



# Coffs Harbour City Council

06 February 2013

## ORDINARY MEETING

The above meeting will be held in the Council Chamber, Administration Building, corner Coff and Castle Streets, Coffs Harbour, on:

**THURSDAY, 14 FEBRUARY 2013**

The meeting commences at **5.00pm** and your attendance is requested.

## AGENDA

1. Opening of Ordinary Meeting
2. Acknowledgment of Country
3. Disclosure of Interest
4. Apologies
5. Public Addresses / Public Forum
6. [Mayoral Minute](#)
7. Mayoral Actions under Delegated Authority
8. [Confirmation of Minutes of Ordinary Meeting – 13 December 2012](#)
9. [Notices of Motion](#)
10. [General Manager's Reports](#)
11. [Consideration of Officers' Reports](#)
12. Requests for Leave of Absence
13. Matters of an Urgent Nature
14. Questions On Notice
15. Consideration of Confidential Items (if any)
16. Close of Ordinary Meeting.

Steve McGrath  
General Manager



## **COFFS HARBOUR CITY COUNCIL**

### **ORDINARY MEETING**

**COUNCIL CHAMBERS  
COUNCIL ADMINISTRATION BUILDING  
COFF AND CASTLE STREETS, COFFS HARBOUR**

**14 FEBRUARY 2013**

#### **Contents**

<b>ITEM</b>	<b>DESCRIPTION</b>
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#### **MAYORAL MINUTE**

MM13/1	TOWN CRIER
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#### **NOTICES OF MOTION**

NOM13/1	REPLACEMENT AND EXTRA GARBAGE BINS AT JETTY FORESHORE
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NOM13/2	PARKING OF RV MOTOR HOMES
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NOM13/3	USE OF AUTONOMOUS POWER SYSTEMS
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NOM13/4	NIGHT RIDER SERVICE - NORTHERN BEACHES
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#### **GENERAL MANAGER'S REPORT**

GM13/1	CODE OF CONDUCT POLICY AND RELATED PROCEDURES
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#### **LAND USE HEALTH & DEVELOPMENT DEPARTMENT REPORTS**

L13/1	DEVELOPMENT APPLICATION NO. 119/13 - LOT 26 DP 1001621, NO. 1 BREAKERS WAY KORORA - MULTI-UNIT HOUSING (ONE ADDITIONAL NEW DWELLING) & STRATA SUBDIVISION
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The following item either in whole or in part may be considered in Closed Meeting for the reasons stated:

L13/2	TENDER: PREPARATION OF ENVIRONMENTAL STUDIES AND PLANNING PROPOSAL - BONVILLE RURAL RESIDENTIAL AREA - CONTRACT NO. RFT-559-TO
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A portion of this report is confidential for the reason of Section 10A (2):

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret.

and in accordance with Section 10A (1) the meeting may be closed to the public.

**ITEM DESCRIPTION**

**CORPORATE BUSINESS DEPARTMENT REPORTS**

- CB13/1 KEY FINANCIAL INDICATORS 2011-12
- CB13/2 BANK BALANCES AND INVESTMENTS FOR OCTOBER 2012
- CB13/3 MONTHLY BUDGET REVIEW FOR NOVEMBER 2012
- CB13/4 EXECUTION OF LEASE DOCUMENTS - MOBIL OIL AUSTRALIA PTY LTD - DEPOT AND FUELLING FACILITY SITES AT COFFS HARBOUR AIRPORT
- CB13/5 LEASE - SHOP PREMISES AT SUITE 102 RIGBY HOUSE, 27-29 DUKE STREET, COFFS HARBOUR
- CB13/6 LEASE TO SPECIAL NEEDS SUPPORT GROUP INC - 13 KANE CRESCENT, COFFS HARBOUR
- CB13/7 DEVELOPER CONTRIBUTION PLANS REVIEW

The following items either in whole or in part may be considered in Closed Meeting for the reasons stated:

- CB13/8 TENDER RFT-573-TO - ELECTRICAL MAINTENANCE AND REPAIR OF COUNCIL PROPERTIES
- CB13/9 TENDER RFT-574-TO - PLUMBING MAINTENANCE AND REPAIR OF COUNCIL PROPERTIES

A portion of these reports are confidential for the reason of Section 10A (2):

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret.

and in accordance with Section 10A (1) the meeting may be closed to the public.

**CITY SERVICES DEPARTMENT REPORTS**

- CS13/1 COFFS HARBOUR COASTAL ZONE MANAGEMENT PLAN
- CS13/2 WOOLGOOLGA LAKE ESTUARY, WILLIS CREEK ESTUARY & DARKUM CREEK ESTUARY COASTAL ZONE MANAGEMENT PLANS
- CS13/3 COASTAL ESTUARY MANAGEMENT ADVISORY COMMITTEE
- CS13/4 COFFS HARBOUR BOAT RAMP - PROPOSAL TO FORM WORKING PARTY
- CS13/5 NSW SPORT & RECREATION GRANT FOR SPORTZ CENTRAL
- CS13/6 PACIFIC HIGHWAY - SAPPHIRE TO ARRAWARRA, RENAMING PROPOSAL
- CS13/7 PUBLIC ART SELECTION PROTOCOLS POLICY

The following items either in whole or in part may be considered in Closed Meeting for the reasons stated:

- CS13/8 TENDER RFT-565-TO: SUPPLY & INSTALLATION OF SAFETY BARRIERS IN COUNCIL'S CASTLE STREET CAR PARK
- CS13/9 TENDER RFT-570-TO: SUPPLY & DELIVERY OF SEWAGE PUMPS FOR SAWTELL PUMP STATION

<b>ITEM</b>	<b>DESCRIPTION</b>
CS13/10	TENDER RFT-576-TO: PLANT REPLACEMENT PROGRAM - SUPPLY ONE CAB CHASSIS 23,000 GVM INTERCHANGEABLE BETWEEN TIPPER AND PRIME MOVER COMBINED WITH ONE THREE AXLE DOG TRAILER RMS REGISTERED 48,000KG GCM SPEC

A portion of these reports are confidential for the reason of Section 10A (2):

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret.

and in accordance with Section 10A (1) the meeting may be closed to the public.



## COFFS HARBOUR CITY COUNCIL

### ORDINARY MEETING

**13 DECEMBER 2012**

Present: Councillors D Knight (Mayor), J Arkan, N Cowling, R Degens, B Palmer, K Rhoades, M Sultana and S Townley

Staff: General Manager, Director Corporate Business, Acting Director City Services, Director Land Use, Health & Development and Executive Assistant.

The meeting commenced at 5.04 pm with the Mayor, Cr D Knight in the chair.

We respectfully acknowledge the Gumbayngirr Country and the Gumbayngirr Aboriginal peoples who are traditional custodians of the land on which we meet and their Elders both past and present.

The Mayor reminded the Chamber that the meeting was to be recorded, and that no other recordings of the meeting would be permitted.

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#### DISCLOSURES OF INTEREST

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Disclosures of interest were tabled by Councillors concerning the following items of business:

<b>Councillor</b>	<b>Item</b>	<b>Type of Interest</b>
Steve McGrath	L12/33	Non-Pecuniary - Significant Conflict as Council's delegate on the JRPP
Cr Knight	L12/33, CB12/107 & CB12/108	Pecuniary as a property owner
Cr Arkan	CB12/107 & CB12/108	Non-Pecuniary - Significant Conflict as runs a market stall every week
Cr Palmer	CB12/108	Non-Pecuniary - Significant Conflict as wife was applicant for position on committee
Cr Palmer	CB12/107	Non-Pecuniary - Significant Conflict as wife operates a retail outlet in CBD

Cr Sultana presented the Commercial Small Business Award to the Coffs Coast Community College for the Cultural Café project, the project was named winner of the Small Business Category.

**PUBLIC FORUM**

<b>Time</b>	<b>Speaker</b>	<b>Item</b>
5.00pm	Margaret Beckett	Presentation by Australia-Japan Society of Coffs Harbour Inc

**PUBLIC ADDRESS**

<b>Time</b>	<b>Speaker</b>	<b>Item</b>
5.05pm	Kath Puddy Boambee Primary School	NOM12/12 – Traffic Conditions – Boambee Primary School
5.10pm	Ian Hogbin	CB12/107 – CBD Master Plan Public Exhibition
5.15pm	Kent Lee	L12/32 – Coffs Harbour Local Environmental Plan and Coffs Harbour Development Control Plan

**CONFIRMATION AND ADOPTION OF MINUTES**

**325 RESOLVED** (Rhoades/Degens) that the minutes of the Ordinary meeting held on 22 November 2012 be confirmed as a true and correct record of proceedings.

Cr Rhoades wishes to withdraw the word "nimby" from the content of discussion regarding Item L12/27.

**RESCISSION MOTION**

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**RM12/1 DEVELOPMENT APPLICATION NO. 700/12 - SENIORS LIVING DEVELOPMENT (SERVICED SELF-CARE HOUSING) - LOT 1 DP 1128964, 2 MULLAWAY DRIVE, MULLAWAY - RESCISSION MOTION**

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**326 RESOLVED** (Arkan/Rhoades) that Resolution 302 of Ordinary meeting held on 22 November 2012 regarding item L12/28 - Development Application No. 700/12 – Seniors Living Development (Serviced Self-Care Housing) – Lot 1 DP 1128964, 2 Mullaway Drive, Mullaway, and reading as follows, be rescinded:

**RESOLVED** (Degens/Cowling) that:

1. Council refuses the Development Application No. 700/12 for a Seniors Living Development (Serviced Self-Care Housing) at Lot 1, DP 1128964 at 2 Mullaway Drive, Mullaway on the following ground:

*That the proposed development is not within the character of the area and will result in adverse impact on the amenity of the area.*

**VOTED FOR**

Cr Rhoades  
Cr Palmer  
Cr Degens  
Cr Knight  
Cr Arkan  
Cr Sultana

**VOTED AGAINST**

Cr Townley  
Cr Cowling

**327 RESOLVED** (Rhoades/Arkan) that:

1. Development Application No. 700/12 for a Seniors Living Development (Serviced Self-Care Housing) at Lot 1, DP 1128964 at 2 Mullaway Drive, Mullaway be approved subject to the conditions in Attachment 3.
2. Persons who made a submission on Development Application No. 700/12 be informed of Council's decision.

**VOTED FOR**

Cr Rhoades  
Cr Palmer  
Cr Degens  
Cr Knight  
Cr Arkan  
Cr Sultana  
Cr Cowling

**VOTED AGAINST**

Cr Townley

## NOTICES OF MOTION

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### NOM12/12 TRAFFIC CONDITIONS - BOAMBEE PRIMARY SCHOOL

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**328 RESOLVED** (Degens/Arkan) that:

1. Council investigate and report back to Council on the following matters outlined below that relate to traffic conditions at Boambree Primary School.
2. The report address the matters with solutions, particularly with respect to the lack of legal parking.

## CORPORATE BUSINESS DEPARTMENT REPORT

**Councillors Knight, Palmer and Arkan declared an interest in the following item, vacated the Chamber and took no part in the discussion or voting, the time being 6.07pm.**

The General Manager called for nominations for a Chairperson for Item CB12/107.

**329 MOVED** (Cowling/Sultana) that Cr Townley be nominated as Chairperson for Item CB12/107.

As there were no other nominations, Councillor Townley was declared as Chairperson for Item CB12/107 and took over the Chair.

