site specific matters have been identified and if necessary that any issues can be addressed with additional information and/or through consultation with agencies and the community.

Each planning proposal is unique. It is difficult therefore to prescribe standard 'appropriate information' to support a planning proposal in each and every case.

An 'Information checklist' has been developed to assist both proponents and councils to identify and agree on the range of information that may be appropriate to support a planning proposal. A copy of the checklist is provided as Attachment 1.

Not all information listed on the checklist will be relevant or required in all circumstances. To prevent unnecessary work prior to the Gateway stage, specific information nominated as being necessary would not be expected to be completed prior to the submission of the planning proposal. In such circumstances, it would be sufficient to identify what information may be required to demonstrate the

proposal's strategic merit or compliance with a relevant statutory consideration such as a section 117 Direction. The scope of any information should be outlined and evidence of any preliminary consultation with relevant agencies should be included to support the request for a planning proposal to proceed.

It is recommended that proponents and RPAs work together to agree on the range and scope of information necessary. This is best done via a pre-lodgement meeting.

Evidence of any pre-lodgement discussions, negotiations and agreement between the parties on the scope of work to be completed should be provided to support a request for a pre-Gateway review of a decision by a council not to proceed with a planning proposal, or where the council fails to make a decision on a planning proposal in the required time. This may include a completed 'Information checklist'. Further advice in relation to the pre-Gateway review process can be found in the department publication *A guide to preparing local environmental plans*.

1.4 When is a pre-lodgement meeting appropriate?

It is recommended that a proponent seek a pre-lodgement meeting with an RPA prior to preparing and submitting a planning proposal. This will be critical where the matter is complex with many factors to be considered. A pre-lodgement meeting will assist the RPA and the proponent to reach agreement on the information necessary to justify further consideration of the proposed change to land-use or controls. It will also ensure that a proponent does not commit time and resources undertaking unnecessary studies or preparing information that does not address the main areas of concern with appropriate detail.

The 'Information checklist' provided at Attachment 1 forms a suggested framework for discussion at a pre-lodgement meeting. The checklist may also be a useful starting point where a council does not have a similar guide or where a proponent is preparing a planning proposal for the first time. It is worth noting that in some cases the nature of a planning proposal will be such that its merits may be able to be demonstrated without the need to prepare any supporting strategic studies.

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The parts of a planning proposal

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.

2.1 Part 1 – objectives or intended outcomes

Part 1 of the planning proposal should be a short, concise statement setting out the objectives or intended outcomes of the planning proposal. It is a statement of what is planned to be achieved, not how it is to be achieved. It should be written in such a way that it can be easily understood by the general community.

For example, the objectives or intended outcomes of a planning proposal might be:

Example 1

To enable the redevelopment of the former Acme Factory site at 3 Smith Road, Smithville, for high-density housing, except for a corridor of public open space along the river frontage.

A planning proposal relates only to an LEP amendment. It is not a development application nor does it consider specific detailed matters that should form part of a development application. It is essential therefore that a proposal addresses all relevant matters that relate to the planning controls to be amended or introduced.

An amendment to an LEP is a stand-alone component of the development process. The RPA and the community must be confident that the proposed planning controls suggested by the planning proposal are acceptable as an outcome appropriate in that location, regardless of the subsequent approval or refusal of any future development application. Sufficient information must be provided to enable an assessment of the proposal to be undertaken.

It is not necessary to identify the mechanism by which the outcomes will be achieved. For instance, in Example 1 the zone(s) the site will eventually be zoned are not stated. The final zone(s) may change as a result of consultation with agencies and public exhibition and a number of alternative zones may be suitable for achieving the desired outcome.

The objectives or intended outcomes (in conjunction with Part 2 – the Explanation of Provisions), constitute the actual ‘proposal’ and will be the basis for drafting the legal instrument (the LEP). The objectives and intended outcomes need to be specific enough to accurately reflect the desired outcome of the proposal yet flexible enough to allow for alternative ways of achieving the desired result to be considered.

Principal LEPs apply to a whole local government area (LGA) and seek to achieve a number of changes.

The objectives and intended outcomes will need to accurately reflect the full extent of those changes. For example:

Example 2

To implement a Standard Instrument LEP across the Smithville local government area that replaces but maintains the general effect of the existing LEPs applying to the land, except where:

1. *It is intended to introduce a new provision to minimise the impacts of urban stormwater on properties, native bushland and receiving waters.*
2. *It is intended to give effect to the Smithville Housing Strategy by:*
 - a. *Enabling the future redevelopment of land within a reasonable walking distance of Smithville Railway Station (as shown on the attached map) for residential flat buildings;*
 - b. *Reserving land for future acquisition by the Smithville Metro Authority for the construction of additional commuter parking at Black Street, Smithville.*
 - c. *Etc.*

As in Example 1, the details of the planning proposal are specific enough to clearly identify the intent of the proposal, yet flexible enough to enable the RPA to determine the most appropriate zones to achieve the desired outcome at a later stage of the process.

2.2 Part 2 – explanation of provisions

The explanation of provisions is a more detailed statement of how the objectives or intended outcomes are to be achieved by means of amending an existing LEP.

In the context of Example 1 and 2, the explanation of provisions might be:

Example 3

The proposed outcome will be achieved by:

- *Amending the Smithville LEP 2009 Land Zoning Map on the former Acme Factory site at 3 Smith Road, Smithville in accordance with the proposed zoning map shown at attachment 1; and*
- *Amending the Smithville LEP 2009 Height of Building Map in accordance with the proposed height map, shown at attachment 2, which indicates a maximum permissible height of 22 metres onsite; and*
- *Amending the Smithville LEP 2009 Floor Space Ratio Map in accordance with the proposed floor space ratio map, shown at attachment 3, which indicates a maximum permissible floor space ratio of 2.5:1 on the site*

In the case of a new principal LEP, the Explanation of Provisions will be more detailed even if it relates to the Standard Instrument. The Explanation of Provisions therefore should take a form similar to the one as follows:

Example 4

The proposed outcome will be achieved by:

Preparing a Standard Instrument LEP in the form shown at attachment 1 (to which the standard instrument is attached) and with accompanying maps as shown at attachment 2 (to which the proposed maps are attached).

