

5 April 2019

Dear Councillor,

You are kindly requested to attend the **Ordinary Meeting** of Wingecarribee Shire Council to be held in **Council Chambers, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 10 April 2019** commencing at **3:30pm**.

Yours faithfully

Ann Prendergast
General Manager

SCHEDULE

3.30pm	Council Meeting begins
5.30pm	Questions from the Public to be read out
7.40pm	Closed Council

RUNNING SHEET

ORDINARY MEETING OF COUNCIL

held in the Council Chambers, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 10 April 2019 at 3:30pm.

Time	Item
3.30pm	Opening of meeting – please remind all present that mobile phones must be switched off before the meeting and that the meeting is tape recorded and the Council Chamber now has 24 Hour Video Surveillance.
	Acknowledgement of Country – Clr L A C Whipper
3.32pm	Opening Prayer - Reverend Richard Mills, Anglican Church
3.35pm	<ul style="list-style-type: none">• Apologies nil• Adoption of Previous Minutes Ordinary Meeting of Council held on 27 March 2019• Business Arising• Declarations of Interest• Mayoral Minute• Public Forum• Motion to move into Committee of the Whole - Clr L A C Whipper• Visitor Item<ul style="list-style-type: none">• Item 10.1 - DA 17/1676 - Construction of 11 Unit Multi-Dwelling Housing - 5 Cliff Street & 11 Clarke Street, Bowral• Item 10.2 - DA 16/0821 - Demolition of existing buildings and construction of 8 unit multi-dwelling housing and 2 commercial units with basement garage and associated landscaping - 186-192 Bong Bong Street, Bowral• Council Reports
5.30pm	Motion to move into Council and the Mayor resumes the Chair
5.30pm	Questions from the Public Continuation of Council Reports General Business Questions Questions with Notice Notices of Motion
7.40pm	Closed Council
8.00pm	Meeting Closed

Ann Prendergast
General Manager



Business

1. **OPENING OF THE MEETING**
2. **ACKNOWLEDGEMENT OF COUNTRY**
3. **PRAYER**
4. **APOLOGIES**
Nil
5. **ADOPTION OF MINUTES OF PREVIOUS MEETING**
Ordinary Meeting of Council held on 27 March 2019
6. **BUSINESS ARISING FROM THE MINUTES**
7. **DECLARATIONS OF INTEREST** 1
8. **MAYORAL MINUTES**
9. **PUBLIC FORUM**

COMMITTEE OF THE WHOLE

10. **VISITOR MATTERS**
 - OPERATIONS, FINANCE AND RISK**
Nil
 - CORPORATE, STRATEGY AND DEVELOPMENT SERVICES**
 - 10.1 DA 17/1676 - Construction of 11 Unit Multi-Dwelling Housing - 5 Cliff Street & 11 Clarke Street, Bowral 2
 - 10.2 DA 16/0821 - Demolition of Existing Buildings and Construction of 8 Unit Multi-dwelling Housing and 2 Commercial Units with Basement Garage and Associated Landscaping - 186-192 Bong Bong Street, Bowral 26
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Mayor to resume chair at 5.30 pm

COUNCIL MATTERS

14. GENERAL MANAGER

Nil

15. DELEGATE REPORTS

16. PETITIONS

Nil

17. CORRESPONDENCE FOR ATTENTION

Nil

18. COMMITTEE REPORTS

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19. QUESTIONS WITH NOTICE

Nil

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21. GENERAL BUSINESS

Nil

22. CLOSED COUNCIL

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22.1 Tender for Trade Services and Minor Works <i>This report is referred to Closed Committee in accordance with s10A(2) of the Local Government</i>	

Act, 1993, under clause 10A(2)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

22.2 Proposed Sale - 10 Frankland Street Mittagong

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(c) as it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

23. RESUMPTION OF OPEN COUNCIL

Resumption of Open Council

Adoption of Closed Session

24. ADOPTION OF COMMITTEE OF THE WHOLE

25. MEETING CLOSURE

Our Mission, Our Vision, Our Values

OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

OUR VISION

Leadership: *'An innovative and effective organisation with strong leadership'*

People: *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

Places: *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

Environment: *'A community that values and protects the natural environment enhancing its health and diversity'*

Economy: *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

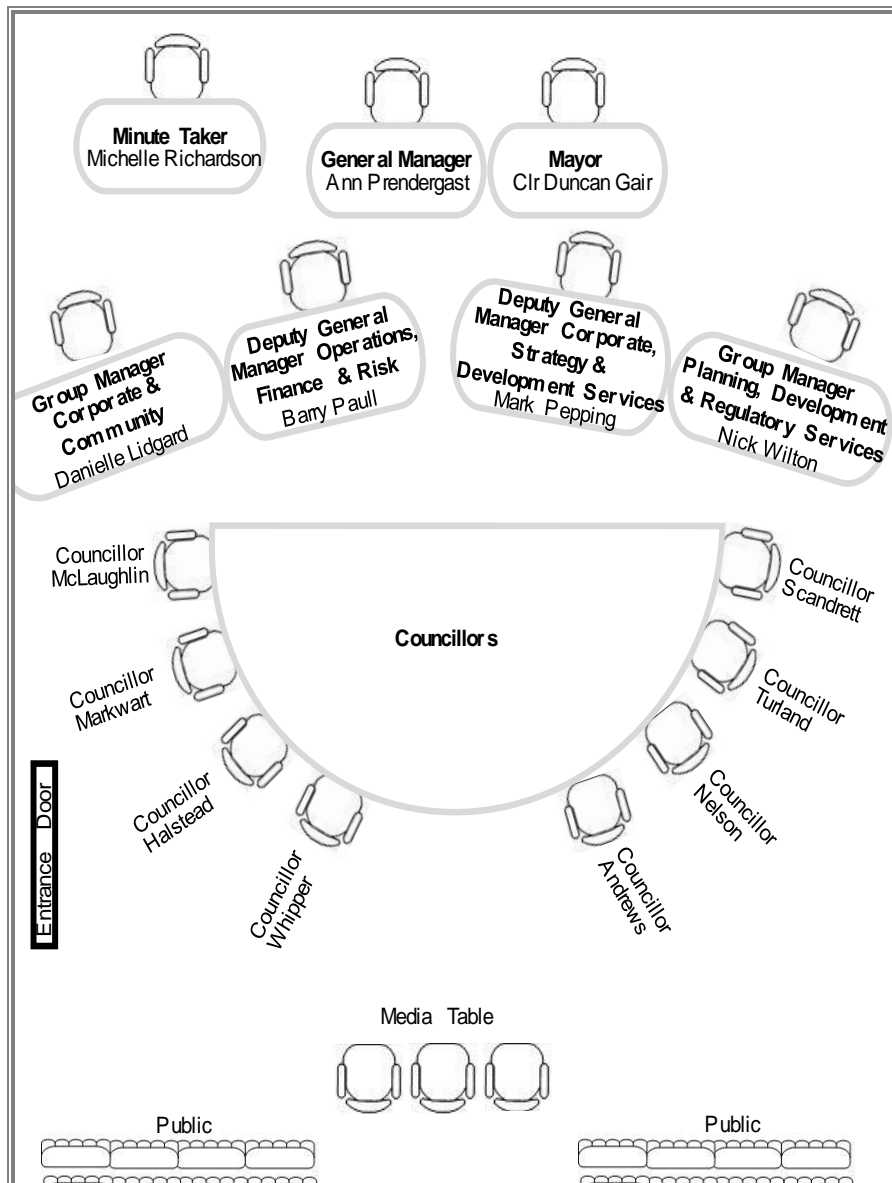
Council Chambers

Recording of Ordinary and Extraordinary Meetings of Council

As authorised by the *Local Government Act 1993*, Wingecarribee Shire Council records the proceedings of the Ordinary and Extraordinary Meetings of Council to ensure accurate transcription of resolutions.

Recording of meetings by members of the media is permitted only for the purpose of verifying the accuracy of any report concerning such meeting. Broadcasting of any sound recording is not permitted. Video recording is also not permitted. No member of the public is to use any electronic, visual or vocal recording device or instrument to record the proceedings of Council without prior permission of the Council.

The Council Chamber now has 24 Hour Video Surveillance.



ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the Traditional Custodians of this land and pay my respect to Elders both past and present. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.

APOLOGIES

Nil at time of print.

DECLARATIONS OF INTEREST

101/3, 101/3.1

The provisions of Chapter 14 of the *Local Government Act 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest and the reasons for declaring such interest must be disclosed as soon as practicable after the start of the meeting.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions or voting on that matter and further require that the member vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

COMMITTEE OF THE WHOLE

10 VISITOR MATTERS

CORPORATE STRATEGY AND DEVELOPMENT SERVICES

10.1 DA 17/1676 - Construction of 11 Unit Multi-Dwelling Housing - 5 Cliff Street & 11 Clarke Street, Bowral

Reference:	17/1676
Report Author:	Development Assessment Planner
Authoriser:	Group Manager Planning, Development and Regulatory Services
Link to Community Strategic Plan:	Promote building practices and the types of developments that improve resource efficiency

PURPOSE

The purpose of this report is to consider Development Application 17/1676 which seeks approval for the construction of 11 multi-dwelling housing units (1 existing and 10 new builds), earthworks and landscaping at Lot 8 DP702375 and Lot 1 DP1041999, 5 Cliff Street & 11 Clarke Street Bowral. This report is prepared for determination and recommends APPROVAL, subject to the attached conditions of consent (**Attachment 1**).

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

THAT development application 17/1676 for the construction of 11 multi-dwelling housing units (1 existing and 10 new builds), earthworks and associated landscaping at Lot 8 DP702375 and Lot 1 DP1041999, 5 Cliff Street & 11 Clarke Street Bowral be APPROVED subject to attached conditions of consent as described in Attachment 1 to the report.