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### CB12/107 CBD MASTER PLAN PUBLIC EXHIBITION

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To seek Council approval to place the Draft CBD Master Plan and Brelsford Park Regional Skate Plaza / Youth Space Concept Design on exhibition.

**330 RESOLVED** (Rhoades/Degens) that:

1. Council places the Draft CBD Master Plan on public exhibition and seek submissions from 14 December 2012 until 28 January 2013.
2. A further report be provided with a final CBD Master Plan and the proposed ten year work schedule associated with the CBD Special Rate Application to the 28 February 2013 Council Meeting.
3. Council note the Brelsford Park Regional Skate Plaza / Youth Space Concept Design and place the Concept Design on public exhibition for the same period as the Draft CBD Master Plan.
4. Council in conjunction with Coffs Harbour Think Tank facilitate a fourth community workshop meeting to review the Draft CBD Master Plan. Coffs Harbour City Council will include details of the meeting as part of its mail out to all CBD property owners. In addition, Council will forward such information to all participants from the 3 previous consultation meetings.

**Councillors Knight, Palmer and Arkan returned to the meeting, the time being 6.14pm.**



## LAND USE HEALTH & DEVELOPMENT DEPARTMENT REPORT

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### L12/32 COFFS HARBOUR LOCAL ENVIRONMENTAL PLAN AND COFFS HARBOUR DEVELOPMENT CONTROL PLAN

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The purpose of this report is to present the results of the public exhibition of the Coffs Harbour draft Local Environmental Plan (LEP) 2012, the draft Development Control Plan (DCP) 2012 and a draft Boundary Adjustment Clause. A copy of the draft LEP and draft DCP has been made available in the Councillor's room and is on Council's website.

The report includes a summary of submissions received and issues raised by the community and Government agencies. A full copy of all submissions has been made available for perusal by Councillors in the Councillor's Room. A summary of the submissions is attached as Attachment 1. An assessment of all submissions has been made and this is attached to this report as Attachment 1.

The Coffs Harbour LEP, upon gazettal, will apply to the whole of the Coffs Harbour City Council Local Government Area (LGA); with the exception of specific deferred areas; and will repeal the provisions of both the Coffs Harbour City LEP 2000 and the Coffs Harbour City Centre LEP 2011.

The Coffs Harbour DCP will similarly apply to the whole of the LGA, with the exception of the areas covered by the current DCPs for Moonee and Hearnese Lake/Sandy Beach, and will supersede the provisions of all current DCPs.

#### 331 **RESOLVED** (Rhoades/Palmer) that:

1. Council adopt the Coffs Harbour Local Environmental Plan 2013.
2. Council recommend to the Minister for Planning and Infrastructure to defer those lands identified on Map 1 (Hearnese Lake/Sandy Beach) and Map 2 (Moonee) from Coffs Harbour Local Environmental Plan 2013.
3. A further report be presented to Council early in 2013 which outlines appropriate environmental investigations (including details on the timeframe, method and anticipated cost) for the deferred areas which will help to inform and enable a Planning Proposal to be progressed to establish the final zone configuration.
4. In accordance with Section 68 of the Environmental Planning and Assessment Act 1979, Coffs Harbour Local Environmental Plan 2013 be submitted to the Department of Planning and Infrastructure for gazettal.
5. Council adopt the Coffs Harbour Development Control Plan 2013 and that it is to be implemented and enforced upon the making of the Coffs Harbour Local Environmental Plan 2013.
6. Council confirms the Moonee Beach Development Control Plan and Hearnese Lake / Sandy Beach Development Control Plan continue to apply to those deferred lands from Coffs Harbour Local Environmental Plan 2013.
7. Council notes the report on submissions to draft Coffs Harbour Local Environmental Plan 2012 and draft Coffs Harbour Development Control Plan 2012 as detailed in Attachment 1.
8. Parties who made a submission to the draft Coffs Harbour Local Environmental Plan 2012 and draft Coffs Harbour Development Control Plan 2012 exhibition be informed of Council's decision in writing.

**Cont'd**

**L12/32 Coffs Harbour Local Environmental Plan and Coffs Harbour Development Control Plan ...(Cont'd)**

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**AMENDMENT**

**MOVED** (Degens/Sultana) that:

1. Council adopt the Coffs Harbour Local Environmental Plan 2013.
2. Council recommend to the Minister for Planning and Infrastructure to defer those lands identified on Map 1 (Hearnes Lake/Sandy Beach) and Map 2 (Moonee) from Coffs Harbour Local Environmental Plan 2013.
3. A further report be presented to Council early in 2013 which outlines appropriate environmental investigations (including details on the timeframe, method and anticipated cost) for the deferred areas which will help to inform and enable a Planning Proposal to be progressed to establish the final zone configuration.
4. In accordance with Section 68 of the Environmental Planning and Assessment Act 1979, Coffs Harbour Local Environmental Plan 2013 be submitted to the Department of Planning and Infrastructure for gazettal.
5. Council adopt the Coffs Harbour Development Control Plan 2013 and that it is to be implemented and enforced upon the making of the Coffs Harbour Local Environmental Plan 2013.
6. Council confirms the Moonee Beach Development Control Plan and Hearnes Lake / Sandy Beach Development Control Plan continue to apply to those deferred lands from Coffs Harbour Local Environmental Plan 2013.
7. Council notes the report on submissions to draft Coffs Harbour Local Environmental Plan 2012 and draft Coffs Harbour Development Control Plan 2012 as detailed in Attachment 1.
8. Parties who made a submission to the draft Coffs Harbour Local Environmental Plan 2012 and draft Coffs Harbour Development Control Plan 2012 exhibition be informed of Council's decision in writing.
9. The proposed 150m<sup>2</sup> floor space in the B6 Enterprise Corridor be adjusted to 600m<sup>2</sup> per allotment for business or office premise.
10. Murdock Street (western side), 81-95 West High Street (submission numbers P48, P51, P52, P55 and P68) and West High Street (southern side, lot numbers in relevant submission), that these be included in the B3 commercial core zoning.

The **AMENDMENT** on being put to the meeting was **LOST**.

**VOTED FOR**

Cr Degens  
Cr Sultana  
Cr Cowling

**VOTED AGAINST**

Cr Rhoades  
Cr Townley  
Cr Palmer  
Cr Knight  
Cr Arkan

**Cont'd**

**L12/32 Coffs Harbour Local Environmental Plan and Coffs Harbour Development Control Plan ...(Cont'd)**

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The **MOTION** on being put to the meeting was declared **CARRIED**.

**VOTED FOR**

Cr Rhoades  
Cr Townley  
Cr Palmer  
Cr Degens  
Cr Knight  
Cr Arkan  
Cr Cowling

**VOTED AGAINST**

Cr Sultana

**GENERAL MANAGER'S REPORTS**

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**GM12/39 REPORT FROM INDEPENDENT LOCAL GOVERNMENT REVIEW PANEL**

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The purpose of this report is to table the paper "Better, Stronger Local Government - The Case for Sustainable Change" by the Independent Local Government Review Panel for Council information.

**332 RESOLVED** (Palmer/Degens) that:

1. Council note the range of activities undertaken by the Independent Local Government Review Panel and receive the Paper "Better, Stronger Local Government - The Case for Sustainable Change".
  2. Council note that the Mid North Coast Regional Organisation of Councils will be reviewing directions and options in February 2013.
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**GM12/40 GOVERNANCE AND AUDIT COMMITTEE**

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For Council to endorse the reviewed Governance and Audit Committee Charter and the process for the appointment of the independent members of the Governance and Audit Committee.

To approve an increase in the remuneration of independent external members of the Governance and Audit Committee (the Committee).

**333 RESOLVED** (Degens/Sultana) that:

1. Council endorse the attached Governance and Audit Committee Charter.
  2. Authority is given to the Governance and Audit Committee Councillor representative (Cr John Arkan), General Manager and an external auditor representative to consider and appoint a maximum of three (3) independent members to the Governance and Audit Committee.
  3. The remuneration payable for independent members of the Governance and Audit Committee is set at \$500.00 (GST inclusive) per meeting attended.
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**GM12/41 TENDER: PROVISION OF LEGAL SERVICES 2012-2015 (RFT-560-TO)**

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To report to Council on tenders received for Contract No RFT-560-TO for the provision of legal services and to recommend firms to be appointed to the panel.

**334 RESOLVED** (Rhoades/Arkan) that:

Council accept the tenders of Wilshire Webb Staunton Beattie Lawyers ABN 61 849 174 739, Sparke Helmore Lawyers ABN 78 848 387 938, Fishburn Watson O'Brien ABN 17 920 148 405 and HWL Ebsworth Lawyers ABN 37 246 549 189, for Contract No. RFT-560-TO, Provision of Legal Services for the rates and sums tendered on the basis that:

1. The tenders are the most advantageous tenders following application of Council's Tender Value Selection System.
2. The tenderers have the necessary experience in a broad range of legal services.

**CORPORATE BUSINESS DEPARTMENT REPORTS**

**Councillors Knight, Palmer and Arkan declared an interest in the following item, vacated the Chamber and took no part in the discussion or voting, the time being 7.04pm.**

The General Manager called for nominations for a Chairperson for Item CB12/108.

**MOVED** (Rhoades/ ) that Cr Townley be nominated as Chairperson for Item CB12/108.

**335 MOVED** (Sultana/Cowling) that Cr Degens be nominated as Chairperson for Item CB12/108.

As there was only one nomination that was seconded, Councillor Degens was declared as Chairperson for Item CB12/108 and took over the Chair.

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**CB12/108 CBD MASTER PLAN COMMITTEE**

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To make a recommendation to Council for the appointment of a business owner to the CBD Master Plan Committee.

**336 RESOLVED** (Rhoades/Townley) that Council appoint Ms Kim Towner as the business owner, who is not a property owner, to the vacant position on the CBD Master Plan Committee, in line with the CBD Master Plan Committee recommendation, and thank Ms Button for her expression of interest in the position.

**337 RESOLVED** (Rhoades) that the motion be put to the meeting.

The **MOTION** on being put to the meeting was declared **CARRIED**.

**Councillors Knight, Palmer and Arkan returned to the meeting, the time being 7.07pm.**

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**CB12/109 MONTHLY BUDGET REVIEW FOR OCTOBER 2012**

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To report on the estimated budget position as at 31 October 2012.

**338 RESOLVED** (Rhoades/Degens) that:

The budget adjustments be approved and the current budget position be noted.

Estimated Budget Position as at 31 October 2012:

	General Account \$	Water Account \$	Sewer Account \$
Original Budget adopted 24 May 2012	308,365 (D)	4,397,830 (D)	3,542,337 (D)
Approved Variations to 30 September 2012	(6,129) (S)	Nil	Nil
Recommended variations for October 2012	(108,794) (S)	Nil	Nil
Estimated result as at 31 October 2012	<u>193,442 (D)</u>	<u>4,397,830 (D)</u>	<u>3,542,337 (D)</u>

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**CB12/110 COFFS COAST STATE PARK TRUST AND WOOLGOOLGA BEACH RESERVE TRUST ANNUAL TRADING REPORT 2011-2012**

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To report on the trading performance of the Coffs Coast State Park Trust and Woolgoolga Beach Reserve Trust Caravan and Holiday Park operations for the period 1 July 2011 to 30 June 2012.