The Standard Instrument will include the following additional local provision:

2.6B Stormwater management

- 1. The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.*
- 2. This clause applies to all land in residential, business and industrial zones.*
- 3. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - a. is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
 - b. includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
 - c. avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

2.3 Part 3 – justification

The justification sets out the case for making the proposed LEP. Changes to an existing LEP can include changes to the current zones and/or development standards and controls. They can affect a single allotment of land, a whole zone, or the entire LGA.

The overarching principles that guide the preparation of planning proposals are:

- the level of justification should be proportionate to the impact the planning proposal will have
- it is not necessary to address a question (see Section 2.3(a)) if it is not considered relevant to the planning proposal. In such cases the reason why it is not relevant should be briefly explained, and
- the level of justification should be sufficient to allow a Gateway determination to be made with the confidence that the LEP can be finalised within the time-frame proposed.

As a minimum, a planning proposal must identify any environmental, social and economic impacts associated with the proposal. It is not expected that a proponent will provide comprehensive information to support a request for a planning proposal. The Gateway may include a requirement for additional information or determine that additional work on a particular aspect of the proposal is required. Detailed information completed prior to the Gateway may be unnecessary if it does not address the main concerns the Gateway identifies in its review of the proposal.

In some cases it will be necessary to undertake technical studies or carry out consultation with government agencies

to justify or clarify different aspects of a planning proposal. Generally, however these investigations will not need to be carried out before the Gateway, provided the issues giving rise to the need for the investigations and an approach for addressing the issues are identified in the planning proposal. The Gateway determination will then confirm the studies and consultation required and the timeframe for these to be completed.

The potential level of information that may be reasonable to justify a planning proposal at the Gateway determination stage is outlined in the following examples:

Example 5

Where vegetation management is an issue for a large site to be rezoned, it would be sufficient for the planning proposal to be submitted to the Gateway to identify the issue, demonstrate that preliminary analysis of the impacts has been undertaken and indicate what environmental studies would be suggested to assess and analyse the value and location of the vegetation and how the matter(s) could be addressed. Where appropriate the need to potentially enter into a voluntary planning agreement (VPA) to protect any significant species or habitat may be highlighted. It is not expected that a proponent would have undertaken the studies or prepared a draft VPA or offset agreement for the purposes of obtaining the initial Gateway determination. This is because the amount of offset or the matters to be addressed in a VPA or other agreement may vary as a consequence of further agency consultation and public exhibition.

Example 6

Overshadowing and amenity impacts may be potential issues associated with increasing the height and floor space ratio controls on a site to a planning proposal to be submitted to the Gateway. It would not be reasonable to require a proponent to provide detailed architectural design drawings of a proposed development as part of the planning proposal. The planning proposal should provide sufficient justification explaining why it is appropriate to increase the development potential of the site by amending these development standards in that location. Block/massing diagrams would be a suitable level of detail to provide with the planning proposal.

The Gateway will need to be confident that the level of information provided with the planning proposal will enable the plan making process to be completed within a reasonable time. Depending on the complexity or scale of the proposal this may require some initial investigations to be carried out prior to submitting the proposal to the Gateway.

2.3(a) Questions to consider when demonstrating the justification

Section A – Need for the planning proposal

Q1. *Is the planning proposal a result of any strategic study or report?*

The answer to this question helps explain the context of the planning proposal. If the planning proposal implements the outcomes of a strategic study or report of some kind, the nature of the study and its key findings should be briefly explained to justify the proposal. A copy of the study or report (or relevant parts) should be submitted with the planning proposal and ultimately form part of the public exhibition material.

Q2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Imposing or changing the controls on development is one means of giving effect to policy. But others may be equally effective, implemented quicker, and impose less of a regulatory burden.

Even when changing development controls is an appropriate means of giving effect to policy, there is still a range of options regarding how and when the new controls should be introduced. For example, it may be more efficient to implement the controls through the council's LGA wide principal Standard Instrument Local Environmental Plan (SI LEP) if this is close to finalisation rather than proceeding with a stand-alone planning proposal.

The planning proposal should demonstrate that alternative approaches to achieving the intended outcomes of the proposal have been considered. It should be evident from this assessment that the proposed approach is the best, most efficient and most time effective approach to delivering the desired outcome.

Section B – Relationship to strategic planning framework.

Q3. *Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

Regional and sub-regional strategies have been prepared for many parts of NSW. The strategies include outcomes and specific actions for a range of different matters relevant to that region or sub-region. In all cases the strategies include specific housing and employment targets and identify regionally important natural resources, transport networks and social infrastructure.

When preparing a planning proposal for an area covered by a regional or sub-regional strategy, the relationship between the planning proposal and the applicable strategy must be considered in the context of those outcomes and actions including housing and employment targets. Where an outcome or action is directly relevant to the planning proposal it should be briefly described and the planning proposal should set out the reasons why the proposal is either consistent or inconsistent with the outcome or action.

Regional strategies include Sustainability Criteria that provide a framework to consider planning proposals that are not consistent with the strategy but may nonetheless have merit. This may include a proposal for rezoning a site immediately adjoining – but not included in – a future urban investigation area under the relevant strategy. In such cases, the Sustainability Criteria should be addressed in the planning proposal.

In cases where there is no regional or sub-regional strategy in place, Assessment Criteria have been identified to assist proponents in preparing information to justify a planning proposal. These criteria form the basis of the initial eligibility assessment for the pre-Gateway review process. The justification component of a planning proposal should address the following Assessment Criteria as a minimum where a regional or sub-regional strategy is not in place:

Assessment Criteria

- a. Does the proposal have strategic merit and:
 - 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 it otherwise demonstrate strategic merit, giving consideration to the relevant section 117 Directions applying to the site and other strategic considerations (e.g. proximity to existing urban areas, public transport and infrastructure accessibility, providing jobs closer to home etc)

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

- the natural environment (including known significant environmental values, resources or hazards) and
- the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and
- 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.