REPORT

BACKGROUND

A previous Development Application was lodged for this site seeking approval for 16 multi-dwelling housing units. DA 14/1328 was lodged 19 December 2014 and was refused by Council in early 2016. This application was refused for the following reasons:

- Amenity of adjoining neighbours
- The complete difference in density of surrounding neighbours current and future
- The style of the development

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REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- Concerns about non-compliance of open space/landscaping
- Concerns regarding drainage
- Concerns regarding flood potential
- Concerns regarding sewerage connection and flow
- Concerns regarding bulk and scale
- Concerns regarding the Bowral Town Plan in relation to the entrance into Bowral and the quality of dwellings in Bowral
- Not consistent with local architecture and good design

The scheme was reduced and challenged in the Land and Environment Court, with the court dismissing the appeal on the following grounds:

- Excessive cut and fill
- Gun barrel driveway and siting of dwellings is not responsive to existing street pattern
- Replacement landscaping is inadequate to offset tree loss
- Quantum of landscape area is not satisfactory and not well distributed across the site
- Amenity of some rear courtyards is unacceptable and upper level balconies also have poor amenity
- Development overall has poor internal amenity
- Privacy and overlooking impacts on adjoining 1 Cliff Street from excessive bulk and scale
- No mix of dwelling sizes
- Inadequate arrangements for waste collection
- Incomplete set of documentation
- Failure to address issues raised by residents

In submitting this application, the scheme is aimed to address these reasons for the refusal for the previous scheme. The assessment of this application has been undertaken without prejudice from this previous scheme for the site and assessed on its own merits.

REPORT

Proposed Development

The proposed development drawings are included as **Attachment 3**.

On 27 November 2017, development application DA17/1676 was lodged by Ghazi Al Ali Architects, which sought consent for the construction of 10 Multi-dwelling housing units, lot consolidation, earthworks and associated landscaping.

The proposal will retain the existing dwelling and incorporate it into the overall development of multi-dwelling housing on the site. The two lots will be consolidated into one parent lot as part of development works, with works comprised of the following:

- 10 new dwellings, comprising;
 - Eight dwellings containing three bedrooms
 - Two dwellings containing two bedrooms
 - All provided with two parking spaces contained with garages (3 with stacked garages)
- Two access points, being;
 - Access from Cliff Street servicing Dwellings 1 - 6
 - Access from Clarke Street servicing Dwellings 7-10

The proposal will include landscaping, drainage and service connection works within the site.

Subject Site and Locality

Figures 1 and 2 illustrate the land's location and general layout. The site has a street address of 5 Cliff Street and 11 Clarke Street, Bowral and is legally described as Lot 8 DP702375 and Lot 1 DP1041999. The site is located at the southwest corner of this intersection, with 7 Cliff Street located in the corner of the site. Figure 1 shows the site in relation to the surrounding development.

The site comprises two separate rectangular lots that are proposed to be consolidated into a single lot to facilitate the development. The lots form an 'L' shape around number 7 Cliff Street. The site encompasses an area covering 5,259m².

Both existing lots are adjacent and rectangular in configuration. Lot 8 DP702375 fronts Cliff Street and is the smaller of the two lots, being 1,199m² in size. The frontage to Cliff Street is 59.6m long. This lot contains the existing dwelling which is to be retained as part of the proposed works. Lot 1 DP1041999 fronts Clarke Street and is the larger of the lots, being 4,060m² in size. The frontage to Clarke Street is 40.2m long. This lot is undeveloped and predominately cleared with a small area of native vegetation adjacent to Clarke Street.

The overall site has two access points. A formed driveway provides access from Cliff Street to the existing dwellings. A second access point from Clarke Street exists but is rarely used as an undeveloped allotment

The site has a fall from east to west of 16.43m, providing an average fall of 1m in every 6m along the long axis of the block.

The existing dwelling at 5 Cliff Street is a double storey brick detached dwelling, with the first floor provided in a steeply pitched roof. The dwelling is surrounded by a landscaped garden extensively planted with exotic vegetation. 11 Clarke Street is primarily cleared but contains a number of native trees within the eastern portion of the site adjacent to the Clarke Street frontage.

The site is surrounded by a varied development pattern, with recently constructed multi-dwelling housing developments interspersed with older detached housing stock. Generally, the surrounding development can be characterised as follows:

- **East** – Single detached housing on lots averaging 800m² in size located on the high side of Clarke Street
- **South** – Multi-dwelling housing development currently under construction containing ten two storey townhouses
- **West** – Two detached single story dwellings located on large town lots, with a multi-dwelling housing development located adjacent containing eight dwellings
- **North** – Newly constructed detached house located at 7 Cliff Street. On the opposite side of Cliff street are single storey detached houses on lots averaging 1,600m² in size

The site is zoned R3 – Medium Density Residential under the provisions of the *Wingecarribee Local Environment plan 2010*.

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AND DEVELOPMENT SERVICES**



(Attachment 2) Figure 1: Locality map (Source: Sixmaps 2018)



(Attachment 2) Figure 2: Aerial image (Source: Nearmap 2018)



STATUTORY PROVISIONS

State Environmental Planning Policies (SEPPs)

The application has been considered with regard to the relevant provisions of applicable SEPPs, including:

- SEPP 55—Remediation of Land
- SEPP (Building Sustainability Index: BASIX) 2004 (“the BASIX SEPP”)
- SEPP (Sydney Drinking Water Catchment) 2011

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. Council is satisfied that the land is not a site of possible contamination and therefore no further assessment of contamination is required.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

With respect to the BASIX SEPP, a recommended condition of consent specifies no construction certificate shall be granted for building work in the development’s dwelling house component unless information and drawings accompanying the construction certificate application reflect the requirements prescribed by the BASIX Certificate accompanying the development application (**Condition 79 Attachment 1**).

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is within the Warragamba Catchment and therefore the Catchment SEPP is applicable to the assessment of the application. The application is a Module 3 (L_{S3}) development for the purposes of the Neutral or Beneficial Effect (NorBE) on Water Quality Assessment Guideline and therefore the application has been referred to Water NSW for Concurrence to determine the impacts to water quality from the proposal.

Water NSW has undertaken a NorBE assessment, determining that the proposal can achieve a neutral or beneficial effect on water quality provided a number of conditions are included in any development consent. **Condition 104 Attachment 1** contains the conditions required by Water NSW.

Local Environmental Plans

Wingecarribee Local Environmental Plan 2010 (the LEP)

The application has been considered with regard to the LEP’s relevant provisions, including:

- Clause 2.3—Zone objectives and Land Use Table
- Clause 7.3—Earthworks

Clause 2.3 Zone objectives and land use table

The site is zoned R3 – Medium Density Residential and in this zone Multi dwelling housing is permissible with development consent. The objectives of the zone are:

- To provide for the housing needs of the community within a medium density residential environment.

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- To provide a variety of housing types with a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The objectives of the zone are met by the proposed development of the site. The proposal will provide a mix of dwelling sizes in a townhouse arrangement within an area undergoing similar development. The proposal will provide additional medium density style housing within Bowral, where this form of housing is currently under represented.

Clause 7.3 Earthworks

Cl. 7.3 (3) requires that the consent authority consider a range of aspects prior to consent being given to development that includes earthworks. The proposal includes earthworks within the site to create the required building pads for townhouse development. The site requires these earthworks as the existing topography does not allow for building to occur on existing surface. Council's Development Engineers have reviewed the extent of earthworks and have not expressed any concerns. Standard conditions of consent have been included to ensure that adequate protections are in place throughout construction to ensure that erosion and sediment control is achieved and that any excavations do not impact on adjacent properties (refer to **Conditions 9 and 32 Attachment 1**). Further, **Condition 74 Attachment 1** establishes an unexpected finds protocol to be enacted during construction works should any object or relic be uncovered.

Development Control Plans

Bowral Town Plan Development Control Plan (the DCP)

The application has been considered with regard to the DCP's applicable provisions, including:

- Part A—Provisions applicable to all land
 - Section 2—General objectives
 - A2.2—Objectives of this Plan
 - Section 3—Ecologically Sustainable Development
 - A3.2—Development on land within the Urban Ecological Setting
 - A3.3—Development in Sydney's Drinking Water Catchment
 - A3.6—Water Sensitive Urban Design
 - A3.7—Stormwater Management Plans
 - A3.8—Erosion and Sediment Control Plans
 - A3.9 Management of Contaminated Land
 - Section 5—Vegetation management and landscaping
 - A5.1—Preservation of trees and other vegetation
 - A5.2—Private landscaped open space
 - A5.3—Controls
 - Section 6—Subdivision, demolition, siting and design
 - A6.3—Site Analysis
 - A6.4—Cut and fill

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- Section 7—Safer by design
 - A7.4—Specific design requirements
- Section 8—Construction standards and procedures
 - A8.2—Surveys and Reports
 - A8.3—Building near of over Council Mains and Easements
 - A8.4—Building over two or more allotments
 - A8.8—Stormwater disposal
 - A8.10—Site access standards during construction
 - A8.12—Waste management and disposal
- Section 10—Outdoor lighting
 - A10.3—Controls
- Part C—Residential-zoned land
 - Section 1—Introduction
 - C1.2—Objectives
 - C1.5—Height of Buildings
 - C1.6—Building materials
 - Section 3—Medium density development
 - C3.2—Site amalgamation
 - C3.3—Site planning
 - C3.4—Density and site coverage
 - C3.5—Street Presentation
 - C3.6—Dwelling mix
 - C3.7—Building height
 - C3.8—Front setbacks
 - C3.9—Side setbacks
 - C3.10—Rear setbacks
 - C3.11—Dwelling orientation
 - C3.12—Design guidelines
 - C3.13—Private open space
 - C3.14—Landscaping and communal open space
 - C3.15—Privacy
 - C3.16—Materials and colours
 - C3.17—Car parking, garaging and driveways
 - C3.18—Pedestrian access
 - C3.19—Waste collection

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- Section 5—Universal design for adaptable housing
 - C5.1—introduction
- Section 17—Northern Entrance Medium Density Precinct
 - C17.1—Location and Description
 - C17.2—Preferred Outcomes
 - C17.3—Specific Controls

The proposed development satisfies the requirements under each of the sections mentioned above. Provided below are comments in relation to certain sections where conditions of consent are recommended or variations considered acceptable.