**339 RESOLVED** (Arkan/Sultana) that:

1. Council, as Corporate Manager of the Coffs Coast State Park Trust, note the unadjusted 2011/12 Annual Trading Report for the Coffs Coast State Park Trust.
2. Council, as Corporate Manager of the Woolgoolga Beach Reserve Trust, note the unadjusted 2011/12 Annual Trading Report for the Woolgoolga Beach Reserve Trust.

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**CB12/111      BANK BALANCES & INVESTMENTS FOR JULY, AUGUST AND SEPTEMBER 2012**

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To list Council's Bank Balances and Investments as at 31 July 2012, 31 August 2012 and 30 September 2012.

**340      RESOLVED** (Rhoades/Sultana) that:

1. The bank balances and investments totaling (from loans, Section 94 and other avenues that form the restricted accounts and are committed for future works) one hundred and sixty four million, seven hundred and sixty six thousand, two hundred and seventeen dollars (\$164,766,217) as at 31 July 2012 be noted.
2. The bank balances and investments totaling (from loans, Section 94 and other avenues that form the restricted accounts and are committed for future works) one hundred and seventy nine million, three hundred and sixty three thousand and ninety one dollars (\$179,363,091) as at 31 August 2012 be noted.
3. The bank balances and investments totaling (from loans, Section 94 and other avenues that form the restricted accounts and are committed for future works) one hundred and seventy eight million, two hundred and thirty five thousand, two hundred and eighty one dollars (\$178,235,281) as at 30 September 2012 be noted.
4. The general fund unrestricted cash and investments totaling one million, eight hundred and sixty seven thousand, five hundred and eighty two dollars (\$1,867,582) as at 31 July 2012, 31 August 2012 and 30 September 2012 be noted.

**LAND USE HEALTH & DEVELOPMENT DEPARTMENT REPORTS**

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**L12/31      CLASS 5 VEGETATION MAPPING - COFFS HARBOUR LOCAL GOVERNMENT AREA**

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To recommend that the Class 5 Vegetation Map (Version 1.1 2012) and accompanying reports for the Coffs Harbour Local Government Area (LGA) be adopted.

**341      RESOLVED** (Townley/Palmer) that:

Council adopt the following data layer and accompanying reports, superseding all previous stand alone and composite vegetation maps and related reports.

Data Layer

1. Coffs Harbour Class 5 Vegetation Map (Version 1.1 2012)

Reports

2. Volume 1: Development of a Fine-scale Vegetation Map for the Coffs Harbour Local Government Area (Attachment 2)
  3. Volume 2: Vegetation Community Profiles of the Coffs Harbour Local Government Area (Attachment 3).
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**Councillors Knight and Arkan and the General Manager declared an interest in the following item, vacated the Chamber and took no part in the discussion or voting, the time being 7.10pm.**

The Director, Corporate Business called for nominations for a Chairperson for Item L12/33.

**342 MOVED** (Cowling/Sultana) that Cr Palmer be nominated as Chairperson for Item L12/33.

As there were no other nominations, Councillor Palmer was declared as Chairperson for Item L12/33 and took over the Chair.

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**L12/33 JRPP - DEVELOPMENT ASSESSMENT REPORT FOR DEVELOPMENT APPLICATION NO. 821/12, PART LOT 107 AND PART LOT 112, DP 752817, LOT 7026, DP 1059118 AND LOT 1, DP 1178196, 2-16 BERYL STREET AND 18 JUNE STREET, COFFS HARBOUR**

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NSW DEPARTMENT OF ATTORNEY GENERAL AND JUSTICE  
Public Administration Building – Police Station (2 storeys); Court House (4 storeys); and Kiosk, development to include demolition works, tree removal, site remediation and earthworks, substation, landscaping and carparking  
Part Lot 107 and Part Lot 112, DP 752817, Lot 7026, DP 1059118 and Lot 1, DP 1178196, No. 2-16 Beryl Street and No. 18 June Street, Coffs Harbour

To inform Councillors that a development assessment report for DA No. 821/12 for a public administration building (Police Station and Court House) at 2-16 Beryl Street and 18 June Street Coffs Harbour has been referred to the Joint Regional Planning Panel (Northern Region) for determination.

**343 RESOLVED** (Rhoades/Sultana) that:

1. The content of this report being Development Assessment Report for Development Application No. 821/12, Part Lot 107 and Part Lot 112, DP 752817, Lot 7026, DP 1059118 and Lot 1, DP 1178196, 2-16 Beryl Street and 18 June Street, Coffs Harbour be noted.
2. The Council tenders a submission on the grounds of on-site parking especially for:
  - 2.1. Members of the legal profession
  - 2.2. Staff
  - 2.3. Handicapped persons
  - 2.4. Public
3. Council provide a submission to the JRPP which states words to the effect:

That Council welcomes and greatly supports the initiative by the state government and looks forward to its early completion.

**Cont'd**

**L12/33 JRPP - Development Assessment Report for Development Application No. 821/12, Part Lot 107 and Part Lot 112, Dp 752817, Lot 7026, DP 1059118 and Lot 1, DP 1178196, 2-16 Beryl Street and 18 June Street, Coffs Harbour ...(Cont'd)**

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**VOTED FOR**

Cr Rhoades  
Cr Palmer  
Cr Degens  
Cr Sultana  
Cr Cowling  
Cr Townley

**VOTED AGAINST**

Nil

**Councillors Knight and Arkan and the General Manager returned to the meeting, the time being 7.22pm.**

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**L12/34 DEVELOPMENT APPLICATION NO. 144/13 - SUBDIVISION (3 LOTS) - LOT 4 DP 588272 & LOT 2 DP 1052113, MORGANS ROAD, SANDY BEACH**

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This report describes Development Application No. 144/13 for the subdivision of Lot 4 DP 588272 and Lot 2 DP 1052113, Morgans Road, Sandy Beach into 3 lots, and to recommend conditional approval of the application.

**344 RESOLVED** (Palmer/Sultana) that:

1. The written objection made pursuant to Clause 6 of *State Environmental Planning Policy No. 1 - Development Standards*, for the variation to the minimum allotment size under Clause 18(2) of *Coffs Harbour Local Environmental Plan 2000* be supported in this particular case.
2. Development Application No. 144/13 for Subdivision (three lots) of Lot 4 DP 588272 and Lot 2 DP 1052113, Morgans Road, Sandy Beach, be approved subject to the conditions appended to this report (Attachment 3).
3. Parties who made a submission to this application are informed of Council's decision.

**VOTED FOR**

Cr Rhoades  
Cr Townley  
Cr Palmer  
Cr Degens  
Cr Knight  
Cr Arkan  
Cr Sultana  
Cr Cowling

**VOTED AGAINST**

Nil



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**L12/35 DEVELOPMENT APPLICATION NO. 575/12 - LOT 3 DP 237384, LOT 6 DP 238625 PACIFIC HIGHWAY SOUTH AND LOT 11 DP 1017118, NO. 7 NORTH BOAMBEE ROAD, COFFS HARBOUR - SUBDIVISION AND BULKY GOODS SALESROOM**

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This report recommends Council's conditional approval of Development Application No 575/12 for subdivision of two (2) lots into three (3), earthworks; construction, fitout and use of a bulky goods salesroom (Bunnings Warehouse) including ancillary nursery and café; related civil works, landscaping; carparking; business identification signage, a pylon sign (proposed lot 51); construction of culverts upon Lot 11, DP 1017118 and under the Pacific Highway; creation of a vacant development lot (proposed Lot 52) and creation of a public road lot (proposed Lot 53).

This report further notes that as part of the development the developer has agreed that part of the site will be dedicated as public road to allow Cook Drive to be realigned opposite the intersection of North Boambee Road. The realignment works and upgraded intersection works will be undertaken by Roads and Maritime Services (RMS).

**345 RESOLVED** (Arkan/Sultana) that:

1. Development Application No 575/12 for resubdivision of two (2) lots into three (3), earthworks; construction, fitout and use of a bulky goods salesroom including ancillary nursery and café; related civil works, landscaping; carparking; business identification signage, a pylon sign (proposed lot 51); construction of culverts upon Lot 11, DP 1017118 and under the Pacific Highway; creation of a vacant development lot (proposed Lot 52) and creation of a public road lot (proposed Lot 53) be approved subject to conditions attached to this report (Attachment 3).
2. Those persons who lodged submissions on this Development Application be informed of Council's decision.
3. The Roads and Maritime Services be informed of Council's decision.

**VOTED FOR**

Cr Rhoades  
Cr Townley  
Cr Palmer  
Cr Degens  
Cr Knight  
Cr Arkan  
Cr Sultana  
Cr Cowling

**VOTED AGAINST**

Nil

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**L12/36 DELEGATION TO COUNCIL OF FUNCTIONS UNDER THE PLUMBING AND DRAINAGE ACT 2011**

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The purpose of this report is to:

1. Advise Council about the proposed delegation of plumbing regulator functions to Council from the Department of Fair Trading under the Plumbing and Drainage Act 2011.
2. Seek Council's endorsement to accept and delegate to the General Manager, the plumbing regulator functions under Section 21 of the Plumbing and Drainage Act 2011.

**346 RESOLVED** (Rhoades/Arkan) that:

1. Council accepts the delegations to undertake the functions of plumbing regulator under Section 21 of the Plumbing and Drainage Act 2011.
2. The General Manager be delegated to undertake the functions of plumbing regulator under Section 21 of the Plumbing and Drainage Act 2011.
3. The necessary documents to undertake the functions of plumbing regulator under Section 21 of the Plumbing and Drainage Act 2011 be executed under the common seal of Council.

**CITY SERVICES DEPARTMENT REPORTS**

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**CS12/51 JETTY MEMORIAL THEATRE STRATEGIC PLAN**

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To recommend that Council adopt the *Jetty Memorial Theatre Strategic Plan 2013-18*.

**347 RESOLVED** (Degens/Arkan) that Council adopts the *Jetty Memorial Theatre Strategic Plan 2013-18* as appended.

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**CS12/52 VILLAGE SPORTS - BCU COFFS TRIATHLON ON 2 & 3 MARCH 2013**

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To seek approval for a request from Village Sports to conduct two days of triathlons on the first weekend of March 2013 around the Jetty Foreshores, Harbour Drive, Hogbin Drive and Sawtell Road.

**348 RESOLVED** (Arkan/Palmer) that:

1. Council approve the running of the inaugural BCU Coffs Triathlon to be held on 2 and 3 March 2013 including the closure of roads as specified in the report.
2. Council notes that the organisers be responsible for all costs associated with the event.

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**CS12/53      PARK BEACH MASTER PLAN LIGHTING & OTHER IMPROVEMENTS**

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To report on works completed under the Park Beach Master Plan and consider additional works to improve security and public amenity.

**349      RESOLVED** (Sultana/Cowling) that:

1. Priorities for future Park Beach Master Plan works are:
  - 1.1 Continued liaison with NSW Police Crime Prevention Office.
  - 1.2 Dune protection fencing - \$65,000.
  - 1.3 Lighting of shared path in the reserve in stages as budget permits - \$365,000.
2. Funding for future Park Beach Master Plan works be sought through grant programs and considered in future operational plans.