Q4. *Is the planning proposal consistent with a council's local strategy or other local strategic plan?*

Where a local strategic plan has been prepared for the LGA and endorsed by the Director-General, relevant matters must be identified and the relationship of the planning proposal to those matters should be discussed.

As is the case with strategic studies and reports, the status of council's plan is important. Is it still in draft form? Has it been adopted by the council? Has it been endorsed by the Director-General? A planning proposal that is explicitly consistent with an endorsed local strategy has a good chance of being supported. Local strategies or local strategic plans also provide the opportunity to justify or detail how environmental issues (such as those set out in section 117 Directions) can be addressed.

Q5. *Is the planning proposal consistent with applicable State Environmental Planning Policies?*

State Environmental Planning Policies (SEPPs) relevant to the planning proposal must be identified and the relationship of the planning proposal with those SEPPs must be discussed. In some instances it may be necessary to provide some preliminary advice in relation to how the proposal satisfies the requirements of the SEPP. For example, a Stage 1 contamination report may be necessary under the provisions of SEPP 55 - Remediation of Land. A proponent and/or RPA should consider whether it is appropriate to undertake this study prior to Gateway to demonstrate that the intent of the planning proposal can be achieved.

Q6. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

Section 117 of the Act enables the Minister to issue directions regarding the content of LEPs to the extent that the content must achieve or give effect to particular principles, aims, objectives or policies set out in those directions.

There is a range of section 117 Directions (Local Planning Directions) requiring certain matters to be addressed if they are affected by a proposed LEP. The directions can be found on the department's website at <http://www.planning.nsw.gov.au/planningsystem/local.asp>.

Each planning proposal must identify which, if any, section 117 Directions are relevant to the proposal, and whether the proposal is consistent with the direction. Where the planning proposal is inconsistent with any of the relevant

directions, those inconsistencies must be specifically explained and justified in the planning proposal.

Certain directions require consultation to take place with particular government agencies to demonstrate consistency with the direction's desired outcome. If such a direction is relevant to the planning proposal, this should be identified in the planning proposal in the first instance. Formal consultation with that government agency should not take place until the initial Gateway determination is issued, confirming the public authorities to be consulted. If additional information is required, sufficient detail should be provided to enable the Director-General to determine whether the inconsistency is of minor significance or whether the planning proposal can be justifiably inconsistent with the conditions of the relevant direction.

Section C – Environmental, social and economic impact

Q7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

If the land affected by the planning proposal contains habitat of any sort, it will be necessary to carry out an assessment of significance in accordance with section 5A of the Act and the 'Threatened Species Assessment Guidelines', which can be found at <http://www.environment.nsw.gov.au/resources/threatenedspecies/tsaguide07393.pdf>.

The assessment of significance will determine whether there is any likelihood that critical habitat or threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposal.

Notwithstanding the significance of the impact, any adverse impact will trigger the requirement under section 34A of the Act for the RPA to consult on the planning proposal with the relevant government agency. If required, this consultation does not need to take place until after the issuing of the initial Gateway determination.

Q8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The aim of the strategic planning framework is to provide comprehensive guidance regarding the matters that will shape the growth of NSW. It is possible other likely environmental effects unique to a particular planning proposal may not be already addressed in the strategic planning framework. These matters may be identified in informal guidelines, codes or policies produced by different public authorities including local councils. These may include natural hazards such as flooding, land slip, bushfire hazard and the like.

It is important these are identified and addressed in the planning proposal. Again, if it is necessary to prepare information or undertake investigations to address an identified matter, the scope of these should be identified in the planning proposal while the actual information/investigation may be undertaken following the initial Gateway determination where appropriate.

Q9. *Has the planning proposal adequately addressed any social and economic effects?*

The response to this question will include effects on items or places of European or Aboriginal cultural heritage not already addressed elsewhere. It may also include impacts on existing social infrastructure such as schools and hospitals and impacts on existing retail centres which may result if the planning proposal proceeds.

In the instance where a planning proposal is to proceed, the Gateway needs to be satisfied that the level of information available leads to the conclusion that the LEP can be completed within a reasonable timeframe and that identified impacts can be addressed.

As with other potential impacts, proponents are required to undertake preliminary assessments and identify the scope of issues to be addressed in any information. The Gateway will confirm the need for the information and the scope of matters to be addressed.

Section D – State and Commonwealth interests

Q10. *Is there adequate public infrastructure for the planning proposal?*

Typically, this question applies to planning proposals that:

- result in residential subdivisions in excess of 150 lots
- substantial urban renewal
- infill development

- development that will result in additional demand on infrastructure (such as public transport, roads, utilities, waste management and recycling services, essential services such as health, education and emergency services).

Where applicable, the justification for the planning proposal should address whether existing infrastructure is adequate to serve or meet the needs of the proposal. Any justification should address how any shortfall in infrastructure provision is to be met. It is not expected that a proponent will identify exactly what infrastructure may be needed at the initial stage. The planning proposal should identify that there may be an expected shortfall in service provision, that studies may be required to identify the extent of that shortfall – and potential mechanisms to address any shortfall – and which agencies will be consulted as part of that process.

For planning proposals likely to place additional demands on public infrastructure, this section will be developed following consultation with the public authorities responsible for the provision of that infrastructure. Proponents may wish to have informal/ preliminary discussions with relevant agencies to inform this process prior to the initial Gateway determination. The initial Gateway determination would confirm the public authorities to be consulted.

Q11. *What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?*

One of the aims of the plan making process is to reduce the number of unnecessary referrals to government agencies. The planning proposal should nominate the state and Commonwealth agencies to be consulted and outline the particular land use issues or site conditions which have triggered the need for the referral. The proposed agency consultation will be confirmed with the Gateway determination.

The preliminary views of any state or Commonwealth agency obtained by a proponent in relation to a proposal prior to its submission to an RPA should be included in this section. This should include agreement about the scope of any additional information/ investigations that may be required by that agency subsequent to the issuing of a Gateway determination. Evidence of this pre-lodgement consultation and any agreement in relation to the progression of the planning proposal should be provided with the planning proposal. This information will also be a relevant consideration in the assessment of whether a proposed instrument qualifies for a pre-Gateway review.