A3.2—Development of land within the Urban Ecological Setting

The proposal is seeking to remove 31 of the 33 trees noted to be located within the subject site. An arboriculture assessment accompanies the application which has been reviewed by Council's Tree and Vegetation Officer who has concurred with the proposal subject to the imposition of **Conditions 65, 66, 93 and 94 Attachment 1**. The site has been determined to not contain any habitat that is deemed significant and warrants retention.

A5.1—Preservation of Trees and Other Vegetation

The site has been assessed by an arborist as part of Development Application preparation. Council's Tree and Vegetation Officer has reviewed the application and has provided concurrence subject to appropriate conditions being imposed on the development of the site.

A6.4—Cut and Fill

The proposal includes areas of cut and fill in excess of 1m. The slope of the site requires earthworks to make any development on the site possible. The design of the site has been required to balance the extent of earthworks with other impacts associated with dwellings being constructed. It is noted that the extent of earthworks could be reduced by raising the finished floor levels of the proposed dwellings to reduce the level of cut required but this would increase the height of buildings at the boundaries of the site increasing overlooking and privacy impacts.

Council's Development Engineers have reviewed the extent of earthworks proposed and have expressed no concerns subject to appropriate conditions being imposed.

A8.3—Building near or over Council Mains and Easements

No building works are proposed near or over Council main or easements. Council has a sewer main that runs through the northeast corner of the lot fronting Cliff Street. This main is located adjacent to the existing dwelling that is proposed to be retained. **Condition 49 Attachment 1** will require that appropriate measures are put in place during construction works to protect this asset from damage through the storage of plant and materials.

A8.4—Building over two or more allotments

The proposal is located over two adjacent lots. Consolidation of these lots will be required prior to Construction Certificate is issued in accordance with **Condition 12 Attachment 1**.

A8.8—Stormwater Disposal

Stormwater disposal has been assessed in detail by Council's Development Engineers. A number of minor amendments are required to the proposed design and have been included as **Condition 23 Attachment 1**.

A8.10—Site access standards during construction

The site is proposed to be accessed throughout construction works from the existing driveway crossover that exists on Cliff Street. Works will occur throughout the majority of the site from this location, with the area fronting Clarke Street to be maintained access free for as long as possible throughout construction.

Condition 20 Attachment 1 will require this process to be detailed within the Construction Management Plan for all works.

C3.3—Site Planning

The proposal has been designed to maximise the use of the site, whilst also achieving a good urban design outcome for a site within the R3 – Medium Density Residential zone. The site has effectively been designed to operate as two separate but linked Multi-dwelling housing developments the first accessed from Cliff Street and the second from Clarke Street. The site has been designed to respond to the natural topography of the site, with buildings stepped up the site and with buildings set into the slope to reduce overall building heights. Impacts to privacy have been accounted for with setbacks maximised where possible and double storey heights minimised where able with adjacent sites. The western boundary of the site is a key interface, with the slope of the site falling to this point, with adjacent single storey dwellings constructed to this boundary. Proposed dwellings along this boundary will present a two storey elevation along this section of the site due to the slope of the site. This elevation has been designed to ensure that overlooking opportunities are removed as far as possible. Windows within the first floor portion of the dwellings are from bedrooms and utility spaces with the lower portion of windows to contain frosted glass. Living spaces have been orientated to have outlooks to the north so that views are not directed towards the adjacent property.

The resultant proposal achieves a good compromise between a number of competing elements. The overall density of the scheme has been reduced to a point where Council will still be able to achieve its strategic direction of increasing density in highly accessible locations while reducing the impacts on surrounding properties. The resultant impacts are deemed to be appropriate for an area zoned for medium density development.

C3.4—Density and Site coverage

The subject site is located within the R3 – B zone, where Council intent is to achieve a FSR of 0.5:1. The overall development of the site will result in a FSR of 0.3:1, significantly lower than the FSR allowed for the site. The density and scale of development is deemed to be appropriate for the site and is consistent with similar medium density multi-dwelling housing development that exist or are under construction within the surrounding area.

C3.9—Side setbacks

The proposal is required to provide 3.5m setbacks along both the southern and western boundary of the site. The site has two street frontages and as such does not have a rear setback. The 3.5m setback is consistent with the approved development to the south of the site.

Along the western boundary of the site, the main building line has been further setback to ensure that overlooking, privacy and solar access impacts are minimised to adjacent properties. The main building line is setback 7m along this boundary, with adjacent dwellings setback a further 4m from the common boundary line. The resultant 11m separation, coupled with the design of the western elevation will minimise all impacts to the adjacent properties to an acceptable standard.



C3.13—Private open space

The private open space requirements detailed within this provision have been met by all proposed dwellings. Each area is provided with a principle private open space area 50m² in size with a minimum dimension of 5m. All areas are provided with adequate solar access.

C3.14—Landscaping and communal open space

The proposed landscaping and communal open space is appropriate for the site. The proposal includes greater than 50% of the site as landscaped space. The frontage treatments are appropriate and will result in the replacement of all poor quality trees that are currently present surrounding the site.

Council's Tree and Vegetation Officer has reviewed the application and concurs with the proposed works subject to conditions being imposed.

C3.15—Privacy

Privacy impacts were a key consideration in the overall assessment of the proposal. The topography of the site means that adjacent dwellings to the west will be located lower than the subject site and provide opportunities for direct overlooking and lines of sight into adjacent living spaces of the existing dwellings. Further, Dwelling 8 located on the southern boundary would be located in close proximity to recently approved dwellings to be located to the south of the site.

Further information was sought from the applicant to demonstrate that adequate offsetting of windows exists between Dwelling 8 and adjacent buildings. Additional information submitted indicates that this has been satisfactorily achieved.

Further, additional information submitted was required to demonstrate how the dwellings proposed along the western boundary would be designed to ensure that the privacy of adjacent dwellings was achieved in concert with providing adequate solar access. The amended plans show that windows along the western elevation within the upper floor have been designed to minimise the size of the windows and that they would be required to be frosted to obscure any views. The design of this section of the site was also altered to provide living spaces with outlooks to the north and south rather than to the west. These measures, coupled with a 7 m setback from the boundary, have minimised the impacts to privacy and overlooking to a level deemed appropriate for a medium density development within this location. It is noted that the proposal is set well back from the minimum setback requirements, dwellings are set into the slope, the site is developed under the allowed FSR and design orientates views away from adjacent properties.

C3.17—Car parking, garaging and driveways

All dwellings are provided with 2 spaces located within attached garaging space integrated with dwellings. Three of the dwellings will provide this parking in a stacked fashion with the other seven dwellings being arranged side-by-side. In addition to the provided residents parking, four visitor spaces will be provided, two accessible from Clarke Street and two from Cliff Street. This proposed provision exceeds the minimum car parking requirement for this development. **Condition 26 Attachment 1** requires the provision of accessible car parking spaces.

C3.19—Waste Collection

Waste collection is proposed to be undertaken by Council kerb side collection. Each dwelling will be provided with individual general and recycling bins that will be required to be bought to the kerb for collection. Green waste generated throughout the site will be the responsibility of a contracted gardener. **Condition 31 Attachment 1** requires that the Waste Management Plan be refined and finalised prior to issue of a Construction Certificate.

C5.1—Universal design for adaptable housing

The overall scheme will contain 11 dwellings, as such four dwellings are proposed within the scheme to be adaptable with every three dwellings that are proposed requiring one dwelling to be constructed to comply with not less than Class C level of Australian Standard 4299 – Adaptable housing. The four dwellings along the western boundary of the site have been designed to be able to comply with this requirement.

Section 4.15 Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

The application has been considered with regard to the relevant provisions of applicable environmental planning instruments (SEPPs and the LEP), as discussed above.

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Not applicable.

(iii) any development control plan, and

The application has been considered with regard to the relevant provisions of the applicable Bowral Town Plan Development Control Plan, as discussed above.

(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

Not applicable.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

No regulations apply to the assessment of this application

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

Not applicable.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,



Context and setting

The subject site forms part of the northern entrance medium density precinct to Bowral. The surrounding area is zoned and used for a mix of low density and medium density residential uses. The surrounding area is currently undergoing transition to this medium density housing form, with a number of multi-dwelling housing developments constructed over the last 10 years. Further development have been approved recently and have commenced construction, with other applications on surrounding parcels of land currently under assessment by Council.

The proposed land use and density is considered to be compatible with its context by providing medium density housing within an identified area close to Bowral. The proposed height and density of the development is consistent with the applicable planning controls for the site and the multi-dwelling housing building typology demonstrates general compatibility with the desired character of the area as indicated by the Bowral Town Plan DCP.

Traditional materials are proposed to fit within the existing built form character of the area. The development maintains a human scale being two storeys in height. Each dwelling entry directly addresses its street frontage or internal driveway achieving a traditional relationship with the public domain.

As such, the proposal is determined to be within keeping with the surrounding character of the site.

Access, Transport and Traffic

A Traffic Impact Study forms part of the application prepared by Novati Consulting Engineers. The proposed development comprises 11 residential dwellings (1 existing and 10 new).