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**CS12/54      TENDER: PIPE BRIDGE OVER BOAMBEE CREEK (TENDER RFT-557-TO)**

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To report on tenders received for contract RFT-557-TO for the construction and installation of a 75m long pipe bridge over Boambee Creek, Sawtell and to gain Council approval to accept a tender.

**350      RESOLVED** (Rhoades/Arkan) that:

1. Council, conditional on approval for Stage 3 Funding from the NSW Office of Water, accepts the tender of HF Hand P/L, ABN 84 064 718 770, for the amount of \$779,482, inclusive of GST on the basis that:
  - a) The tender is the most advantageous tender following the application of Council's Tender Value Selection System
  - b) The Tenderer has the necessary experience in similar works and its ability and performance are satisfactory
  - c) The Tenderer's financial capacity is acceptable
2. The contract documents be executed under the Seal of Council.

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**CS12/55 TENDER: TIMBER SUPPLY, HARTLEYS BRIDGE, KARANGI  
(TENDER RFT-561-TO)**

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To report on tenders received for the supply and delivery of timber components for the construction of Hartleys Bridge on Hartleys Road, Karangi, NSW, and to gain Council's approval to accept a tender.

**351 RESOLVED** (Rhoades/Arkan) that:

1. In accordance with clause 178(1)(a) of the *Local Government (General) Regulation 2005*, Council accept the tender of Leonard J Williams, ABN 40 000 523 982, for Contract No. RFT-561-TO for the supply and delivery of timber, Hartleys Bridge, Karangi, for the lump sum amount of \$225,466.91 Inc GST on the basis:-
  - a) The tender is the highest scoring tender following the application of Council's Tender Value Selection System.
  - b) The tenderer has proven from past experience, that their ability and performance are satisfactory.

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**CS12/56 TENDER: SLOPE REMEDIATION WORKS AT VARIOUS SITES,  
EASTERN DORRIGO WAY, COFFS HARBOUR (TENDER RFT-  
564-TO)**

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To report on tenders received for the supply and installation of soil nails and other slope remediation works on Eastern Dorrigo Way, Coffs Harbour, NSW, and to gain Council's approval to accept a tender.

**352 RESOLVED** (Rhoades/Arkan) that:

1. In accordance with clause 178(1)(a) of the *Local Government (General) Regulation 2005*, Council accept the tender of Specialised Geo Pty Ltd, ABN 49 105 101 497, for Contract No. RFT-564-TO for slope remediation works, Eastern Dorrigo Way, Coffs Harbour, for the tenderer amount of \$609,184.40 Inc GST on the basis:-
  - a) The tender is the highest scoring tender following the application of Council's Tender Value Selection System.
  - b) The tenderer has the necessary experience in similar works and their past performance as stated by their references has been satisfactory.
  - c) The works will be funded by the Natural Disaster relief grant arrangements, administered by the RMS.

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**CS12/57 TENDER: SUPPLY OF PIPES AND FITTINGS, BOAMBEE CREEK TO SAWTELL TREATMENT PLANT (TENDER RFT-566-TO)**

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To report on tenders received for Contract RFT-566-TO, for the supply of ductile iron pipes and fittings for Stage 2 of the Sawtell Rising Main and Reclaimed Water Main, between Boambee Creek and Sawtell Treatment Plant, and to gain Council approval to accept a tender.

**353 RESOLVED** (Rhoades/Arkan) that:

1. Council, conditional on approval for Stage 3 Funding from the NSW Office of Water, accepts the tender of Iplex Pipelines P/L, ABN 56 079 673 308 for the amount of \$854,181 inclusive of GST on the basis that:
  - a) The tender is the most advantageous to Council.
  - b) The tenderer has the necessary experience in similar works and its ability and performance are satisfactory.
  - c) The tenderer's financial capacity is acceptable.
2. The contract documents be executed under the Seal of Council.

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**CS12/58 TENDER: LINING AND CLEANING OF SEWER PIPES (TENDER RFT-567-TO)**

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To report on tenders received for Contract RFT-567-TO for the cleaning and internal lining of various sewer pipes and to gain Council approval to accept a tender.

**354 RESOLVED** (Rhoades/Arkan) that:

1. Council accept the tender of Insituform Pacific P/L, ABN 43 123 427 305, for the part Lump Sum and part Schedule of Rates amount of \$595,495, inclusive of GST on the basis that:
  - a) The tender is the most advantageous tender following the application of Council's Tender Value Selection System
  - b) The Tenderer has the necessary experience in similar works and its ability and performance are satisfactory
  - c) The Tenderer's financial capacity is acceptable
2. The contract documents be executed under the Seal of Council.

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**REQUESTS FOR LEAVE OF ABSENCE**

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There were no requests for leave of absence.

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**MATTERS OF AN URGENT NATURE**

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**MUN12/19 Coffs Creek - Contamination**

Cr Townley raised the issued of the Coffs Creek being contaminated by material from a local hotel and asked if staff could give an update.

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**QUESTIONS ON NOTICE**

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There were no questions on notice.

This concluded the business and the meeting closed at 7.36 pm.

Confirmed: 14 February 2013

.....  
Denise Knight  
Mayor

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## TOWN CRIER

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### **Purpose:**

To seek approval for the voluntary role of Town Crier to be publicly advertised via an Expression of Interest and appropriate selection process.

### **Description of Item:**

Town Criers are seen as ambassadors and carry out their roles in a ceremonial manner involving themselves in civic and community events by way of re enactment of the Craft of Town Crying.

Coffs Harbour was represented from 2001 until 2007 by the late John Kerr as the Town Crier. From all accounts John was an extremely popular personality in this role, and an important part of the community landscape.

John was a keen representative at many Council and community events and functions including conferences, festivals, civic receptions and gala days and had a successful history competing at the Australian Town Crier Championships.

### **Sustainability Assessment:**

- **Civic Leadership**

The role encapsulates a tradition with a long history, and in more recent times extol the virtue of the region represented, presenting a colourful sight to all.

The candidate needs to **want** to be the Crier, as it is basically a voluntary position where the reward is the pleasure of doing the performance.

The role can cover events such as Australia Day, opening of Council, new citizenship ceremonies, leading parades, acting as master of ceremonies at local events, fund raising, tourism events, representing Council at annual town crying national championships. A popular request is to have the Town Crier perform a 'call to order' to introduce the master of ceremonies at a wide range of events.

### **Consultation:**

Recently, with the development of a 'revised blueprint' for the 2013 Australia Day celebrations, interest in a Town Crier was raised amongst the committee members, with some thought given to potential candidates for the position.

In addition, contact has been made with the Membership / Media Officer of the Ancient and Honorable Guild of Australian Town Criers (affiliated with the World Guild) Mr Ralph Cockle who provided guidelines for the role and Guild membership requirements as follows:

- Female or Male
- Over 18 years of age
- Ability to annunciate clearly and project their voice without the aid of a microphone

- Possess a passion for the community they represent and have a good general knowledge of the features and highlights of the City
- Be an outgoing person with the ability to mix well and respond to the duties required
- Non essential previous experience in theatre, choral societies, toastmaster. Rostrum could be beneficial.
- Copy of Council's proclamation or a letter of appointment; Joining form and fee (\$40); Annual subscription (\$20).

**Related Policy and / or Precedents:**

Generally Council's provides the costume, bell and tricorn hat.

Reimbursement of costs of travel and accommodation to annual championship events attended was reimbursed in part under the arrangement with the previous Town Crier to the amount of between \$500 and \$1000.

**Issues:**

An expression of interest detailing clear objectives and parameters of the voluntary position, establishment of a selection panel and development of a selection criteria are required to support a transparent process and exploit the opportunity.

Council responsibility for costs associated with the process and with fulfilling the role is to be kept to a minimum and within the parameters of the expression of interest.

**Recommendation:**

**That Council:**

1. **Approve the concept of establishing a voluntary Town Crier role;**
2. **Seek expressions of interest from individuals seeking to fill the voluntary position of Town Crier for Coffs Harbour City Council;**
3. **Delegate authority to a selection panel consisting of the Mayor, Deputy Mayor, General Manager and the Membership / Media Officer of the Ancient Honorable Guild of Australian Town Criers to review the applications received and appoint a voluntary Town Crier for Coffs Harbour city;**
4. **Note that the approval is based on the understanding that Council will fund the cost of the application and subscription to the Ancient and Honorable Guild of Australian Town Criers, reasonable cost of the costume, bell and tricorn hat, and annual expenditure for attendance at championship events to a maximum of \$1,000 per annum**



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## REPLACEMENT AND EXTRA GARBAGE BINS AT JETTY FORESHORE

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### **Purpose:**

Councillor Nan Cowling has given notice of her intention to move:

That Council replace the unsightly garbage bins and add extra bins to the foreshore area starting a hundred metres or so west of the boat ramp to the boat ramp and along the car park facing Gallows Beach.

Suggested placements and replacements:

West of boat ramp

- An extra bin beside the existing bin west of the picnic shelter;
- An extra bin beside the existing bin east of the picnic shelter;
- An extra bin beside the fish cleaning bench;
- Two new bins at the entrance to the boat ramp car park.

East of the boat ramp

- An extra bin on way to eastern wall;
- Also the existing bin requires a replacement lid;
- Both bins at eastern wall overflowing and require replacement lids;
- Require two extra bins near the tree at parking lot near eastern wall.

Gallows Beach

- Extra bin on eastern end;
- Extra bin on northern side of car park;
- Two additional bins on western end of car park.

### **Rationale:**

The garbage bins there now are an eye-sore; they are vandalised, unsightly and are too small.

These garbage bins are often overflowing indicating that larger bins are urgently required.

It is obvious that with all the rubbish that still lies around there is not enough garbage bins allocated to that area. The only other option is that the bins are emptied more often. Overflowing garbage bins left in the hot summer sun for any length of time is a health hazard and as such needs immediate attention.

### **Staff Comment:**

Estimated cost of establishing suggested additional bins is \$14,400.

Annual service of suggested additional bins cost \$6,800.

Larger bins are not possible in this location due to contractor Workplace Health and Safety reasons.

Overflowing only occurs on occasions in peak periods.

This is General Fund expenditure and no provision exists in the current budget.

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## PARKING OF RV MOTOR HOMES

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### **Purpose:**

Councillor John Arkan has given notice for his intention to move the following:

That Coffs Harbour City Council allow RV motor homes to park on Council owned land, east of railway at the jetty, for a limit of 48 hours.

### **Rationale:**

Coffs has no where for this type of van/travellers to camp. Because of this Coffs is losing crucial dollars to the local economy. By allowing a limited parking area Coffs shall benefit, economically, socially and environmentally.

### **Staff Comment:**

Council's approval to allow vehicles to park on Council owned land would constitute the establishment of a camping ground under the Local Government Act and Council would therefore be required to comply with all requirements of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. The exchange of funds or lack thereof (ie, "free camping/parking") is of no consequence to this position as Council will still be deemed to have established a camping ground.

Alternately, Council's approval to allow vehicles to park on Crown Land under Corporate Management by Council is permissible under sections of the Crown Lands Act. However, Crown Lands have published a position paper entitled: "The Use of Crown Reserves for Operating Caravan Parks and Camping Grounds" (attached) in which the Crown confirms that it is *"committed to sustainable tourist destinations that cater for caravans, campervans, motorhomes, tents and other moveable dwellings. However, the Authority cannot, nor does not, condone illegal caravanning and/or camping on Crown land. All facilities on Crown land advertised for public tourist accommodation, including showgrounds, must be approved"*. As per the position paper, "approval" is required under both the Local Government Regulation 2005 and SEPP21 (Caravan Parks).