2.4 Part 4 - mapping

Planning proposals should be supported by relevant and accurate mapping where appropriate. The mapping should be clear and accurately identify, at an appropriate scale, relevant aspects of the proposal including:

- the land subject to the planning proposal

- current land use zone/s applying to the land
- current development standards relating to the land (i.e. FSR, building height, minimum lot size)
- the proposed alternative zone, if a change in zone is proposed
- a map illustrating the extent of the proposed revised development standard, if a change to a development standard is proposed
- relevant maps or figures illustrating the intent of the planning proposal including:
 - » extent of a proposed heritage conservation area
 - » location of a specific heritage item
 - » proposed extent of an environmental conservation area
 - » area to which a local provision will apply.

Additional material such as aerial photographs clearly identifying the site should also be included where appropriate.

Where a council is preparing the planning proposal and already has a SI LEP in force, mapping should be carried out consistently with the requirements of *Standard technical requirements for LEP maps*. That is, the maps should be prepared using the same format template, colours, zone names etc as required under the department's guidelines. Mapping should be prepared at an appropriate scale showing the subject site and immediate area surrounding the site. Where the planning proposal is prepared by a proponent, this may not initially be possible. However, for exhibition purposes, the Gateway may determine that SI LEP compliant mapping should be prepared to ensure consistency with council's current SI LEP maps.

The Gateway may also determine that additional mapping be prepared to support the exhibition of a planning proposal. Where this is the case, this requirement will be included in the initial Gateway determination.

As the planning proposal progresses through the plan making process, it may be necessary to prepare additional mapping and supporting figures. Any additional maps should also be of a sufficient standard and quality to meet the department's mapping guideline requirements.

2.5 Part 5 – community consultation

This part of the planning proposal should outline the community consultation to be undertaken in respect of the proposal, having regard to the requirements set out in *A guide to preparing local environmental plans*. For the purpose of public notification the guide distinguishes between 'low impact' and other types of planning proposals.

If an RPA considers a greater period of public notification is required or that a public hearing should be held, it should be explained in this part of the planning proposal.

The Gateway determination will then confirm the public consultation that must be undertaken in respect of the planning proposal having regard to the details set out in the planning proposal. This part of the proposal must be revised to reflect any change to the consultation requirements specified in the determination.

The Act sets out the community consultation requirement for planning proposals and these are determined or confirmed at the Gateway. It may be premature to undertake extensive consultation with the broader community on a particular planning proposal before the Gateway. The Gateway will confirm the scope of additional information that may be required and the range of agencies to be consulted. As a result, the planning proposal may vary from the time it is initially conceived to the point where a definite proposal evolves for the site.

The community consultation should provide the full range of completed technical and background information relating to a site so interested parties/ persons can make an informed opinion if the planning proposal is approved at Gateway.

An indication of any proposed community consultation strategy is required with the planning proposal.

2.6 Part 6 – project timeline

A primary goal of the plan making process is to reduce the overall time taken to produce LEPs. The Gateway will need to be confident, should the planning proposal proceed, that the level of information provided with the planning proposal will enable the plan making process to be completed within a reasonable time. In order to meet these goals 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 inclusion of a project timeline with the planning proposal will provide a mechanism to monitor the progress of the planning proposal through the plan making process. It will also allow the RPA, the department and Parliamentary Counsel's Office (PCO) to more accurately manage resources to ensure there are no unexpected delays in the process.

The timeframe for the completion of the planning proposal will depend on the complexity of the matter, the nature of any additional information that may be required and the need for agency and community consultation. The following details should be provided as a minimum in the project timeline:

- anticipated commencement date (date of Gateway determination)
- anticipated timeframe for the completion of required technical information
- 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
- date of submission to the department to finalise the LEP
- anticipated date RPA will make the plan (if delegated)
- anticipated date RPA will forward to the department for notification.

The project timeline will be assessed by the department, and may be amended by the Gateway to provide the necessary level of confidence that the LEP will be finalised within a reasonable time.



What happens next?

The RPA will undertake an assessment of the planning proposal information provided and decide whether the proposal contains sufficient information to meet the requirements of the Act and this guideline. The RPA will then to decide whether or not to send the proposal to Gateway. The RPA will generally consider the matter at a council meeting and resolve to send the planning proposal to the department for consideration.

Once the planning proposal is submitted to the department the proposal is assessed before being considered by the LEP Review Panel. The Panel will make a recommendation to the Minister (or delegate) as to whether there is merit in the proposal proceeding and if so, whether any conditions should be attached to the proposal to ensure it progresses. If it is determined that a proposal should proceed, the Minister (or delegate) will issue a Gateway determination and the matter will be returned to the RPA to finalise in accordance with any conditions imposed by the Gateway.



Need more information?

The preparation of a planning proposal is the critical first step in the plan making process. The plan making process includes opportunities for the review of decisions to be undertaken to ensure that proposals with strategic merit can be considered in a timely manner. In certain circumstances the plan making process has been delegated to council to ensure that local planning decisions are made at the local level.

To assist understanding of the plan making system the department has prepared a Planning Circular (PS 12-006 *Delegations and independent reviews of plan making decisions*) which explains in more detail the various components of the plan making process. *A guide to preparing local environmental plans* has also been updated.

These documents may be found on department's website at www.planning.nsw.gov.au/gateway-process

If you require additional information about preparing a planning proposal or the plan making process, you should initially contact one of the department's regional teams. Contact details for these teams can be found on the department's website (www.planning.nsw.gov.au/contact-us) or by phoning the department's Information Centre on (02) 9228 6333.