Off-Street Car Parking

The proposed development comprises 26 parking spaces, which includes:

22 resident spaces comprising:

- 2 parking spaces for each dwelling in an associated garage
- Garages designed to be side by side for 7 of the new dwellings as well as the existing
- Three of the new dwellings to be provided with double garaged configured for vehicles to be stacked.

4 Visitor parking spaces comprising:

- 2 accessible from Cliff Street
- 2 accessible from Clarke Street

Car parking provision is in accordance with the minimum rates for car parking on the site outlined in the Bowral Town Plan DCP.

On-Street Car Parking

The site's parking requirement has been fully accounted for internally to the subject site. On-street parking is not deemed to be required for the ongoing operation of the site. It is noted that on-street parking along Cliff Street is not desirable due to the grade and width of this road way. Informal on-street parking may occur along Clarke Street but this is expected to be minor due to the majority of dwellings being accessible from Cliff Street rather than Clarke Street. The surrounding road network can support any increase in on-street parking that may result from the development of this site.



Traffic Impacts

The Traffic Impact Study uses a vehicle trips per hour rate of 0.5-0.65 per hour for each within the peak hour for the proposed development. This results in 7.37 trips generated by the site in both the morning and afternoon peak periods. The study indicated that the surrounding road network was able to accommodate the extra trip generation that would result from the operation of the site.

Privacy

The impacts to surrounding dwellings was a key consideration of the assessment of the proposed development. As detailed above, the topography of the site exacerbates the overlooking possible when dwellings are constructed in close proximity to a common boundary. In this case, two adjacent dwellings have been constructed with their private open space opening off their living rooms directly towards the common western boundary of the subject site. In this location, the proposal seeks to construct four dwellings with the rear of these dwellings orientated towards this boundary. The initial scheme submitted to Council included windows and balconies that were located within the first floor. This resulted in direct overlooking opportunities into the private open space of the existing dwellings.

A meeting was held with the applicant to discuss the issues identified within the initial assessment of the application. At this meeting, Council detailed that the proposal would not be supportable in its current layout. As such, the applicant amended the design of this portion of the site to ensure that any opportunities to overlook adjacent properties was significantly reduced. The first floor design was altered to orientate habitable spaces away from the common boundary, directing views to the north or south. Remaining windows were reduced in size and detailed to be frosted in the lower portion to limit the potential for overlooking. The resultant scheme is deemed to result in a satisfactory outcome for the adjacent site whilst still allowing appropriate development to occur within the site.

Stormwater

The overall scheme for the development of the subject site includes the provision of an underground on-site detention tank to manage stormwater flows within the site. This approach is generally not supported by Council and requires detailed justification as to why an above ground system could not be supported. Extensive consultation occurred in regard to this issue throughout the assessment of the application, with Council's Development Engineer liaising with the applicant's engaged consultant.

The subject site was deemed to not support an above ground storage system as this would be required to be located at the low point of the site directly adjacent the rear fence of the adjacent dwellings to the west of the site. Further, by requiring the storage to be located in this location the overall yield of the development would be reduced by at least two dwellings.

The proposal put forward by the applicant contained the OSD tank to be located underneath the communal access driveway from Cliff Street. A tank in this location would be well positioned to collect the majority of stormwater collected both on site and upstream. The tank was sized appropriately to deal with the 1



in 100 year storm event, with the outlet from the tank directing flows into the stormwater system located within Cliff Street.

The small area that would not flow into this collection system (the private open space at the rear of dwellings 1-4) would drain to the existing stormwater infrastructure that exists at the low point central within the western boundary. The water flow to this location would be significantly reduced as the catchment area would be minimal compared to pre-development scenario.

After assessment by Council's Development Engineer in consultation with the Drainage Officer, the proposed scheme was deemed to result in a satisfactory outcome for the site. Water NSW also provided concurrence with the proposed scheme.

Assessment of Council's stormwater infrastructure in this location shows that it is able to accommodate the modification to the water regime (only minor with the diversion resulting in stormwater entering the system approximately 50m upstream from its current point of discharge to Cliff Street).

It is noted that one of the main concerns raised in submissions from neighbouring properties was the impact of stormwater flows from the subject site into their properties. This outcome will significantly improve the current situation.

Sewer

Significant concern was raised through the exhibition period of this application, as well as other similar applications in the surrounding area, that the existing stormwater and sewer system was already at capacity and not able to support any further development. Comments identified that in high rainfall events that the sewer system would overflow down Mittagong Road. In response to this issue, the applicant was required to undertake Water and Sewer modelling to assess the capacity of the existing system and to determine if the extra demand placed on the systems from this site and the others would be supported.

The modelling was undertaken by UWS and identified a number of upgrades that would be required to be undertaken by each of the sites seeking development consent prior to Occupation Certificates being granted. As such, a number of conditions of consent have been included in the draft Notice of Determination to achieve this outcome.

Waste

Waste management will be a key consideration for the development of this site.

Excavation

Significant volumes of excavated soils will be generated from the site. Appropriate testing will need to be undertaken of extracted soil prior to disposal if it is to be deemed to be Virgin Extracted Natural Material. If the soil does not meet this standard it will be required to be disposed of at an appropriately licenced facility. **Condition 31** requires that a detailed waste management plan be prepared that details the process for testing of soil and disposal processes if found to be contaminated.

Construction

During construction, the following management strategies will required to be implemented to minimise the volume of waste that ends up in the landfill:

- All fixtures and fittings will be made to measure;

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- All materials will be ordered in accordance with a bill of quantities;
- Recycled materials will be utilised wherever possible;
- Measures will be taken to ensure the construction contractor appropriately disposes of waste and where possible recycles materials;
- Sorting of different waste streams on site where possible to maximise reuse and recycling opportunities or the nomination of a contractor with comprehensive waste management abilities so that different waste streams are sorted at their facility to minimise landfill waste; and
- Measures will be taken to ensure the construction contractor is aware of the waste management procedures and adheres to appropriate guidelines.

Ongoing Waste

A Waste Management Plan has been prepared by Ghazi Al Ali Architects as part of the application which addresses the ongoing management of waste during the operational phase of the development to ensure impacts on the local area are minimised. The proposed Waste Management Plan indicates that waste collection will be undertaken by general Council kerbside pickup for general and recycling waste streams.

Green waste is anticipated to be minimal on the site, with majority of the landscape on site being managed by a private contractor who will be responsible for the removal of any large volumes of green waste which arise from the communal open spaces on the site.

It is considered that the proposed development will not have an adverse impact on the local area arising from waste.

(c) *the suitability of the site for the development,*

The proposed development is deemed appropriate for the locality given the site is located within the R3 Medium Density Residential zone wherein the proposed development is permitted with Council consent.

The proposed development has been carefully designed in order to minimise associated impacts to surrounding developments and in response to the site constraints that exist. The dwellings have been designed to respect the established architectural style of the area and to sit within the area through appropriate landscaping around and within the overall site.

There are no constraints posed by adjacent developments that would prohibit this proposal. There are adequate utilities and services available to the proposed development where necessary. The air quality and microclimate are appropriate for the development, there are no hazardous land uses or activities nearby, and ambient noise levels are suitable for the development

The site is not subject to natural hazards including flooding, slip, mass movement or bushfires. The soil characteristics are appropriate for the development, and there are no critical habitats, or threatened species, populations, ecological communities or habitats on the site. The development will not prejudice future agricultural production and there are no known mineral or extractive resources on the site.

(d) *any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.



- (e) *the public interest.*

On balance, the development is not considered contrary to any known federal, state or local government interests, nor any wider community interests.

COMMUNICATION AND CONSULTATION

Community Engagement

Neighbour Notification and Advertising - Public Participation

The development application was Neighbour Notified and Advertised for a period of 45 days between 03 January 2018 and 16 February 2018, attracting 9 objections to the proposal. The issues raised in the submissions are identified and discussed below:

1. *Previous application for site*

Three submissions indicated that this application was proposing a worse outcome than the application that was previously submitted for the site and refused by Council and dismissed on appeal by the Land and Environment Court.

Comment – This application was submitted as a fresh application for the site and as such has been assessed on its own merits. All referrals required by the *Environmental Planning and Assessment Act 1979* have been undertaken as required with no reference to past history of the site. All internal referrals have also been undertaken with no prejudice from previous history of the site. The application is significantly altered from the previous application with Council and has been treated as such.

2. *Inconsistent documentation*

Five submissions received indicated that there were inconsistencies throughout the documentation submitted to Council detailing what was proposed..

Comment – Council's review of the application showed some minor inconsistencies with some terminology within the reports. However, this inconsistency does not change the overall proposal put to Council. One of the reasons mentioned in the Land and Environment decision to dismiss the appeal for the refusal of the previous application was that the scheme did not contain any consistent documents in which to grant an approval to. These submissions have used this reasoning to cast doubt on this iteration of the application.

3. *Demolition of existing building*

Three submissions expressed concern that the application would result in the demolition of the existing building

Comment – As a result of some of the inconsistencies in the documentation discussed above, these submissions expressed concern that it was the intent of the applicant to demolish the existing dwelling and include further townhouses in this location following approval of this application. The Waste Management Plan submitted incorrectly included a demolition phase of works. Consultation with the applicant indicated that demolition of this aspect of the site was not proposed. If this was to be sought at a later date following approval of this application it would need to be considered as a separate Development Application as it would not satisfy the



“Substantially the same development” test required to modify an existing development consent. This application would then be considered on its own merits.

4. *Privacy Impacts*

Seven of the nine submissions received expressed concerns about privacy impacts from the proposal on existing dwellings located to the west of the site. Further, one comment expressed concern about the impact from the site with the approved development to the south of the site.

Comment – The privacy impact of the proposal and how it has been addressed through the assessment of the application and the amendments made by the applicant have been extensively explored previously in this report. The resultant proposal is deemed to address privacy concerns adequately.