This position has been endorsed by the NSW Department of Planning, Tourism NSW, Local Government & Shires Association, Caravan & Camping Industry Association of NSW (CCIA) and the Campervan & Motorhome Club of Australia (CMCA).

The legislative requirements for setting up a caravan park or camping ground as per the Regulation are numerous and the cost associated with establishing a caravan park or camping ground at the Jetty Foreshores would be considerable. The Local Government Regulation 2005 contains requirements for minimum size for a caravan park, dwelling site and camp site sizes, setbacks, roads, utility services, fire hose reels, shower and toilet facilities, laundry facilities, management and other matters.

Council has previously corresponded with the CCIA lending support to the Association's goal of ensuring all caravan parks and camping ground are established and operated as per the Regulations, ensuring a level playing field for all caravan parks and camping grounds throughout NSW.

Many caravan parks within the LGA (local government area) provide specific RV sites with Park Beach Holiday Park (operated by Council) providing custom designed RV/5<sup>th</sup> wheel sites developed expressly for these types of motorhomes. In off peak times the park also allows the use of two camp sites for the price of one to accommodate larger set-ups. At last year's CCIA State Conference the president of the CMCA (peak body for Motorhome owners), in a speech about the specific needs of its members, identified Park Beach as the ideal site setup for catering to motorhomes.

Council operates four Holiday Parks within the LGA, and they are part of a broader, competitive Holiday Park industry on the Coffs Coast. Each holiday park within the LGA is required to hold a S68 Approval to Operate and a review of the CCIA Touring Guide indicates that at least 13 individual parks advertise their ability to cater for large motorhomes. The creation of a 'free camping' location would be anti-competitive and breach the Principles of Competitive Neutrality.

# THE USE OF CROWN RESERVES FOR OPERATING CARAVAN PARKS AND CAMPING GROUNDS

Attachment 2



Land and Property  
Management Authority  
Crown Lands



The purpose of this paper is to clarify for Local Councils and other organizations with an interest in operating caravan parks and camping grounds, the position of the Land and Property Management Authority in respect of the use of Crown reserves for operating caravan parks and camping.

## Introduction

The Land and Property Management Authority (the Authority) is committed to sustainable tourist destinations that cater for caravans, campervans, motorhomes, tents and other moveable dwellings. However, the Authority cannot, nor does not, condone illegal caravanning and/or camping on Crown land. All facilities on Crown land advertised for public tourist accommodation, including showgrounds, must be approved.

## Position

### i. Approval to Operate

The approval to operate a caravan park and/or a camping ground in NSW (either on Crown land or freehold land) is required under:

- Section 68 of the *Local Government Act 1993* (LG Act), in compliance with the relevant provisions of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*.

### ii. Approval to Develop

*State Environmental Planning Policy No. 21 – Caravan Parks* (SEPP 21) requires that “development for the purposes of a caravan park may be carried out only with the development consent of the [local government] council”. Note that the definition of ‘caravan park’ includes a camping ground.

However, if a caravan or camping ground is prohibited under another plan, for example, a council’s local environmental plan, SEPP 21 does not change that position.

Also, the establishment of a new caravan park or camping ground on Crown land requires the Authority’s consent (land owners consent) which is subsequently submitted with the development application.

The local Council is the consent authority for development under SEPP 21 and for an approval to operate.

## Endorsement

This position paper is endorsed by the following Government Agencies and Organisations:

NSW Department of Planning

Tourism New South Wales

Local Government & Shires Association

Caravan & Camping Industry Association of NSW

Campervan & Motorhome Club of Australia

## Further Information

Further information may be obtained by contacting the Crown Lands Division, LPMA, Level 4, 437 Hunter Street, Newcastle NSW 2300; or [www.lpma.nsw.gov.au](http://www.lpma.nsw.gov.au).

Land and Property Management Authority

Head office  
1 Prince Albert Road  
Queens Square  
SYDNEY NSW 2000

T 1300 052 637  
61 2 9228 6666  
F 61 2 9233 4357

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# PLANNING circular

## PLANNING SYSTEM

### Illegal Camping

<b>Circular</b>	PS 10-019
<b>Issued</b>	July 2010
<b>Related</b>	PS05-007, PS06-001

# Illegal Camping

The purpose of this circular is to remind councils, event organisers, touring groups and others that, with limited exceptions, carrying out or providing for camping (eg. in caravans, campervans, motorhomes or tents) on council or other land requires council approval.

### Introduction

The NSW planning and local government legislation both have a role in the regulation of camping. Compliance with the regulatory requirements for camping in that legislation promotes camping that is safe, enjoyable, equitable and sustainable.

### Approvals required for caravan parks and camping grounds

Under *State Environmental Planning Policy No 21 – Caravan Parks* (SEPP 21), the use of land within a local government area for a caravan park or camping ground may, unless prohibited by another plan, be carried out only with the development consent of the council. However, SEPP 21 does not require development consent for a caravan park or camping ground on land dedicated or reserved under the *National Parks and Wildlife Act 1974* (NP&W Act).

In addition, operating a caravan park or camping ground is an activity requiring council approval under Section 68 of the *Local Government Act 1993* (LG Act) unless excepted by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (LG Regulation 2005), other legislation<sup>1</sup> or a local approvals policy<sup>2</sup>.

Approval to operate a caravan park or camping ground is usually subject to a condition that the park or ground must be designed, constructed, maintained and operated in accordance with the relevant requirements of the LG Regulation 2005. It contains requirements for minimum size for a caravan park, dwelling site and camp site sizes, setbacks, roads, utility services, fire hose reels, shower and toilet facilities, laundry facilities, management and other matters.

Special provision is made in the LG Regulation 2005 for operating 'primitive camping grounds'. This type of camping ground is generally remote from urban areas, and under the Regulation is required to have only a limited range of facilities. Requirements include that the ground must be provided with a water supply, toilet and refuse disposal facilities as specified in the approval for the ground. Such fire fighting facilities as may be specified in the approval are also to be provided.

Normally the installation of caravans, campervans or tents in a caravan park or primitive camping ground, and the installation of campervans or tents in other camping grounds, does not require council approval. The installation of caravans, campervans, tents and annexes in caravan parks and camping grounds must, however, comply with the relevant requirements under the LG Regulation 2005 (eg. see clause 132 regarding primitive camping grounds and clauses 161-173 regarding other camping grounds and caravan parks). For example, certain separation distance requirements apply for reasons of safety and privacy.

Section 78A of the *Environmental Planning and Assessment Act 1979* allows an applicant (other than the Crown) in a single development application to apply to use land for a caravan park or camping ground, and operate a caravan park or camping ground.

<sup>1</sup> For example, an approval under Section 68 of the LG Act is not required for (and the LG Regulation 2005 does not apply to) a caravan park or camping ground on land dedicated or reserved under the NP&W Act 1974.

<sup>2</sup> A local approvals policy adopted under Part 3 of the LG Act may specify the following: the circumstances in which a person would be exempt from the need to obtain a particular approval of the Council for activities governed by the LG Act; the criteria which a Council must take into consideration in determining whether to give or refuse an approval under the LG Act; and other matters relating to approvals.

### Temporary caravan parks and camping grounds

A temporary caravan park or camping ground requires development consent and approval to operate. As with permanent parks and grounds relevant requirements in the LG Regulation 2005 concerning tents, caravans and annexes in caravan parks and camping grounds must also be complied with.

Before granting consent to a development application, or approving a LG Act application, for a temporary caravan park or camping ground, a council should be satisfied that for the duration of park's or ground's operation provision of a water supply and toilet and refuse facilities will be adequate. Councils should also assess whether fire-fighting facilities are needed and whether any other facility or measure may necessary to promote the health, safety and amenity of the occupiers.

Under the LG Regulation 2005, a temporary caravan park or camping ground operated for a period of 6 weeks or less, solely in connection with use of the land for a sporting, recreation or cultural event, does not have to be designed, constructed, maintained and operated in accordance with Subdivisions 1-8 of Division 3 of Part 3 of the Regulation (see clause 73(3)). This means, for example, that the park or ground may be excused from having permanent amenities.

### Problems caused by illegal camping

Councils are encouraged to be proactive in preventing illegal camping. The reasons for this include:

- if inadequate facilities are provided or the standard of operation is unsatisfactory, the health and safety of campers will not be assured. This may be especially so in relation to fire safety;
- use of an illegal caravan park or camping ground may cause disturbance to adjoining land users, especially if there are adjoining residential areas. This disturbance may be associated with noise, scattering of rubbish, or inadequate toilet facilities or provision for greywater disposal. Environmental damage may also eventuate;
- illegal camping subjects commercial businesses running approved caravan parks and camping grounds to unfair competition, contrary to Competitive Neutrality Guidelines. This is the case even if the unauthorised camping is not provided free or with subsidisation. Under the local government regulations, caravan park approval holders are required to provide certain facilities and comply with an extensive range of standards related to health, safety and amenity considerations.

### Examples of enforcement options

If development for a caravan park or camping ground occurs on land where that use is prohibited, or requires but does not have development consent, a

council may initiate the giving an order no 1 under section 121B of the EP&A Act to cease that use.

This order could be given to the owner of the premises or person using the premises for the purpose of a caravan park or camping ground (eg. the operator). Normally, before an order is given, the person who gives it must give a notice of intention in accordance with 121H.

Given the provisions in section 626 of the LG Act, if a person operates a caravan park or camping ground without required prior approval under Part 1 of Chapter 7 of the LG Act, that person is guilty of an offence. Court action could be taken in respect of this. The maximum penalty the court may impose for an offence of this type is 50 penalty units (\$5,500).

### Council approval not required for certain exceptions

There are a number of circumstances in which camping in caravans, campervans or tents elsewhere than in a caravan park or camping ground does not require council approval under the LG Act.

#### 1. Exceptions under LG Regulation 2005

For land elsewhere than in a caravan park or camping ground, the LG Regulation provides the following conditional and unconditional exemptions from the requirement for council approval.

#### Conditional exemptions

Under the LG Regulation 2005 council approval is not required for the installation of:

- up to two caravans, campervans or tents on any land (with the landowner's permission), provided they are not occupied for more than two days at a time and are not occupied for more than 60 days (in total) in any 12 month period
- one caravan or campervan on land on which there is a dwelling house, provided the caravan or campervan is occupied by the owner of the dwelling house or members of the household, and the caravan or campervan is maintained in a safe and healthy condition
- a caravan or campervan on agricultural land, provided the caravan or campervan is occupied by seasonal workers on the land.

#### Unconditional exceptions

The LG Regulation 2005 (clause 78) provides that installing a caravan, campervan or tent on a **Crown reserve** or in a **State forest** does not require LG Act approval. Instead, the *Crown Lands Act 1989* and the *Forestry Act 1916* apply respectively.

Information about camping in Crown reserves and where to find Crown land holiday parks is available from the NSW Land and Property Management Authority (see [www.caravanandcampingnsw.com.au](http://www.caravanandcampingnsw.com.au)). Enquiries about camping in NSW state forests may be made to Forests NSW (T: 1300 655 687) or see [www.dpi.nsw.gov.au/forests/recreation](http://www.dpi.nsw.gov.au/forests/recreation).