ATTACHMENT 1 – INFORMATION CHECKLIST

▶ STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) – (e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 117 direction/s)

▶ STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
Strategic Planning Context			<ul style="list-style-type: none"> • Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining) • Sea level rise 	<input type="checkbox"/>	<input type="checkbox"/>
• Demonstrated consistency with relevant Regional Strategy	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Demonstrated consistency with relevant Sub-Regional strategy	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Demonstrated consistency with Threshold Sustainability Criteria	<input type="checkbox"/>	<input type="checkbox"/>	Urban Design Considerations		
Site Description/Context			<ul style="list-style-type: none"> • Existing site plan (buildings, vegetation, roads, etc) • Building mass/block diagram study (changes in building height and FSR) • Lighting impact • Development yield analysis (potential yield of lots, houses, employment generation) 	<input type="checkbox"/>	<input type="checkbox"/>
• Aerial photographs	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Site photos/photomontage	<input type="checkbox"/>	<input type="checkbox"/>	Economic Considerations		
Traffic and Transport Considerations			<ul style="list-style-type: none"> • Economic impact assessment • Retail centres hierarchy • Employment land 	<input type="checkbox"/>	<input type="checkbox"/>
• Local traffic and transport	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• TMAP	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Public transport	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Cycle and pedestrian movement	<input type="checkbox"/>	<input type="checkbox"/>	Social and Cultural Considerations		
Environmental Considerations			<ul style="list-style-type: none"> • Heritage impact • Aboriginal archaeology • Open space management • European archaeology • Social & cultural impacts • Stakeholder engagement 	<input type="checkbox"/>	<input type="checkbox"/>
• Bushfire hazard	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Acid Sulphate Soil	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Noise impact	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Flora and/or fauna	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Soil stability, erosion, sediment, landslip assessment, and subsidence	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Water quality	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Stormwater management	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Flooding	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
• Land/site contamination (SEPP55)	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
			Infrastructure Considerations		
			• Infrastructure servicing and potential funding arrangements	<input type="checkbox"/>	<input type="checkbox"/>
			Miscellaneous/Additional Considerations		
			<i>List any additional studies</i>		



Notes

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PLANNING circular

PLANNING SYSTEM

Plan-making reviews

Circular	PS 12-006
Issued	29 October 2012
Related	

Delegations and independent reviews of plan-making decisions

The purpose of this circular is to advise councils and the public about new delegations and independent reviews related to plan-making under Part 3 of the *Environmental Planning and Assessment Act 1979*.

Introduction

Two changes have been put in place to improve plan-making processes under Part 3 of the *Environmental Planning and Assessment Act 1979* (the Act). These changes come into effect on 2 November 2012 and will increase transparency, provide greater certainty, and increase councils' roles and responsibilities in plan making, by:

- delegating the making of some local environmental plans (LEPs) to councils, and
- allowing for independent reviews of some council and departmental decisions in the plan making process.

LEP delegations

The making of some LEPs will now be delegated back to councils, in keeping with the government's commitment to return local planning powers to local councils and their communities.

The Minister has delegated the following plan-making powers to councils:

- to make – and determine not to make – an LEP under section 59(2), and (3) of the EP&A Act
- to defer inclusion of certain matters in an LEP under section 59(3) and
- 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 defers the proposal or if a matter is deferred from the LEP.

The changes will give local councils responsibility for LEPs of local significance and streamline the processing of their LEPs by removing duplicative steps in the making of these LEPs.

The delegations will 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 the Gateway determination.

When submitting a planning proposal, councils will be required to identify whether they wish to exercise the Authorisation for each planning proposal.

Delegation will be routinely issued for particular types of LEPs (see below). However, any other draft LEP that the Gateway determines is of local significance will also be delegated to councils.

LEPs to be routinely delegated

The following types of draft LEPs will routinely be delegated to councils to prepare and make following a Gateway determination that the planning proposal can proceed:

- mapping alterations
- section 73A matters (e.g. amending references to documents/agencies, minor errors and anomalies)
- reclassifications of land
- 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.

Issue of delegations

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. The department has written to all councils advising that

plan making powers are to be delegated under section 23 of the Act. 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, 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. If a condition of the Authorisation cannot be complied with council must not exercise the delegation and must advise the department immediately.

Drafting and notifying delegated LEPs

Under section 59(1) of the Act the department currently requests the Office of the Parliamentary Counsel (PCO) to draft the legal instrument that gives effect to a planning proposal. However, when a planning proposal is delegated, the council will now deliver its instructions directly to PCO electronically. The council will concurrently copy the instructions to the department for monitoring and reporting only. The 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

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 <http://www.planning.nsw.gov.au/gateway-process>. 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.

Independent Reviews

To increase transparency and accountability in the Part 3 plan-making process, the government has formalised two existing administrative review processes:

- **Pre-gateway reviews** – which may be requested by a proponent before a planning proposal has been submitted to the department for a Gateway determination. These reviews are informed by advice from joint regional planning panels (regional panels) or the Planning Assessment Commission (PAC), and
- **Gateway reviews** – which may be requested by a council or proponent following a Gateway determination, but before community consultation on the planning proposal has commenced. These reviews are informed by advice from the PAC.

These reviews will allow councils and proponents to have decisions in relation to proposed amendments to LEPs reconsidered, by providing an opportunity for an independent body to give advice on such proposals.

An amendment to the Environmental Planning and Assessment Regulation 2000 (the Regulation) has been made to require councils to notify proponents of certain matters and to charge proponents fees for reviews.

This circular provides a summary of the review mechanisms. Detailed guidance for councils and proponents is provided within *A guide to preparing local environmental plans*.

Pre-Gateway reviews

When a review may be requested

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- 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 information.

The Regulation requires councils to notify a proponent when the council determines that it will not prepare a planning proposal. The proponent of the proposed instrument then has 40 days to request that the

relevant regional panel review the proposal. Where a council has not made a determination after 90 days, the proponent may request a review any time after the 90 days has lapsed.

A guide to preparing local environmental plans sets out lodgement requirements, including fees and information a proponent must provide to the department in order for a review to be undertaken. It also sets out strategic and site-specific eligibility criteria that must be met in order for a proposal to be eligible for review by the regional panel.

Review and determination

The relevant regional panel will review all eligible proposals forwarded to it by the department. In the City of Sydney local government area, the PAC will undertake the review.

A guide to preparing local environmental plans sets out what matters the regional panel/PAC will take into consideration when reviewing the proposal.

The regional panel/PAC will provide advice on whether it would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Act (Gateway determination).

The Minister's final decision will be informed by the regional panel's or PAC's advice, and the views of the department, council and proponent.