5. *Building Height*

Three submissions identified that the two storey building height along the western boundary of the site was not appropriate for the area.

Comment – The two storey development along the western boundary of the site is a consequence of the topography of the site. The western boundary of the site forms the low point. Dwellings have been design to respond to the existing topography to limit earthworks wherever possible. As such, the proposed dwellings have been designed to present as single story from the east, with a lower floor provided to each dwelling as the slope falls away. The slope within the site is not conducive to creating single storey dwellings. The only way this could happen would be to raise the floor levels of the dwellings in effect creating a two storey scaled building. The proposed building form is the best outcome available to the site as it makes best use of the available site for housing, provides adequate landscaped area and limits the extent of earthworks required.

6. *Overshadowing*

One submission expressed overshadowing a concern along the western boundary of the site.

Comment – This concern stems from a combination of the two storey height of the buildings along the western boundary, the proposed setback and the slope of the site. Following consultation with the applicant, the potential for this impact occurring has been minimised. The impact is isolated to early morning solar access, with Council requirements focusing on the period between 9am and 3pm at the winter solstice. To ensure that adequate solar access is achieved, the setback from the western boundary has been proposed to be 7m. This distance with the proposed height will enable adequate solar access to the existing dwellings to occur.

7. *Excavation*

Two submissions expressed concern about the extent of cut and fill proposed across the site, stating that it exceeded Council’s guidance within the Bowral Town DCP.

Comment – The development of a site such as this one will require areas of cut and fill in order to create flat building pads in which to build upon. The applicant has sought to minimise the excavations required by stepping buildings in response to the topography of the site. In effect, the proposed dwellings will be constructed as a single storey on the high side of the building envelope, with this increasing to two storeys as the slope falls away moving west. The depth controls articulated in the DCP have been exceeded in this case in an attempt to limit the overall height of constructed dwellings by submerging elements of the built form into the site. If



excavations were reduced, the height of dwellings would increase affecting privacy/overlooking concerns and would require the importation of fill material. Council's Development Engineers have reviewed the extent of excavations required and have expressed no concerns that cannot be adequately addressed through the imposition of standard conditions of consent.

8. *Building Setbacks*

One submission expressed concern that the proposed 3.5m setback along the western boundary was too small.

Comment – 3.5m is the standard side setback for a building greater than 3m high in the medium density zone. This is the control that the application is required to meet as a minimum. In this case, the proposal has been further setback from this boundary to 7m to ensure that privacy and overlooking concerns are minimised.

9. *Steep slope*

One submission raised concern that development of two storey dwellings on a steep slope such as this required special consideration.

Comment – The applicant has worked to develop a scheme that works with the site constraints, including grade, to achieve a suitable outcome. Council has deemed that the proposed development in regard to the grade of the site is suitable.

10. *Tree removal*

Five of the submissions received identified that tree removal from the site and the resultant loss of green space would be a detrimental outcome for the area as well as being a loss of habitat for native animals.

Comment – Council's Tree and Vegetation Officer has reviewed the application, including the proposed tree removal plan as well as the submitted landscape plan, to determine the impacts proposed by the development. Concurrence has been provided for the proposed works. Trees to be removed, whilst a loss to the area, are appropriately replaced through the landscape plan. The concern about the loss of green space is acknowledged. The landscaping to the site will provide additional tree species to a site that is predominately cleared. It is also noted that the current zoning for the site enables this form of development, with the current cleared open space unlikely to remain into the future even if this proposal was not to proceed.

11. *Landscaping inadequate*

Two submissions indicated that the proposed landscaping was inadequate, with it unequally distributed through the site.

Comment – The proposed landscaping has been assessed by Council's Tree and Vegetation Officer and has been deemed to be appropriate for the site subject to a number of standard conditions of consent being imposed.

12. *Provision of extra green space in area*

One submission sought Council to purchase the parcel of land and convert it into a public green space.

Comment – With the proximity of the Mt Gibraltar Reserve and Cherry Tree Walk at the southern end of Clarke Street, there is no shortage of public open space in this precinct.



13. Weeds

One submission raised concern about the amount of weed species that are currently on site.

Comment – The assessment of this development application has not considered the current prevalence of weed species within the site when determining the application.

14. Character of Development

Four submissions related to the proposed development not being in character with the established architectural style of the area as required for the Northern Entrance Medium Density Precinct. This includes the density of development, building materials and roof forms.

Comment – The initial submission to Council was amended as part of consultation to result in a built form that is more consistent with the established character of the area. It is noted that character is a broad assessment of an area and includes macro and micro factors that influence an area. The street setbacks, proposed landscaping, height, bulk, form and materials all contribute. On the whole, the proposal is consistent or enhances the overall character of the area. It provides a consistent built form with building repetition, setbacks and heights from the two streets maintained and established in locations where this is not the case. Some of the submissions indicated that the proposal would result in the loss of the rural character of the area. The current zoning expresses Council's desire for this area to assume a residential character consistent with a medium density environment. The concern surrounding the built form has been addressed in part by the changes made to the overall scheme. Standard roof pitches have been proposed instead of the initial proposal for shallow pitched roofs. Building materials are also proposed to be consistent with surrounding built form. From a holistic point of view the proposal is consistent with the established character of the area. It is acknowledged that individual elements that contribute to character can be singled out to demonstrate non-compliance but this assessment must be undertaken holistically.

15. Building Bulk

Three submissions expressed concern about the perceived bulk of the buildings along the western boundary of the site. In effect it would present as a solid wall of development 50m long.

Comment – This issue was raised in consultation with the applicant during the assessment of the application. The proposed scheme has been modified to address this issue. This has been achieved in a couple of ways, with the setback of the buildings increased and the articulation of the western elevation altered. The setback from the western boundary is now proposed to be 7m from the boundary which will diminish the perceived bulk of the building. Regarding articulation, the proposed dwellings are designed as semi-detached dwellings (dwelling 1/2 and 3/4 sharing party walls). A break exists between dwelling 2 and 3, with vegetation proposed through this corridor. Further, buildings 1/2 and 3/4 have been further articulated by reducing the length of the party wall away from the western boundary in effect creating a courtyard between the two dwellings for additional landscape planting. As the site, including vegetation, matures the bulk of these buildings will further decrease to eventually present as four separate dwellings separated by vegetation.

16. Visual Impact

Three submissions indicated that the proposed works would have a detrimental impact to the visual amenity of the site when viewed from Mittagong Road. The submissions expressed concern that the proposed development being stepped up the topography of the site would present as a 6 storey development.

Comment – The slope of the site means that development will be stepped up the slope. This is the outcome that Council seeks for such a site. The key to breaking this built form up is appropriate landscaping that sits above the rooflines of dwellings when viewed from external to the site. The proposal includes landscaping that will achieve this outcome over time. The proposed dwellings will be set in a garden environment characteristic of the Southern Highlands which includes a number of significant deciduous trees. It should also be noted that the subject site is not readily observed from Mittagong Road, with the existing residential development along the roadway screening the site from view.

17. Glare

One submission expressed concern that glare would result from the afternoon sun shining on the roof of dwelling 9 and 10 reflecting into the property east of the site.

Comment – The roof pitch and materials proposed will not result in glare from the sun shining in adjacent properties. **Condition 16 Attachment 1** requires that colours and materials be approved prior to the issue of Construction Certificate.

18. Driveway

Three submissions highlighted that the driveway proposed from Cliff Street would present as a gun barrel driveway, with this arrangement not supported by the DCP. A further submission expressed concern at the grade of the proposed driveway from Clarke Street.

Comment – In this instance a gun barrel driveway is supportable as the topography of the site will aid in the softening of the driveway entrance. The driveway will slope downwards as it enters the site, with the planted landscaping either side of the driveway providing a canopy as they mature which will become the dominant feature when viewing the site from the street. This design feature is deemed to be appropriate for the subject site. The driveway proposed from Clarke Street has been designed in accordance with the requirements of Australian Standards.

19. Waste Collection

Two submissions expressed concern about the proposed waste management processes that would be undertaken once the development was occupied. Specific concern related to the placement of bins at the kerbside.

Comment – The proposal will have waste collection services undertaken as part of standard Council kerbside pickup. This will result in each dwelling bringing bins to the kerbside for collection. The associated impacts of this are deemed reasonable. Dwellings 1-6 and 11 will place their bins on the Cliff Street kerbside along the 60m frontage to the site. Dwellings 7-10 will place their bins at the Clarke Street kerbside (Frontage 40m). The respective frontages are deemed adequate for the number of bins that will be placed in either location for collection.

20. Noise

One submission raised concern that the proposal, once occupied, would create additional noise impacts to the surrounding area.

Comment – The proposal is seeking to develop residential dwellings in an existing residential area. The noise impacts will be consistent with those that are currently experienced in the area. Noise impacts during construction of the site will be managed by a Construction Management Plans.

21. Traffic Impacts

Two submissions expressed concerns that the existing intersection of Cliff Street with Mittagong Road was already highly congested and unsafe. Further development within this area would exacerbate this issue.

Comment – The Traffic Impact Study identified that the subject site would only add a small amount of traffic to the existing road network. A number of these trips would be generated to this intersection. The additional movements would not impact the operation of this intersection greatly and was not deemed to be a concern with the overall development of the site.

22. On-street parking

One submission identified that Cliff Street was not wide enough to support on-street parking.

Comment – The proposal includes sufficient off-street parking for both residents and visitors to not be reliant on parking within Cliff Street. The proposal has over provided for parking spaces than what is detailed within the Bowral Town DCP.

23. Stormwater

Five submissions indicated concerns with how stormwater was to be managed by the development of the site. Concern was raised about the adequacy of the OSD tank and the potential for water flows to be directed between the proposed dwellings into the downstream houses.