2. Other exceptions

*National Parks*

The use of caravan parks, campervans and tents on lands reserved or dedicated under the NP&W Act is regulated under that Act. Approval under the LG Act is not required for those uses on those lands.

Information on camping opportunities within lands subject to the NP&W Act may be obtained from the National Parks and Wildlife Service (see [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) and select Visiting a Park).

*Roadside rest areas*

Camping in a roadside rest area may be permitted, unless a 'no camping' or 'no overnight stays' sign has been placed there by a council or the Roads and Traffic Authority (RTA) (or other relevant authority). Enquiries about the use of rest areas along roads administered by the RTA may be made to that agency.

**Further information**

For further information on the regulation of caravan parks and camping grounds see the Department of Planning website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

Copies of the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993*, *State Environmental Planning Policy No 21 – Caravan Parks*, the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* and other State legislation are available on the NSW legislation website at <http://www.legislation.nsw.gov.au>.

If you have queries about this Planning Circular please contact the Department's Information Centre 02 9228 6333 or email [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au).

**Authorised by:**

Sam Haddad  
 Director-General  
 NSW Department of Planning

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**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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## USE OF AUTONOMOUS POWER SYSTEMS

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### **Purpose:**

Councillor Sally Townley has given notice of her intention to move:

“The use of autonomous power systems be considered acceptable for electricity provision in suitable subdivision situations”.

### **Rationale:**

Council’s Development Control Plans (DCPs) generally have the aim of requiring new dwellings on subdivided lots to have electricity available. It is not specified that this must be only from the electricity mains grid system. However, it has been consistently interpreted by Council staff to be the case. The reasoning behind requirement of mains power is so that further subdivision and development can occur, ie as one house gets hooked up to the grid, the next can follow. While this is generally logical and appropriate in the majority of cases, there are certain situations where the use of autonomous power systems, such as solar power, should be considered as equally suitable.

Examples include areas which are unlikely to have further development adjoin in the future, such as properties at the end of a road, adjoining steep lands or adjoining public land such as State Forest or National Park.

The Council itself has actively endorsed the use of solar power and the Rigby House system is highly commendable. Council’s Strategic Plan refers to the use of alternative energies.

In the past decade, Australia has seen an enormous uptake of solar systems and our planning framework now needs to be amended to allow for autonomous power systems (which are installed by qualified professionals and meet Australian standards) to be considered as valid options for the provision of electricity.

Currently Council is actively holding back the use of renewable energies for houses, particularly in rural or rural/residential areas. By accepting this motion, Council will be enabling residents to contribute to an increase in renewable, carbon neutral energy sources.

### **Staff Comment:**

Council at its meeting of 23 July 1974 resolved, from a whole of community strategic decision perspective, to require reticulated water, sewer and electricity for subdivisions in residential and reticulated electricity for subdivisions in rural residential areas. Council has consistently applied this policy through the application of standard conditions to development consents relating to subdivision.

Coffs Harbour City Council Local Environmental Plan (LEP) 2000, draft Coffs Harbour City LEP 2013 (adopted by Council 13/12/12) and their respective Development Control Plans (DCP) apply this policy. The current DCP has the following requirements in regard to the provision of services:



Utility Services

Utility services must be extended to all lots within a subdivision in accordance with the following table (except for common property in community title and strata subdivisions):

<b>Utility Service</b>	<b>Urban Area</b>	<b>Rural Residential Area</b>	<b>Rural area</b>
Council's water main	Yes	No	No
Council's sewer main	Yes	No	No
Telephone	Yes <sup>1</sup>	Yes <sup>1</sup>	No
Electricity	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>2</sup>

<sup>1</sup> In greenfield subdivisions these services must be underground.

<sup>2</sup> Unless the applicant can demonstrate that alternative methods of providing electricity exists or that the provision of this service is cost prohibitive.

LEP 2000 requires in Clause 25, in regard to Urban Release Areas, that development consent must not be granted unless the consent authority is satisfied that public utility infrastructure that is essential for the proposed development is available or adequate arrangements have been made to make the infrastructure available when required. This provision was a mandated requirement of the Department of Planning and Infrastructure and is also required by them to be included in Draft LEP 2013.

There is a community expectation that if land in residential or rural residential areas are subdivided (with Council consent) that the resultant allotments will be supplied with a reticulated power supply. Rural residential land is predominately located in urban fringe areas and not isolated or remote. These areas are also serviced with sealed roads. Council may have a duty of care to notify/inform purchasers if these expected services were not available.

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## NIGHT RIDER SERVICE - NORTHERN BEACHES

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### **Purpose:**

Councillor Sally Townley has given notice for her intention to move:

That Council

1. Financially support a Night Rider shuttle bus service to the Northern Beaches from Coffs Harbour each Saturday night.
2. The successful previous service and conditions be maintained, free for commuters, to be paid by Council at around \$400 per night, roughly \$20,000 per year.
3. Consider supporting the service on-going if alternative sponsorships/grants cannot be sourced.

### **Background:**

The grant for the successful Night Rider service has recently expired, however there is no alternative public transport options to travel back to the Northern Beaches from Coffs Harbour in the evening.

Coffs Harbour has a high rate of drink driving (one of the highest in NSW – primarily due to a lack of transport options) with this initiative potentially providing the opportunity for people to utilise the shuttle service rather than risk drinking and driving back to the Northern Beaches. Besides potentially saving lives there are many economic and social benefits of having a greater connectivity between the Northern Beaches and Coffs Harbour regions. There are social benefits also for the Northern Beaches with less beach parties, as well as getting people home safely rather than wandering Coffs Harbour during anti-social hours.

### **Staff Comment:**

Council has provided a grant funded Nightrider service at peak times for some years. For the past three years we have operated a Woolgoolga service at 2:30am on Saturday nights during December and January. We have used a 21 seater which has been well patronised. The cost is approximately \$400 per run. This was in response to a Woolgoolga focus group meeting. They told us that people from Woolgoolga generally go to Coffs Harbour on a Saturday and have difficulty getting home in the early hours of the morning.

Grants were provided by Attorney General's Dept (unlikely to be repeated) and Road and Maritime Services give Council funding to promote the service but not for operation of the bus.

This year the Liquor Accord contributed to the New Year's Eve services.

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## CODE OF CONDUCT POLICY AND RELATED PROCEDURES

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### **Purpose:**

That Council adopts the Code of Conduct policy and notes the related procedures.

### **Description of Item:**

The Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made for the purposes of section 440 of the *Local Government Act 1993* ("the Act"). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all parts of this document.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office. Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

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

### **Sustainability Assessment:**

- **Environment**

This is not applicable to this report.

- **Social**

This is not applicable to this report.

- **Civic Leadership**

The purpose of Council policies is to ensure transparency and accountability in local government. The implementation enables Council to identify and respond the community. This is consistent with the *Coffs Harbour 2030* Community Strategic Plan strategy *LC2.2.1: Enable and support all levels of government to serve the local community.*

- **Economic**

#### **Broader Economic Implications**

There are no broad economic impacts associated with the implementation of the recommendations.

**Delivery Program/Operational Plan Implications**

The ongoing development and review of Council policies and plans are accommodated within Council's budget structure. This expenditure is monitored through Council's monthly and quarterly budget reviews.

**Related Policy and / or Precedents:**

- Division of Local Government Model Code of Conduct – March 2013.
- Division of Local Government - Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW March 2013.

**Statutory Requirements:**

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions and is made for the purposes of section 440 of the Local Government Act 1993. The Model Code is prescribed by the regulations.

**Issues:**

This is not applicable to this report.

**Implementation Date / Priority:**

Implementation date is 1 March 2013. Training for Councillors has been scheduled for Wednesday 20 February 2013. All staff will be attending training sessions through late February and March 2013.

**Recommendation:**

1. **Council adopts the revised Code of Conduct Policy dated March 2013, noting it is based on the NSW Division of Local Government's Model Code of Conduct.**
2. **Council adopts the related procedures for handling code of conduct complaints.**

Locked Bag 155,  
Coffs Harbour, NSW 2450  
ABN 79 126 214 487

## COFFS HARBOUR CITY COUNCIL



### Code of Conduct Policy

**Policy Statement:**

Section 440 of the *Local Government Act 1993* requires every Council to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct for Local Councils in NSW.

Council's Code of Conduct Policy incorporates all elements of this Model Code of Conduct.

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

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

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

Councillors, administrators, members of staff of council, volunteers, independent conduct reviewers, members of council committees including conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials.

**Director or Manager Responsible for Communication, Implementation and Review:**

General Manager

**Related Legislation, Division of Local Government Circulars or Guideline:**

Local Government Act 1993 (NSW)

Local Government Amendment (Conduct) Act 2012 (NSW)

Local Government (General) Regulations 2005

The Model Code of Conduct for Local Councils in NSW – March 2013, Division of Local Government

Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW, Division of Local Government

**Does this document replace an existing policy?**

**Yes**

Code of Conduct Policy 2008 (as amended April 2009)

**Other Related Council Policy or Procedure:**

Gifts and Benefits Policy

Complaints and Other Feedback Policy

**Application:**

**It is mandatory for all staff, councillors and delegates of Council to comply with this policy.**

<b>Distribution:</b> This policy will be provided to all staff, councillors and delegates of council by: <input checked="" type="checkbox"/> Internet <input checked="" type="checkbox"/> Intranet <input type="checkbox"/> Email <input type="checkbox"/> Noticeboard <input checked="" type="checkbox"/> Datworks	
<b>Approved by:</b> Executive Team [Meeting date] Council [Meeting date & Resolution No.]	<b>Signature:</b> _____ <i>General Manager</i>
<b>Council Branch Responsible:</b>	<b>Date of next Review:</b>

### Key Responsibilities

<b>Position</b>	<b>Directorate</b>	<b>Responsibility</b>
Mayor	Council	To lead Councillors in their understanding of, and compliance with this policy.
General Manager	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with this policy.
Directors	All Directorates	To communicate, implement and comply with this policy.
All Council officials	Council	To abide and comply with the Code of Conduct and related training and procedures.  To complete Code of Conduct training as required.

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*Incorporating all elements of the Model Code of Conduct for Local Councils in NSW - March 20*



## **PART 1 INTRODUCTION**

This Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) is made for the purposes of section 440 of the *Local Government Act 1993* (“the Act”). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all parts of this document.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council’s code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

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

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

## **PART 2 PURPOSE OF THE CODE OF CONDUCT**

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

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

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



### **PART 3 GENERAL CONDUCT OBLIGATIONS**

#### General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
  - b) is detrimental to the pursuit of the charter of a council
  - c) is improper or unethical
  - d) is an abuse of power or otherwise amounts to misconduct
  - e) causes, comprises or involves intimidation, harassment or verbal abuse
  - f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
  - g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
- 3.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)
- 3.3 You must treat others with respect at all times.

#### Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

#### Harassment and discrimination

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

#### Development decisions

- 3.7 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 3.8 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors

conveys any suggestion of willingness to provide improper concessions or preferential treatment.

Binding caucus votes

- 3.9 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.11 Clause 3.9 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting or from voluntarily holding a shared view with other councillors on the merits of a matter.
- 3.12 Clause 3.9 does not apply to a decision to elect the Mayor or Deputy Mayor or to nominate a person to be a member of a council committee.