For proposals that are to proceed, further work may still be required by the proponent before the proposal complies with section 55 of the Act in relation to submitting a planning proposal for Gateway determination.

Further details on these procedures are outlined in *A guide to preparing local environmental plans*.

Exclusions – Pre-Gateway Reviews

A proponent who has requested council to prepare a planning proposal prior to the date this circular was issued may seek a review if the supporting information accompanying the request is still current (i.e. less than two years old).

A review request accompanied by information that is more than two years old will not normally be considered.

Gateway reviews

When a review may be requested

A council or proponent may request the Minister (or delegate) to 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 council or proponent thinks should be reconsidered.

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 would then have 40 days to formally apply for a Gateway review.

A guide to preparing local environmental plans sets out lodgement requirements, including information the council or proponent must provide for a Gateway review to be undertaken.

Review and determination

The PAC will provide advice on whether the original Gateway determination should be altered, giving consideration to the council or proponent's submission and the reasons given for the original Gateway determination.

The Minister's final decision on whether to alter the Gateway determination will be informed by the PAC's advice, and the views of the council and proponent.

Further details on these procedures are outlined in *A guide to preparing local environmental plans*.

Further information

The Environmental Planning and Assessment Regulation 2000 has been amended to require councils to notify proponents of certain plan-making matters and to charge proponents fees for reviews. The regulation is called the Environmental Planning and Assessment Amendment (Reviews) Regulation 2012.

A guide to preparing local environmental plans provides advice on the various stages in the plan-making process including details of the stages for pre-Gateway reviews, the review of Gateway determinations and the delegation of plan-making functions to councils. The guide has been updated throughout with the main changes relating to:

- delegation procedures
- guidance on the plan making process
- guidance on the procedures for independent review.

A guide to preparing planning proposals, issued under section 55(3) of the Act, provides advice on the preparation and content of planning proposals. The guide has been updated throughout with the main changes relating to:

- guidance on the level of information to be required for planning proposals together with the inclusion of an information checklist for planning proposals
- advice regarding pre-lodgement meetings

- the introduction of 'part 6 – project timeline' and discussion of requirements and procedures
- guidance on mapping requirements and procedures.

Copies of the Environmental Planning and Assessment Regulation 2000 are available online at <http://www.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 <http://www.planning.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: <http://www.planning.nsw.gov.au/gateway-process>

For further information please contact the Department of Planning & Infrastructure's information centre on 1300 305 695.

Department of Planning & Infrastructure circulars are available from <http://www.planning.nsw.gov.au/circulars>

Authorised by:

Sam Haddad
Director-General

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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PLANNING circular

PLANNING SYSTEM

Policy, Planning Systems and Reform

Circular	PS13-002
Issued	14 March 2013
Related	PS10-008

Calculating the genuine estimated cost of development

This circular is to advise consent authorities, applicants and the community what costs associated with a development proposal are to be considered when calculating or providing genuine estimated costs of works under the *Environmental Planning and Assessment Regulation 2000* when charging development application fees.

Introduction

Following an investigation, the Independent Commission Against Corruption recommended the NSW Department of Planning and Infrastructure issue a guideline that specifies what matters should be taken into consideration when calculating development application fees.

The purpose of this circular is to ensure greater consistency and reduce disputes about fees for development applications.

This circular applies to development application fees under Part 4 of the *Environmental Planning and Assessment Act 1979*, other than State significant development. It does not apply to the calculation of fees for complying development certificates, construction certificates or section 94A levies.

Why are cost estimates required?

Development application (DA) fees are calculated by having regard to, among other things, the estimated cost of development.

Other fixed fees may also apply - for matters such as notification, external referrals, builders' long service leave levy and additional fees for designated development - however, these do not apply to every application and are not the focus of this circular.

It is important to note that capital investment value (CIV) - a threshold used in relation to development that is of state or regional significance - does not apply for the purpose of calculating an application fee for a Part 4 DA. For more information on CIV, refer to Planning Circular PS10-008.

How are the fees for DAs calculated?

Clause 246B of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) sets out how DA fees are calculated. That clause includes a table which specifies maximum fees for erecting buildings, carrying out works, and demolition. The maximum fee is based on the estimated cost of the proposed work(s).

The consent authority must determine the fee having regard to the genuine estimate of the cost provided by the applicant on the DA form. Clause 255 of the Regulation provides that the estimated cost is the estimated cost indicated in the DA unless the consent authority is satisfied that the cost indicated in the DA is neither genuine nor accurate.

It should be noted that the table in clause 246B specifies a maximum fee. The consent authority retains discretion whether to impose the maximum fee in the particular circumstances of the case.

Who should estimate the costs of development prior to lodgement?

It is recommended that:

- for development up to \$100,000, the estimated cost be estimated by the applicant or a suitably qualified person¹, with the methodology used to calculate that cost submitted with the DA.
- for development between \$100,000 and \$3 million, a suitably qualified person should

¹ A suitably qualified person is: a builder who is licensed to undertake the proposed works, a registered architect, a qualified and accredited building designer, a registered quantity surveyor or a person who is licensed and has the relevant qualifications and proven experience in costing of development works at least to a similar scale and type as is proposed.

- prepare the cost estimate and submit it, along with the methodology, with the DA.
- for development more than \$3 million, a detailed cost report prepared by a registered quantity surveyor verifying the cost of the development should be submitted with the DA.

What work is to be included in calculating a cost estimate?

Clause 255 of the Regulation specifies how the consent authority must make its determination about what fee is payable.

The consent authority must make its determination by reference to certain costs for certain types of development:

- For development involving erecting a building, the consent authority must consider:
 - the costs associated with constructing the building, and
 - the costs associated with preparing the building for the purpose for which it is to be used (such as the costs of plant, fittings, fixtures and equipment².)
- For development involving carrying out a work the consent authority must consider the construction costs of the work
- For development involving demolition, the consent authority must consider the costs of demolition

If two or more fees are applicable to a single DA (such as an application to subdivide land and erect a building on one or more lots created by the subdivision), the maximum fee payable for the development is the sum of those fees (clause 254).