Comment – Council's Development Engineers placed particular focus on the assessment and adequacy of the proposed stormwater system. This included the capacity of the system, how it flowed from the site and how any overflow would be handled. The Development Engineers provided concurrence with the overall proposal subject to the imposition of a number of conditions of consent.

24. Sewer system

Four of the submissions received indicated concerns with the existing sewer system along Mittagong Road. Submissions noted that there have been numerous occasions recently where the sewer system has overflowed in high rainfall events.

Comment – As part of additional information sought from the applicant, Water and Sewer modelling was required to be undertaken by this site (in conjunction with two other development sites in close proximity) to assess the capacity of the existing system to cope with additional demand. This assessment was undertaken and submitted to Council for assessment. Conditions of consent have been included in the draft Notice of Determination to achieve the recommendations that resulted as part of this assessment.

25. Construction Impacts

Three submissions raised concern at the impacts associated with construction works onsite. Namely this centred around sediment and erosion control in respect to downstream properties.



Comment – Appropriate conditions of consent have been included in the draft Notice of Determination to ensure that measures are put in place to limit any construction impacts. These will be detailed within a Construction Management Plan which will include a detailed Sediment and Erosion Control Plan.

26. Non-compliance with Bowral Town DCP

One submission raised concern that a number of the development controls contained within Bowral Town DCP v9 (dated 29 November 2017) had not been addressed adequately by the application.

Comment – The application was lodged with Council on the 27th November 2017 and as such is not required to comply with the development controls detailed within v9 of the Bowral Town DCP. The assessment detailed above has been undertaken in accordance with v8 of the Bowral Town DCP. No significant non-compliances have been identified within this review that are not appropriately justified by the application.

Internal Communication and Consultation

Referrals	Advice/Response/Conditions
Accredited Certifier	No objection to proposed development; recommended conditions of consent specify relevant requirements.
Development Engineer	Development engineering referral, including comments from Council Water and Sewer Engineer and Drainage Engineer, has determined that the application is supportable subject to a range of recommended conditions of consent contained within Attachment 1 .
Contributions Planner	No objection to proposed development; recommended conditions of consent specify relevant requirements including contributions payable.
Tree and Vegetation Officer	No objection to proposed development; recommended conditions of consent specify relevant requirements.

External Communication and Consultation

Referrals	Advice/Response/Conditions
Water NSW	No objection to proposed development; recommended conditions of consent specify relevant requirements.

SUSTAINABILITY ASSESSMENT

- **Environment**

The development's potential environmental impacts are discussed earlier in this report.

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- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

COUNCIL BUDGET IMPLICATIONS

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010*, applicable state environmental planning policies, and the Bowral Town Plan Development Control Plan.

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OPTIONS

The options available to Council are:

Option 1

Determine development application 17/1676 by granting consent, subject to the recommended conditions of consent specified in **Attachment 1**.

Option 2

Determine development application 17/1676 by refusal, and provide reasons for Council's determination.

Option 1 is the recommended option to this report.

CONCLUSION

Provided that the recommended conditions of consent are complied with, the development is considered satisfactory with respect to the relevant provisions of applicable environmental planning instruments, development control plans and Council policies, and is not expected to have a significant negative impact on the environment or the character and amenity of the locality.

ATTACHMENTS

1. 17/1676 Draft Notice of Determination & WaterNSW Concurrence Conditions - *circulated under separate cover*
2. 17/1676 Locality Map & Aerial Image - *circulated under separate cover*
3. 17/1676 Architectural Plans - *circulated under separate cover*

10.2 DA 16/0821 - Demolition of Existing Buildings and Construction of 8 Unit Multi-dwelling Housing and 2 Commercial Units with Basement Garage and Associated Landscaping - 186-192 Bong Bong Street, Bowral

Reference: 16/0821
Report Author: Development Assessment Planner
Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Promote building practices and the types of developments that improve resource efficiency

PURPOSE

The purpose of this report is to consider Development Application 16/0821 which seeks approval for the demolition of existing buildings and construction of 2 commercial units, 6 shop top housing and 2 multi-dwelling housing units including basement garage at Lot 1 DP1097653 and Lot D DP155304, 186-192 Bong Bong Street Bowral. This report is prepared for determination and recommends APPROVAL, subject to the attached conditions of consent (**Attachment 1**).

VOTING ON THE MOTION

Councillors are required to record their votes on this matter.

RECOMMENDATION

THAT development application 16/0821 for the demolition for the existing building and construction of 2 commercial units, 6 shop top housing and 2 multi-dwelling housing units including basement garage at Lot 1 DP1097653 and Lot D DP155304, 186-192 Bong Bong Street Bowral be APPROVED subject to attached conditions of consent as described in **Attachment 1** to the report.

REPORT

BACKGROUND

Under Wingecarribee local Environmental Plan 2010, the land is in the B4 – Mixed Use Zone. There is no apparent record of any previous development consent being granted in relation to the land.

REPORT

Subject Site and Locality

Figures 1 and 2 illustrate the land's location and general layout. The site has a street address of 186-192 Bong Bong Street, Bowral. The site is located between Victoria Street to the north and Bundaroo Street located to the south of the site. Figure 1 shows the site in relation to the surrounding development.

The site comprises of two separate rectangular lots that are proposed to be consolidated into a single lot to facilitate the development. The site encompasses an area covering 1360 square metres.

Both existing lots are adjacent and rectangular in configuration. The shorter, wider Lot 1 DP1097653 located at the northern end of the site covers approximately 760 square metres, and the longer, narrower Lot D DP155304 situated on the southern end comprises an area of 600 square metres.

Access to the property is via Bong Bong Street which runs parallel to the street facing property boundary line running in a north-south orientation. Bong Bong Street is a classified road, managed by Roads and Maritime Services.

The existing access arrangement is via a domestic driveway located to the south of the northern lot and by a Right of Carriageway that benefits the subject site that is located within the adjacent lot to the north (Floria Apartments, Strata Plan 88855).

The site is relatively level overall with a slight fall from the north east to the south west corner of the subject site. There is a change in elevation of approximately 1m over the site, corresponding with an average gradient of 2.1%.

The site is currently developed and contains existing buildings, landscaped areas and hardstand areas. Situated within the northern portion of the site is a commercial building originally constructed as a duplex residential building. To the rear (east) of the building is a sealed car parking area with one covered car parking space. A residential dwelling with a separate garage and shed to the rear is located in the southern portion of the site.

A mixed use commercial and multi-unit development is to the north and to the rear (eastern) property boundary line.

The property is located slightly east of and outside of the mapped 1:100 ARI flood level as identified by *Bewsher Consulting Pty Ltd* Flood Study (2009). A Bowral Town Plan DCP Flood Liable Land assessment is included within Section 7 of the Water Cycle Management Study prepared by *Sowdes* dated 14th July 2016 accompanying the Development Application.

The subject property falls within the mapped extent of the Bowral Heritage Conservation Area, WLEP 2010 map Reference Her 007C.

The site is zoned B4 – Mixed Use under the provisions of the *Wingecarribee Local Environment Plan 2010*.

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(Attachment 2) Figure 1: Locality map (Source: Sixmaps 2018)



(Attachment 2) Figure 2: Aerial image (Source: Nearmap 2018)

Proposed Development

The proposed development drawings are included as **Attachment 3**.

On 5 September 2016, a development application was lodged by Bureaucracy Busters, which sought consent for the proposed demolition of existing buildings, lot consolidation and construction of a new mixed use development comprising five (5) commercial offices and ten (10) residential units.

Following submission of the application, the proposal has been reduced following consultation with Council. The amended scheme comprises the demolition of existing buildings, lot consolidation and construction of a new mixed use development comprising two (2) commercial offices and eight (8) residential units.

The proposal will result in the demolition of the existing buildings on both sites prior to lot consolidation and construction works commencing. The resultant built form will result in the following:

- Basement car parking, including;
 - Provision of 20 spaces (3 being accessible).
- Eight residential units, comprising
 - Two 2 bed and six 3 bed units
 - Two storeys in height
 - Living spaces and kitchens located to ground floor in front units, Master bedrooms also located at ground floor level for rear units
 - Front units contain three bedrooms on the first floor with bathroom facilities
 - Rear units contain the second bedroom and terrace space within the first floor
 - All units provided with private open space as courtyards.
- Two commercial units
 - 41m² of commercial floor space in size
 - Associated store room with bathroom facilities
 - Direct access from Bong Bong Street

The proposal will include landscaping, drainage and limited works within the Bong Bong Street road reserve.

STATUTORY PROVISIONS

State Environmental Planning Policies (SEPPs)

The application has been considered with regard to the relevant provisions of applicable SEPPs, including:

- SEPP 55—Remediation of Land
- SEPP (Building Sustainability Index: BASIX) 2004 (“the BASIX SEPP”)
- SEPP (Infrastructure) 2007 (“ISEPP”)
- SEPP (Sydney Drinking Water Catchment) 2011

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. Council is satisfied that the

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land is not a site of possible contamination and therefore no further assessment of contamination is required. Historic uses within the site have been extensively documented through the Heritage Impact Statement prepared to support the application, with this investigation demonstrating that no potentially contaminating land uses have occupied the site.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

With respect to the BASIX SEPP, a recommended condition of consent specifies no construction certificate shall be granted for building work in the development's residential component unless information and drawings accompanying the construction certificate application reflect the requirements prescribed by the BASIX Certificate accompanying the development application (**Condition 81**).

State Environmental Planning Policy (Infrastructure) 2007 ("ISEPP")

A referral was made to Roads and Maritime Services (RMS) to assess the impact of the proposed development as it fronts a classified road in accordance with the provisions of cl. 101 of the Infrastructure SEPP.