## **PART 4 CONFLICT OF INTERESTS**

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

### What is a pecuniary interest?

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

What are non-pecuniary interests?

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

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

Managing non-pecuniary conflict of interests

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

4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.

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

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

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

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

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

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

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

#### Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
  - b) where the major political donor has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).
- 4.22 For the purposes of this Part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
  - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.
- 4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

#### Loss of quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.

- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
  - b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
- a) the matter is a proposal relating to
    - i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or
    - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and
  - b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

#### Other business or employment

- 4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353*)
- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) conflict with your official duties
  - b) involve using confidential information or council resources obtained through your work with the council
  - c) require you to work while on council duty
  - d) discredit or disadvantage the council.

Personal dealings with council

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

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## **PART 5 PERSONAL BENEFIT**

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

### Gifts and benefits

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

### Token gifts and benefits

- 5.3 Generally speaking, token gifts and benefits include:
- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
    - i) the discussion of official business
    - ii) council work related events such as training, education sessions, workshops
    - iii) conferences
    - iv) council functions or events
    - v) social functions organised by groups, such as council committees and community organisations
  - b) invitations to and attendance at local social, cultural or sporting events
  - c) gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
  - d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers
  - e) prizes of token value.

### Gifts and benefits of value

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

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

- 5.5 You must not:
- a) seek or accept a bribe or other improper inducement
  - b) seek gifts or benefits of any kind
  - c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty



- d) accept any gift or benefit of more than token value
  - e) accept an offer of cash or a cash-like gift, regardless of the amount.
- 5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.
- 5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

Improper and undue influence

- 5.8 You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the appropriate exercise of their representative functions.
- 5.9 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

## **PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS**

### Obligations of councillors and administrators

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

6.2 Councillors or administrators must not:

- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
- b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
- c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
- d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

### Obligations of staff

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

6.4 Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them
- e) ensure that any participation in political activities outside the service of the council does not conflict with the performance of their official duties.

Obligations during meetings

- 6.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 6.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
  - b) Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
  - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
  - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
  - e) Councillors and administrators being overbearing or threatening to council staff.
  - f) Councillors and administrators making personal attacks on council staff in a public forum.
  - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
  - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
  - i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
  - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

## **PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES**

### Councillor and administrator access to information

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

### Councillors and administrators to properly examine and consider information

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

### Refusal of access to documents

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

### Use of certain council information

- 7.8 In regard to information obtained in your capacity as a council official, you must:
  - a) only access council information needed for council business
  - b) not use that council information for private purposes
  - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
  - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

- 7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.10 In addition to your general obligations relating to the use of council information, you must:
- a) protect confidential information
  - b) only release confidential information if you have authority to do so
  - c) only use confidential information for the purpose it is intended to be used
  - d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body
  - f) not disclose any information discussed during a confidential session of a council meeting.

Personal information

- 7.11 When dealing with personal information you must comply with:
- a) *the Privacy and Personal Information Protection Act 1998*
  - b) *the Health Records and Information Privacy Act 2002*
  - c) the Information Protection Principles and Health Privacy Principles
  - d) council's privacy management plan
  - e) the Privacy Code of Practice for Local Government

Use of council resources

- 7.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 7.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
  - b) the representation of employees with respect to grievances and disputes
  - c) functions associated with the role of the local consultative committee.
- 7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 7.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

- 7.16 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.17 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
  - b) for other non-official purposes.
- 7.18 You must not convert any property of the council to your own use unless properly authorised.
- 7.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

[Councillor access to council buildings](#)

- 7.20 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 7.21 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 7.22 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

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

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

### Complaints made for an improper purpose

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

8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- a) to intimidate or harass another council official
- b) to damage another council official's reputation
- c) to obtain a political advantage
- d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
- e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- f) to avoid disciplinary action under this code
- g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
- h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
- i) to prevent or disrupt the effective administration of this code.

### Detrimental action

8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.

8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.

8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:

- a) injury, damage or loss
- b) intimidation or harassment
- c) discrimination, disadvantage or adverse treatment in relation to employment
- d) dismissal from, or prejudice in, employment
- e) disciplinary proceedings.

Compliance with requirements under this code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

Disclosure of information about the consideration of a matter under this code

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

Complaints alleging a breach of this part

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



## PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:


the Act	the <i>Local Government Act 1993</i>
act of disorder	see the definition in clause 256 of the Local Government (General) Regulation 2005
administrator	an administrator of a council appointed under the Act other than an administrator appointed under section 66
Chief Executive	Chief Executive of the Division of Local Government, Department of Premier and Cabinet
committee	a council committee
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
council committee	a committee established by resolution of council
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
council official	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
councillor	a person elected or appointed to civic office and includes a Mayor
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	see the definition in section 441 of the Act
election campaign	includes council, State and Federal election campaigns
personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion

the Regulation                      the Local Government (General) Regulation 2005

The term “you” used in the Model Code of Conduct refers to council officials.

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

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Locked Bag 155, Coffs Harbour, NSW 2450 ABN 79 126 214 487		<b>COFFS HARBOUR CITY COUNCIL</b>			
<b>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW</b>					
<b>Director or Manager Responsible for communication, implementation and review</b> General Manager					
<b>Purpose</b> These procedures ("the Model Code Procedures") are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW ("the Model Code"). The Model Code and Model Code Procedures are made under sections 440 and 440AA respectively of the <i>Local Government Act 1993</i> ("the Act") and the <i>Local Government (General) Regulation 2005</i> ("the Regulation").  Sections 440 and 440AA of the Act require every council to adopt a code of conduct and procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.					
<b>Scope</b> It is mandatory for all staff, councillors and delegates of council to comply with this procedure.					
<b>Consultation</b>					
<b>Distribution</b> This procedure will be provided to all staff, councillors and delegates of council by:					
<input checked="" type="checkbox"/> Internet <input checked="" type="checkbox"/> Intranet <input type="checkbox"/> Email <input type="checkbox"/> Noticeboard <input type="checkbox"/> Internal mail					
<b>Approved by (Name/Team):</b>			<b>Signature:</b>		
<b>Date of Approval:</b>			_____ <b>Dataworks IR Number:</b>		
<b>Date of Effect (if relevant):</b>			<b>Mandatory Review Date (if relevant):</b>		

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## **PART 1 INTRODUCTION**

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

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

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

## **PART 2 DEFINITIONS**

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

“the Act”	the <i>Local Government Act 1993</i>
“administrator”	an administrator of a council appointed under the Act other than an administrator appointed under section 66
“code of conduct”	a code of conduct adopted under section 440 of the Act
“code of conduct complaint”	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct
“complainant”	a person who makes a code of conduct complaint
“complainant councillor”	a councillor who makes a code of conduct complaint
“complaints coordinator”	a person appointed by the general manager under these procedures as a complaints coordinator

“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
“council committee”	a committee established by resolution of council
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
“councillor”	a person elected or appointed to civic office and includes a Mayor
“council official”	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
“delegate of council”	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated
“the Division”	the Division of Local Government, Department of Premier and Cabinet
“investigator”	a conduct reviewer or conduct review committee
“the Regulation”	the <i>Local Government (General) Regulation 2005</i>
“subject person”	a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

**PART 3 ADMINISTRATIVE FRAMEWORK**

The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.

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



- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

The appointment of complaints coordinators

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

**PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?**

What is a "code of conduct complaint"?

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

When must a code of conduct complaint be made?

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

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

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

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

- 4.10 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.11 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.12 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

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

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

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

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

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

- 5.6 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council and council committee members and for determining the outcome of such complaints.
- 5.7 Where the general manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision.

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

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

- 5.11 The general manager must refer all code of conduct complaints about conduct reviewers to the Division for its consideration.
- 5.12 The general manager must notify the complainant of the referral of their complaint in writing.
- 5.13 The general manager must implement any recommendation made by the Division as a result of its consideration of a code of conduct complaint about a conduct reviewer.

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

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

How are code of conduct complaints about councillors to be dealt with?

- 5.16 The general manager must refer the following code of conduct complaints about councillors to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
  - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see section 328B),
  - c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
  - d) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.
- 5.17 Where the general manager refers a complaint to the Division under clause 5.16, the general manager must notify the complainant of the referral in writing.
- 5.18 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.20.
- 5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.20 The general manager must refer all code of conduct complaints about councillors other than those referred to the Division under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

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

- 5.21 The Mayor must refer the following code of conduct complaints about the general manager to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
  - b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
  - c) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

- 5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Division under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.25.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

Referral of code of conduct complaints to external agencies

- 5.26 The general manager, Mayor or a conduct reviewer or conduct review committee may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the Division, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.
- 5.27 Where the general manager, Mayor, conduct reviewer or conduct review committee refers a complaint to an external agency or body under clause 5.26, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 5.28 Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the council is subsequently advised otherwise by the referral agency or body.

Disclosure of the identity of complainants

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
  - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
  - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or

- d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
  - e) it is otherwise in the public interest to do so.
- 5.30 Clause 5.29 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.31 Where a councillor makes a code of conduct complaint about another councillor or the general manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.33 The general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.
- 5.34 Where a complainant councillor makes a request under clause 5.31, the general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

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

5.38 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.37, the general manager or the Mayor must refer the complaint to the Division for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

Special complaints management arrangements

5.39 The general manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.

5.40 Where the Division receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:

- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
- b) impeded or disrupted the effective administration by the council of its code of conduct, or
- c) impeded or disrupted the effective functioning of the council.

5.41 A special complaints management arrangement must be in writing and must specify the following:

- a) the code of conduct complaints the arrangement relates to, and
- b) the period that the arrangement will be in force.

5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.

5.43 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.

5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.

5.45 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the general manager, review the arrangement to determine whether it should be renewed or amended.



- 5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.

## **PART 6 PRELIMINARY ASSESSMENT**

### Referral of code of conduct complaints to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the general manager or the Mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
  - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interests in relation to the matter referred to them, or
  - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
  - c) they or their employer has entered into one or more contracts with the council in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K, or
  - d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.

- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

Preliminary assessment by a conduct reviewer

- 6.9 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.10 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
  - a) to take no action, or
  - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or
  - d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police, or
  - e) to investigate the matter, or
  - f) to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.
- 6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.
- 6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.
- 6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

- 6.14 The conduct reviewer must refer to the Division any complaints referred to him or her that should have been referred to the Division under clauses 5.16 and 5.21.
- 6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.
- 6.17 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
- a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and
  - b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
  - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with the complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.
- 6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

[Referral back to the general manager or Mayor for resolution](#)

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

- 6.23 The conduct reviewer must consult with the general manager or Mayor prior to referring a matter back to them under clause 6.22.
- 6.24 The general manager or Mayor may decline to accept the conduct reviewer's recommendation. Where the general manager or Mayor declines to do so, the conduct reviewer may determine to deal with the complaint by other means under clause 6.10.
- 6.25 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager or, in the case of a complaint about the general manager, the Mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.
- 6.26 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager, or, in the case of a complaint about the general manager, the Mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

Complaints assessment criteria

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

- m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

## **PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES**

- 7.1 Where a conduct reviewer recommends that the complaints coordinator convene a conduct review committee to investigate a matter, the conduct reviewer must notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2 The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:
  - a) a panel of conduct reviewers established by the council, or
  - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.
- 7.3 In selecting suitable conduct reviewers for membership of a conduct review committee convened under clause 7.2, the complaints coordinator may have regard to the following:
  - a) the qualifications and experience of members of the panel of conduct reviewers, and
  - b) any recommendation made by the conduct reviewer about the membership of the committee.
- 7.4 The conduct reviewer who made the preliminary assessment of the complaint must not be a member of a conduct review committee convened under clause 7.2.
- 7.5 A member of a panel of conduct reviewers may not be appointed to a conduct review committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the committee under clause 6.4.
- 7.6 Where the complaints coordinator convenes a conduct review committee, they will advise the complainant in writing that the committee has been convened and the membership of the committee.
- 7.7 Where, after a conduct review committee has been convened, a member of the committee becomes unavailable to participate in further consideration of the matter, the complaints coordinator may appoint another person from a panel of conduct reviewers to replace them.
- 7.8 Meetings of a conduct review committee may be conducted in person or by teleconference.
- 7.9 The members of the conduct review committee must elect a chairperson of the committee.