Information to be provided as the basis for estimating costs

Schedule 1 of the Regulation specifies the information and documentation that is to accompany a DA. This includes the estimated cost of the development and a sketch of the development (see Schedule 1, Part 1 (1) (h) and (2) (1) (b) of the Regulation).

The sketch of the development should include, among other things, floor plans indicating an estimate of the gross floor area of the development (in square metres). The floor plans should also provide gross floor areas for each component of the development, including the floor areas of any decks, garages, driveways, retaining walls, landscaping and the like.

The estimated cost may be calculated based on:

- a detailed estimate of cost based on individual components (**Attachment A - Table 1**), or
- floor space estimates of construction and fit out (**Attachment A - Table 2**)

Tables 1 and 2 in Attachment A provide examples of the information to be provided with a DA. These may be adapted by the consent authority taking into consideration location specific costs and development types.

Maximum fee—subdivision of land

Cost estimates do not apply to development involving subdividing land. Under clause 249, the maximum DA fee payable for development involving subdividing land is calculated as follows:

- subdivision (other than strata subdivision):
 - involving the opening of a public road, \$665, plus \$65 for each additional lot created by the subdivision, or
 - not involving the opening of a public road, \$330, plus \$53 for each additional lot created by the subdivision,
- strata subdivision, \$330, plus \$65 for each additional lot created by the subdivision.

For the purpose of determining fees, subdividing land refers to plans of subdivision and does not include subdivision work. Subdivision work is estimated in the same manner as for other development involving carrying out a work.

Reviewing the estimated cost of development

The consent authority must accept the estimate of cost submitted with the DA unless it is satisfied that the estimate is neither genuine nor accurate.³

Please note that a person is guilty of an offence if the person makes any statement, knowing it to be false or misleading in an important respect, in or in connection with any document lodged with the Director-General or a consent authority or certifying authority for the purposes of the Act or the Regulation (cl.283 of the Regulation).

If the estimate provided is not considered genuine or accurate, the consent authority should check the appropriate floor area of the proposed development and multiply it by the unit cost for the component. If a proposed development includes decks, garages, driveways, retaining walls, landscaping and the like, they should be separately estimated and added to the total cost estimate. This will give an estimated cost for the purpose of determining the fee.

The consent authority should determine a measure for acceptable cost variation. For example, if the estimated cost of the development is within 10 per cent of the cost calculated by the consent authority, the stated estimate in the DA should be accepted. If the DA cost variation is more than 10 per cent, the consent authority may require the applicant to engage an independent quantity surveyor to review the cost estimates or the consent authority may undertake its own estimation.

² This includes the cost of the elements or items and the cost of installation.

³ Clause 255 (2) EP&A Regulation 2000

Applicants and consent authorities should note that the estimated cost of development is intended to reflect the 'market cost' of building materials and labour involved in carrying out the development and may not accurately reflect the actual cost. This cost could be higher than the estimate if certain materials or products are unavailable. Similarly, the cost could be less than the estimate if the proponent uses cheaper materials or is able to source free labour.

Resources for estimating the cost of works

It is recommended that the consent authority adopt a table of development costs. A template is provided at **Attachment B**. This could be made available on the relevant consent authority's website or attached to the DA form. The table should guide applicants and consent authorities in estimating the cost of work for the purposes of determining development application fees.

To determine appropriate cost rates for inclusion in a consent authority's table, references should be made to reliable cost indicators.

The Australian Institute of Quantity Surveyors provides technical guidance on estimating costs and methods of measurement in the Australian Cost Management Manuals. Private companies also periodically produce construction cost guides and software.

It should be noted that costs will vary depending on location and will also need to be updated on a regular basis to reflect changes in building costs over time.

Further Information

For further information please contact the Department of Planning & Infrastructure's information centre on 1300 305 695.

Department of Planning & Infrastructure circulars are available from <http://www.planning.nsw.gov.au/circulars>

Authorised by:

Sam Haddad
Director-General

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ATTACHMENT A

ESTIMATED COST OF WORKS*(Model table - to be adapted by the consent authority)*

The genuine cost of the development proposed in a development application should include costs based on industry recognised prices, including cost for materials and labour for construction and/or demolition and GST. If the estimate is understated, the figure will need to be adjusted. Additional application fees may then be incurred.

Various commercial entities publish building and construction cost guides/calculators which can be referenced. The Australian Institute of Quantity Surveyors provides technical guidance on estimating costs and methods of measurement in the Australian Cost Management Manuals.

1. GENERAL PROJECT INFORMATION

DEVELOPMENT APPLICATION		
APPLICANT'S NAME		
APPLICANT'S ADDRESS		
REFERENCE/ DA/CC number		
DATE:		
DEVELOPMENT NAME		
DEVELOPMENT ADDRESS		
DESCRIPTION OF WORKS		
TOTAL SITE AREA	Gross floor area (commercial)	m ²
	Gross floor area (residential)	m ²
	Gross floor area (retail)	m ²
	Gross floor area (industrial)	m ²
	Gross floor area (other)	m ²
PARKING	Gross floor area (parking)	m ²
	Number of parking spaces	
DEMOLITION WORKS		m ²
OTHER WORKS		

2. ESTIMATED COST OF WORKS

Please attach either Table 1 or Table 2 below. If the development is over \$3,000,000, a detailed cost report prepared by the registered quantity surveyor should be attached verifying the cost of the development.