RMS has reviewed the submitted documentation and has provided concurrence to the proposed works subject to a number of conditions being imposed. **Condition 104** in **Attachment 1** contains the required conditions from RMS.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is within the Warragamba Catchment and therefore the Catchment SEPP is applicable to the assessment of the application. The application is a Module 3 (L_{S3}) development for the purposes of the Neutral or Beneficial Effect (NorBE) on Water Quality Assessment Guideline and therefore the application has been referred to Water NSW for Concurrence to determine the impacts to water quality from the proposal.

Water NSW has undertaken a NorBE assessment, determining that the proposal can achieve a neutral or beneficial effect on water quality provided a number of conditions are included in any development consent. **Condition 105** within **Attachment 1** contains the conditions required by Water NSW.

Local Environmental Plans

Wingecarribee Local Environmental Plan 2010 (the LEP)

The application has been considered with regard to the LEP's relevant provisions, including:

- Clause 2.3—Zone objectives and Land Use Table
- Clause 4.3—Height of Buildings
- Clause 4.4—Floor Space Ratio
- Clause 5.10—Heritage Conservation
- Clause 7.3—Earthworks
- Clause 7.9—Flood Planning



Clause 2.3 Zone objectives and land use table

The site is zoned B4 – Mixed Use and in this zone Shop Top Housing, Multi-dwelling housing and Commercial Premises are all permissible with development consent. The objectives of the zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations in order to maximise public transport patronage and encourage walking and cycling.
- To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas.

The objectives of the zone are met by the proposed development of the site. The proposal will provided a mix of uses including 2 commercial office spaces and 8 residential dwellings. The site is well located to encourage use of active transport into Bowral due to its close proximity. The proposal has been designed to be consistent with surrounding built form and to be compatible with surrounding land uses.

Clause 4.3 Height of Buildings

The site is mapped as having a development standard for Height of Buildings of 10m. The proposal has a maximum building height across the whole site when measured from existing ground level of 8.98m. This development standard is satisfied.

Clause 4.4 Floor Space Ration

The site is mapped as having a development standard for Floor Space Ratio (FSR) of 1.1:1. The proposal has a Gross Floor Area of 1141m² for an overall site area of 1360m². This equates to a FSR of 0.84:1, satisfying this control.

Clause 5.10 Heritage Conservation

The site is mapped as being located within the Bowral Heritage Conservation Area. Cl. 5.10(2)(a)(iii) requires that development consent must be sought to demolish a building located within such a zone. The proposed development will require that the existing buildings on the two affected lots be demolished before construction can commence. Further, consent is also required to erect a building within a conservation area subject to cl. 5.10(2)(e)(ii).

Cl. 5.10(4) requires the consent authority to consider the impact of the proposed development on the Heritage Conservation Area. Council has provided all documentation associated with the application to Council's engaged heritage consultant, who was consulted on a number of occasions throughout the process as the proposal was modified in response to Council concerns.

A number of concerns were raised on heritage grounds centred around the treatment of the existing buildings on site, the proposed landscaping of the site and the façade details. The applicant modified the designs to meet these requirements, with **Conditions 19** and **92** requiring that the existing building are recorded for their heritage value and that the landscaping plan is implemented. Further **Condition 2** ensures that the façade design is implemented as shown in submitted plans and renders in **Attachment 3**.

Clause 7.3 Earthworks

Cl. 7.3 (3) requires that the consent authority consider a range of aspects prior to consent being given to development that includes earthworks. The proposal includes extensive excavations within the site for the establishment of a basement garage area. The proposed works will not have any detrimental impacts on the surrounding properties or impact on the water cycle in the area. The site has been extensively disturbed and it unlikely that any

Aboriginal objects or other relics will remain intact on-site. **Condition 76** establishes an unexpected finds protocol to be enacted during construction works should any object or relic be uncovered. Further, **Conditions 7** and **62** require that adequate safety measures be put in place during excavation of the site to ensure the stability of surrounding properties. Additionally, **Condition 35** requires that adequate site controls are in operation to ensure that no impacts to water quality occur from site run-off.

Clause 7.9 Flood Planning

The subject site is mapped as being located within the 'Flood Planning Area' and as such, Clause 7.9 applies. Council must therefore be satisfied that the criteria at cl. 7.9(3) are satisfied. The proposal has been designed to ensure that all habitable spaces are located above the 1 in 100 year flood level plus 500mm freeboard. This level is deemed for the site to be 671.50m. The plans for the proposed buildings show that Finished Floor Level (FFL) for the commercial component to be 672.55m and the FFL for the residential component to be 673.8m. These levels sit well above the required flood level ensuring no impact results to the built components of the site.

The car parking for the site is proposed to be located within a basement garage. The design of the basement has considered the flood affectation of the overall site. The entry ramp for the basement has been designed to first rise from the adjacent Bong Bong Street to a height of 672.20m before grading down in to the basement proper. This will ensure that the entry to the garage remains flood free, with a clearance of 0.7m above the minimum level for development within this site in respect to flooding. The FFL of the basement has been shown to be at 671.0m, which is equal to the 1 in 100 year flood level.

Condition 23 requires that the applicant demonstrate that satisfactory detention of stormwater can be provided separate to BASIX requirements prior to a Construction certificate being issued for works to commence on site. This condition is to ensure that there are no increases to stormwater flows post development of the site when compared to current situation. Once this condition is achieved, Council is satisfied that the development will not pose any risks to the safety to life or property caused by flood events.

Development Control Plans

Bowral Town Plan Development Control Plan (the DCP)

The application has been considered with regard to the DCP's applicable provisions, including:

- Part A—Provisions applicable to all land
 - Section 2—General objectives
 - A2.2—Objectives of this Plan
 - Section 3—Ecologically Sustainable Development
 - A3.2—Development on land within the Urban Ecological Setting
 - A3.3—Development in Sydney's Drinking Water Catchment
 - A3.6—Water Sensitive Urban Design
 - A3.7—Stormwater Management Plans
 - A3.8—Erosion and Sediment Control Plans
 - A3.9 Management of Contaminated Land
 - Section 4—Flood Liable Land

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- A4.4—Controls for General Development
- Section 5—Vegetation management and landscaping
 - A5.1—Preservation of trees and other vegetation
 - A5.3—Controls
- Section 6—Subdivision, demolition, siting and design
 - A6.2—Demolition
 - A6.4—Cut and fill
 - A6.10—New Development within the vicinity of Heritage Items
- Section 7—Safer by design
 - A7.4—Specific design requirements
- Section 8—Construction standards and procedures
 - A8.2—Surveys and Reports
 - A8.3—Building near of over Council Mains and Easements
 - A8.4—Building over two or more allotments
 - A8.8—Stormwater disposal
 - A8.10—Site access standards during construction
 - A8.11—Footpath protection during construction and Hoardings
 - A8.12—Waste management and disposal
- Section 10—Outdoor lighting
 - A10.3—Controls
- Section 11—Development near rail corridors 7 busy roads
 - A11.1—Development adjacent to a Rail corridor
 - A11.3—Controls
- Part B—Business Zoned Land
 - Section 1—Introduction
 - B1.3—Business Precincts
 - Section 2—Design Considerations
 - B2.2—Height of Buildings
 - B2.3—Floor Space Ratios
 - B2.4—Designing for Pedestrian access within the town
 - Section 4—On-site car parking
 - B4.2—Objectives
 - B4.3—Relevant technical documents
 - B4.5—Requirements for new development of redevelopment
 - B4.8—Disabled parking requirements

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- Section 5—Loading facilities and waste & recovery storage and collection
 - B5.2—Controls
- Section 11—Residential development in Business areas
 - B11.1—Introduction
 - B11.2—Objectives
 - B11.3—Controls
- Section 14—Northern Entrance Precinct
 - B14.2—Referred development outcomes
 - B14.3—Development controls
- Part C—Residential-zoned land
 - Section 3—Medium density development
 - C3.2—Site amalgamation
 - C3.3—Site planning
 - C3.4—Density and site coverage
 - C3.5—Street Presentation
 - C3.6—Dwelling mix
 - C3.7—Building height
 - C3.8—Front setbacks
 - C3.9—Side setbacks
 - C3.10—Rear setbacks
 - C3.11—Dwelling orientation
 - C3.12—Design guidelines
 - C3.13—Private open space
 - C3.14—Landscaping and communal open space
 - C3.15—Privacy
 - C3.16—Materials and colours
 - C3.17—Car parking, garaging and driveways
 - C3.18—Pedestrian access
 - C3.19—Waste collection
 - Section 5—Universal design for adaptable housing
 - C5.1—introduction

The proposed development satisfies the requirements under each of the sections mentioned above. Provided below are comments in relation to certain sections where conditions of consent are recommended or variations considered acceptable.



A4.4—Controls for general development (Flood liable land)

An assessment of Flood Risk was included as part of the submitted Water Cycle Management Study. This identified the site as being predominately located within the Fringe Low Flood Risk Precinct. The 1 in 100 year flood level has been modelled as being at 671.00m within this location. The proposal details that the FFL for the office units will be 672.55m and the residential units at 673.80m. Both uses are well above the modelled flood levels. Additionally, the entrance to the basement carpark is designed to be at 672.20m which is also sufficiently above the flood level to limit entry of waters in a severe flood event.

A6.4—Cut and Fill

The proposal includes the provision of a basement carpark, requiring extensive excavation of the site to be undertaken. The extent of excavations has been minimised to the extent necessary to achieve the required car parking, whilst limiting impacts to surrounding properties. **Conditions 7** and **62** will require that appropriate ground stabilisation works are put in place during construction works to ensure no impacts to adjacent property occurs.

A8.4—Building over two or more allotments

The proposal is located over two adjacent lots. Consolidation of these lots will be required prior to Construction Certificate is issued in accordance with **Condition 79**.