- 7.10 A quorum for a meeting of the conduct review committee is two members.
- 7.11 Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.
- 7.12 If a quorum is not present at a meeting of the conduct review committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the conduct review committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have a casting vote.
- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the conduct review committee in which it makes its determination in relation to the matter.
- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The conduct review committee may only conduct business in the absence of the public.
- 7.17 The conduct review committee must maintain proper records of its proceedings.
- 7.18 The complaints coordinator shall undertake the following functions in support of a conduct review committee:
- a) provide procedural advice where required,
  - b) ensure adequate resources are provided including secretarial support,
  - c) attend meetings of the conduct review committee in an advisory capacity, and
  - d) provide advice about council's processes where requested.
- 7.19 The complaints coordinator must not be present at, or in sight of a meeting of, the conduct review committee where it makes its final determination in relation to the matter.
- 7.20 The conduct review committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.

## **PART 8 INVESTIGATIONS**

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

- 8.1 A conduct reviewer or conduct review committee (hereafter referred to as an “investigator”) may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 8.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the Mayor.
- 8.3 The general manager or the Mayor is to deal with a matter reported to them by an investigator under clause 8.2 as if it were a new code of conduct complaint in accordance with these procedures.

### How are investigations to be commenced?

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

- 8.7 Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the investigator in the amended notice.
- 8.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the Mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
  - b) in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice.

#### Written and oral submissions

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



How are investigations to be conducted?

- 8.15 Investigations are to be undertaken without undue delay.
- 8.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 8.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 8.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 8.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

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

- 8.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:
  - a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - c) refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police.
- 8.21 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 8.22 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, the Mayor, discontinue their investigation of the matter.

- 8.23 Where the investigator discontinues their investigation of a matter under clause 8.22, this shall finalise the consideration of the matter under these procedures.
- 8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

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

Final investigation reports

8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.

8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.

8.34 The investigator's final report must:

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

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

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

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

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

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

- a) the seriousness of the breach,
- b) whether the breach can be easily remedied or rectified,

- c) whether the subject person has remedied or rectified their conduct,
- d) whether the subject person has expressed contrition,
- e) whether there were any mitigating circumstances,
- f) the age, physical or mental health or special infirmity of the subject person,
- g) whether the breach is technical or trivial only,
- h) any previous breaches,
- i) whether the breach forms part of a pattern of conduct,
- j) the degree of reckless intention or negligence of the subject person,
- k) the extent to which the breach has affected other parties or the council as a whole,
- l) the harm or potential harm to the reputation of the council or local government arising from the conduct,
- m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
- n) whether an educative approach would be more appropriate than a punitive one,
- o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
- p) what action or remedy would be in the public interest.

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

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

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

- 8.40 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor and this will finalise consideration of the matter under these procedures.
- 8.41 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraph (a), the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.
- 8.42 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (b) or (c), the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.
- 8.43 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (d) to (h), the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

Consideration of the final investigation report by council

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

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

- ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.

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

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

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

## **PART 9 RIGHTS OF REVIEW**

### Failure to comply with a requirement under these procedures

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

### Practice rulings

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

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

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

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

### Requests for review

9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e),

may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Division.

- 9.7 A review under clause 9.6 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
  - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
  - c) that the council has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 9.9 The Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The Division will undertake a review of the matter on the papers. However, the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Division.
- 9.12 Where a person requests a review under clause 9.6, the Division may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Division.
- 9.13 The Division must notify the person who requested the review and the complaints coordinator of the outcome of the Division's review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.
- 9.14 Where the Division considers that the investigator or the council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.
- 9.15 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of the Division's determination in relation to the matter to the general manager or the Mayor, and
  - b) the general manager or Mayor must review any action taken by them to implement the sanction, and



- c) the general manager or Mayor must consider the Division's recommendation in doing so.

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

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

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

## **PART 10 PROCEDURAL IRREGULARITIES**

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

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

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

## **PART 11 PRACTICE DIRECTIONS**

11.1 The Division may at any time issue a practice direction in relation to the application of these procedures.

11.2 The Division will issue practice directions in writing, by circular to all councils.

11.3 All persons performing a function prescribed under these procedures must consider the Division's practice directions when performing the function.

## **PART 12 REPORTING ON COMPLAINTS STATISTICS**

12.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:

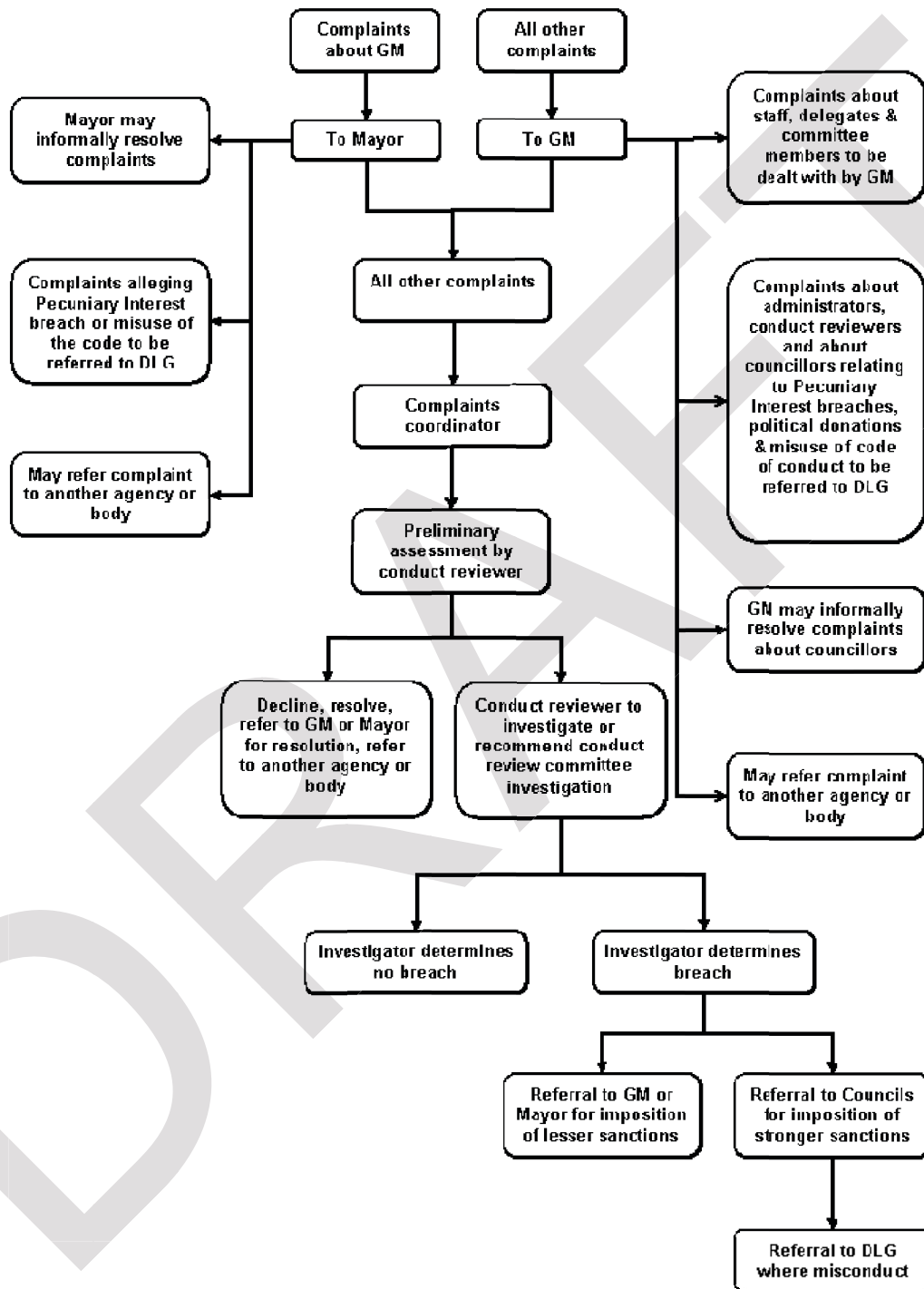
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September,
- b) the number of code of conduct complaints referred to a conduct reviewer,
- c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
- d) the number of code of conduct complaints investigated by a conduct reviewer,
- e) the number of code of conduct complaints investigated by a conduct review committee,
- f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
- g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews, and
- h) The total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.

12.2 The council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

## **PART 13 CONFIDENTIALITY**

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

### Model Code Procedure Flowchart



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**DEVELOPMENT APPLICATION NO. 119/13 - LOT 26 DP 1001621, NO. 1 BREAKERS WAY KORORA - MULTI-UNIT HOUSING (ONE ADDITIONAL NEW DWELLING) & STRATA SUBDIVISION**

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**Purpose:**

To consider Development Application No.119/13 for multi-unit housing (one additional new dwelling) and strata subdivision at 1 Breakers Way, Korora.

At its meeting of 15 December 2005, Council resolved:

1. *That development applications for approval involving substantial aspects of the following elements be referred to Council for determination:*
  - *Significant public interest and community input;*
  - *Substantial non-compliance with relevant strategic controls;*
  - *Significant land use;*
  - *Major environmental issue(s);*

Accordingly this matter is reported to Council for determination due to significant public interest and community input.

**Description of Item:**

The proposed development is for an additional free standing dwelling on a site currently consisting of an attached dual occupancy and swimming pool. The site is an irregular shaped, corner block with an area of 1406m<sup>2</sup> and a reasonable slope from Lagoon Crescent down to Breakers Way.

The proposed additional two storey dwelling will be sited to the east of the existing dual occupancy development and will front onto Breakers Way. It will consist of a rendered external finish and a flat metal roof.

Access to the existing development will remain off Lagoon Crescent and access to the proposed dwelling will be off Breakers Way.

The application also includes a proposed strata subdivision that will consist of 3 strata lots and common property.

**Sustainability Assessment:**

• **Environment**

No significant vegetation is required to be removed; only landscaping. The excavation of the site poses potential environmental impacts to downstream water quality due to erosion and sedimentation. This potential impact is manageable with the provision of adequate sediment and erosion control measures.

The proposed dwelling will not have a detrimental impact on the existing streetscape along Breakers Way. Due to the aspect of the land, no adjoining properties will be significantly overshadowed by the proposal. The proposed dwelling is orientated towards the street and windows and screening positioned to minimise any overlooking and loss of privacy of adjoining properties.