3. CERTIFICATION OF THE ESTIMATED COST OF WORKS

I certify that:

- I have provided the estimated costs of the proposed development and that those costs are based on industry recognised prices; and
- the estimated costs have been prepared having regard to the matters set out in clause 255 of the *Environmental Planning and Assessment Regulation 2000*

Signed:

Name:

Position:

Contact Number:

Contact Address:

Date:

Table 1: ESTIMATED COST OF WORKS - BASED ON WORKS COMPONENTS*(Model table - to be adapted by the consent authority)*

Cost (applicant's genuine estimate)	
Demolition works (including cost of removal from site and disposal)	\$
Site preparation (e.g. clearing vegetation, decontamination or remediation)	\$
Excavation or dredging including shoring, tanking, filling and waterproofing	\$
Preliminaries (e.g. scaffolding, hoarding, fencing, site sheds, delivery of materials, waste management)	\$
Building construction and engineering costs <ul style="list-style-type: none"> ▪ concrete, brickwork, plastering ▪ steelwork/metal works ▪ carpentry/joinery ▪ windows and doors ▪ roofing 	\$
Internal services (e.g. plumbing, electrics, air conditioning, mechanical, fire protection, plant, lifts)	\$
Internal fit out (e.g. flooring, wall finishing, fittings, fixtures, bathrooms, and equipment)	\$
Other structures (e.g. landscaping, retaining walls, driveways, parking, boating facilities, loading area, pools)	\$
External services (e.g. gas, telecommunications, water, sewerage, drains, electricity to mains)	\$
Professional fees (e.g. architects and consultant fees, excluding fees associated with non-construction components)	\$
Other (specify)	\$
Parking / garaging area	\$
GST	\$
TOTAL	\$

OR

Table 2: ESTIMATED COST OF WORKS - BASED ON FLOOR SPACE ESTIMATES*(Model table - to be adapted by the Consent Authority)*

			Costs
PROFESSIONAL FEES	% of construction cost	%	\$
	% of development cost	%	
	total cost		
DEMOLITION & SITE PREPARATION	x/m ² of site area	\$	\$
	total construction cost		
EXCAVATION	x/m ² of site area	\$	\$
	volume of material removed		
	total construction cost		
CONSTRUCTION Commercial	x/m ² of commercial area	\$	\$
	total construction cost		
CONSTRUCTION Residential	x/m ² of residential area	\$	\$
	total construction cost		
CONSTRUCTION Retail	x/m ² of retail area	\$	\$
	total construction cost		
CONSTRUCTION Industrial	x/m ² of commercial area	\$	\$
	total construction cost		
CONSTRUCTION other	x/m ² of commercial area	\$	\$
	total construction cost		
FITOUT Commercial	x/m ² of commercial area	\$	\$
	total construction cost		
FITOUT Residential	x/m ² of residential area	\$	\$
	total construction cost		
FITOUT Retail	x/m ² of retail area	\$	\$
	total construction cost		
FITOUT Industrial	x/m ² of industrial area	\$	\$
	total construction cost		
FITOUT Other	x/m ² of retail area	\$	\$
	total construction cost		
CARPARK	x per space	\$	\$
	x/m ² of parking area	\$	
	total construction cost		
TOTAL CONSTRUCTION COST			\$
TOTAL GST			\$
TOTAL DEVELOPMENT COST			\$

ATTACHMENT B

EXAMPLE OF INDICATIVE WORKS FOR DEVELOPMENT AND CONSTRUCTION PROPOSALS

(Table to be adapted by the consent authority)

	Type	Rate by m ² floor area or as indicated
RESIDENTIAL DEVELOPMENT		
Multi Residential Housing		
Townhouse		\$ x/ m ²
Villas		\$ x/ m ²
Undercover Parking	Ground floor	\$ x per space
Dwellings		
Small Lot Housing	1 storey	\$ x/ m ²
Dual Occupancy	1 & 2 storey	\$ x/ m ²
Project Home	1 & 2 storey	\$ x/ m ²
Architectural Design	1 storey	\$ x/ m ²
Architectural Design	More than 1 storey	\$ x/ m ²
Additions	Ground floor – Timber	\$ x/ m ²
Additions	Ground floor – Brick Veneer	\$ x/ m ²
Additions	First floor	\$ x/ m ²
Decks /Pergolas		
Deck	Unroofed	\$ x/ m ²
Deck	Roofed	\$ x/ m ²
Pergola	Unroofed	\$ x/ m ²
Garages		
Garages	Metal (kit)	\$ x/ m ²
Garages	Cladded timber frame	\$ x/ m ²
Garages	Brick	\$ x/ m ²
Carpports		
Carpports	No new slab	\$ x/ m ²
Carpports	New slab	\$ x/ m ²
Retaining Walls		
Retaining Walls	Brick (1m high)	\$x/ linear metre
Retaining Walls	Block/treated pine (1m high)	\$x/ linear metre
Front Fence		
Front Fence	Face brick with inserted panels	\$ x/ linear metre
Front Fence	Brushwood 1.8m high	\$ x/ linear metre
Front Fence	Pool type 1.5m high	\$ x/ linear metre
Front Fence	Colorbond 1.8m high	\$ x/linear metre
Pools		
In Ground Pool <40 m ²	Concrete	\$ x complete
In Ground Pool <40 m ²	Fibreglass	\$ x complete
Above Ground Pool <40 m ²	Vinyl	\$ x complete
COMMERCIAL & INDUSTRIAL		
Offices	1-3 storeys	\$ x/ m ²
Offices	4+ storeys	\$ x/ m ²
Shops		\$ x/ m ²
Supermarkets		\$ x/ m ²
Department Stores		\$ x/ m ²
Shopping Complex		\$ x/ m ²
Cinemas		\$ x per seat
Service Stations		\$ x/ m ²
Parking Areas		
Car park	Open (bitumen)	\$ x/m ²
Car park	Undercover (no ventilation)	\$ x per space
Car park	Undercover (ventilated)	\$ x per space
Hotels, Motels, Clubs		
Hotel/Motel/Club	1 & 2 storey	\$ x/ m ²
Hotel/Motel/Club	3 + storeys	\$ x/ m ²
Health Care Building		
Hospital	1 storey	\$ x/ m ²
Hospital	Multi storey	\$ x/ m ²
Medical Centre	1 storey	\$ x/ m ²
Nursing Home	1 storey	\$ x/ m ²

Education Facility		
Primary/High School		\$ x/ m ²
Technical College		\$ x/ m ²
Industrial		
Factory/Warehouse	Precast concrete <1000m ²	\$ x/ m ²
Factory/Warehouse	Precast concrete >2000m ²	\$ x/ m ²
Factory/Warehouse	Metal Walls <1000m ²	\$ x/ m ²
Factory/Warehouse	Metal Walls > 1000m ²	\$ x/ m ²