A8.10—Site access standards during construction

The site is located fronting a classified road. Construction works will be required to minimise all impacts to the operation of Bong Bong Street. The construction Management Plan is required to be prepared by **Condition 20** and will detail how traffic movements will be managed throughout demolition, excavation and construction works. No vehicles, equipment or materials will be allowed to be located within the Bong Bong Street road reserve or on the footpath adjacent to the site.

A11.1—Development adjacent to a Rail corridor

The proposal is located on the opposite side of Bong Bong Street from the rail corridor. The proposed excavations for the basement would occur within a distance of 25m from this corridor. Concurrence with the Australian Rail Track Corporation was deemed to not be required as excavations within 25m of the corridor would not be in excess of 2m.

Conditions 36 and **95** have been included within the Notice of Determination to require that dwellings are designed to ensure noise impacts are minimised internal to the buildings.

B4.2—Objectives (on-site car parking)

The proposal includes provision for 20 car spaces, including 3 accessible spaces. These 20 spaces will service the eight (8) residential dwellings and two (2) commercial units, providing 2 spaces for each.

The car parking layout has been reviewed by Council's Development Engineers and is deemed satisfactory subject to the imposition of conditions of consent.

B14.2—Preferred development outcomes (Northern Entrance Precinct)

The proposal satisfies the preferred development outcomes for this Precinct. Development will be a mix of commercial and residential uses. Commercial uses are proposed fronting Bong Bong Street and are of a size to encourage small office type businesses, which generate low traffic volumes. The proposal has been reviewed by Council's Heritage advisors and after extensive consultation has resulted in an outcome deemed to be appropriate for the site's location within the Bowral Heritage Conservation Area. Access to Bong Bong Street has been assessed by both Council's Development Engineers and Roads and Maritime Services to

ensure appropriate measures are in place to ensure movement remains the priority for this key arterial road for Bowral.

C3.13—Private open space

The private open space requirements detailed within this provision have not been met by any of the proposed dwellings. Generally, each dwelling is provided with at least 25m² of Private Open Space. This is considered appropriate for the location of the proposed development and the style of the dwellings. In addition to Private Open Space, areas of communal open space are proposed directly adjacent all private spaces to be utilised by all residents that is clearly separated from any public space.

C3.14—Landscaping and communal open space

The proposed landscaping and communal open space is appropriate for the site. The resultant plantings detailed within the landscape plans will result in additional greenery introduced to the Bong Bong Street frontage when compared to similar developments in the vicinity of the site. Plantings internal to the site are appropriate in respect to the scale of the site.

C3.15—Privacy

The proposed dwellings have been designed to ensure that overlooking and privacy impacts are minimised as much as is possible for a Mixed Use zone. Windows overlooking adjacent residential uses have been minimised, with first floor outlooks generally directed over internal spaces within the development. Overlooking opportunities internal to the site are also limited. The master bedroom of each dwelling has been set back from the rear wall of the ground floor to aid in reducing overlooking into adjacent terrace spaces.

The adjacent Floria apartments are designed to all orientate to the north, with private open space provided for these dwellings in a first floor terrace with a northerly aspect. The rear dwellings within the subject site are designed to provide lines of sight into their respective ground floor private open space. There is some potential for these dwellings to have sight lines from the first floor spaces into the adjacent property. It is expected that these impacts will be minimal with these views to service areas and generally underutilised areas noting their positioning on the south elevation of the adjacent property.

C3.19—Waste Collection

Waste collection is proposed to be undertaken by a private waste collection operator. The waste area is located to the rear of the site, with the service vehicle utilising the access easement along the northern side of the site. **Condition 99** requires that appropriate arrangements regarding the easement be entered into prior to development works being completed.

C5.1—Universal design for adaptable housing

Eight dwellings are proposed within the scheme. Development controls require that for every three dwellings that are proposed, one dwelling shall be constructed to comply with not less than Class C level of Australian Standard 4299 – Adaptable housing. The two rear dwellings have been designed to be able to comply with this requirement. **Condition 39** requires that the standards for a Class C adaptable dwelling be demonstrated for these rear dwellings prior to a Construction Certificate being issued.

Section 4.15 Evaluation

(1) *Matters for consideration—general*

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *any environmental planning instrument, and*

The application has been considered with regard to the relevant provisions of applicable environmental planning instruments (SEPPs and the LEP), as discussed above.

(ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Not applicable.

(iii) *any development control plan, and*

The application has been considered with regard to the relevant provisions of the applicable Bowral Town Plan Development Control Plan, as discussed above.

(iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable.

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Clause 92(b) of the environmental Planning and Assessment Regulation 2000 requires that the provisions of AS2601 be considered when determining an application involving demolition. **Conditions 8 and 44** require that demolition works be undertaken in accordance with the provisions contained within AS 2601.

(v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Context and setting

The subject site forms part of the northern entrance precinct to Bowral. The surrounding area is zoned and used for a mix of commercial, residential and recreational uses. The site has a frontage to the main northern thoroughfare of Bowral and is at the interface of the commercial and residential zone. It is within

convenient walking distance of town centre amenities and is approximately 500 metres from the railway station.

The proposed land use and density is considered to be compatible with its context by providing medium density housing within close proximity of the commercial core of Bowral and significant public transport infrastructure. The proposed height and density of the development is consistent with the applicable planning controls for the site and the multi-dwelling housing building typology demonstrates general compatibility with the desired character of the area as indicated by the Bowral Town Plan DCP.

The proposed development responds to its context through the breaking up of the built form into distinct roof forms, emulating terrace style housing. Traditional materials are proposed to fit within the existing built form character of the area. The development maintains a human scale being two storeys in height. Each dwelling entry directly addresses its street frontage achieving a traditional relationship with the public domain, with the spaces setback to signify their private use. Commercial spaces are located at street level with no setback from the footpath, activating this section of Bong Bong Street further promoting movement along this section on the roadway.

As such, the proposal is determined to be within keeping with the surrounding character of the site.

Access, Transport and Traffic

A Traffic Impact and Parking Assessment forms part of the application prepared by Calibre Consulting. The proposed development comprises 8 residential apartments and 2 commercial units with a floor space of 82m² combined.

Off-Street Car Parking

The proposed development comprises 20 parking spaces, which includes:

13 resident spaces comprising:

- 1 accessible parking space for residents
- 9 standard parking spaces
- 2 visitor spaces
- 1 accessible space for visitors

3 commercial parking spaces comprising:

- 1 designated accessible space
- 2 standard spaces

Car parking provision is in accordance with the minimum rates for car parking on the site outlined in the Bowral Town Plan DCP, with a total of 18 spaces (including 3 accessible spaces) required.

On-Street Car Parking

The site does not have the ability to rely upon on-street parking due to its location on a classified roadway with no provision of parking spaces along its alignment. Informal parking arrangements are on occasion evidenced opposite the proposed development site, with this discouraged by Council. The closest location for on-street parking occur 130m to the south on Bundaroo Street or 80m to the north on Victoria Street. Both of these locations are heavily utilised for car parking during peak periods.



Traffic Impacts

The Traffic Impact and Parking Assessment uses a vehicle trips per hour rate of 0.9 on the AM and 0.85 in the PM for the proposed development. This results in 2.8 trips in and 6.6 trips out during the AM peak period, and 6.2 trips in and 2.4 trips out during the PM peak period. The assessment of the impact of this generation is stated as follows in the Assessment:

“Analysis undertaken of the AM and PM peaks indicates that additional traffic generated by the proposed development would have minimal impact on delays / queues to / from the site. As a result of this, the proposed development is not expected to significantly alter the existing operating conditions of the road network.” (Calibre, page 16).

Parking and Driveway Design

The Traffic Impact and Parking Assessment found that the proposed driveway achieves adequate sight lines to and from Bong Bong Street. The design of the car park is found to be in accordance with AS2890.1 and 6.

Council’s Traffic Engineers undertook a detailed assessment of the entry ramp into the basement garage to ensure that adequate head clearance was achieved and that suitable grades were provided as a departure from the Australian Standard was proposed for this aspect due to site constraints. Following consultation with the applicant a suitable outcome was achieved.

Bong Bong Street

Roads and Maritime Services (RMS) has reviewed the submitted documentation as the site is located on a Classified road and RMS do not object to the application subject to a number of conditions being included within any development consent for the site. The review of the application included extensive negotiations with RMS to reach agreement on satisfactory treatments to the Bong Bong Street road reserve.

The applicant will be required to undertake works within the road reserve to increase the size of the existing raised island located to the north of the site. Works will result in the raised median being extended further south for the full length of the subject sites frontage within the road. This work was required to restrict right in/out movements to the site so that no impedance to traffic flow within the north bound lane of Bong Bong Street occurs.

Further, being a classified road, any requirement to temporarily use the road for construction works will require approval from RMS and for appropriate traffic management systems to be put in place.



Heritage

The site does not contain any heritage listed items and does not adjoin any heritage listed items. However, the site is located within a heritage conservation area requiring careful consideration of the external fabric of the building. Council's Heritage Advisor has been heavily involved in the assessment of this application, requiring a number of amendments to be made to achieve an outcome deemed to be suitable for the site in respect to the surrounding heritage elements of the area and its location on the northern entry into Bowral. A Heritage Impact Statement was also prepared to support the application, with the outcomes of this assessment forming the initial basis of the design proposed.

The resultant amendments to the proposal have altered the façade of the building to reduce its bulk and scale to be consistent with the building located to the north and south of the site to create a consistent aesthetic of colours and building materials whilst maintaining a diversity of building forms consistent with a commercial area within a heritage setting.

Flooding

Flooding is noted as being a significant concern for the community in the surrounding area. The proposal has been designed to be above the modelled flood level of the area, with all habitable spaces to be flood free. The basement has been designed to also be above flood levels for the entry to the garage, with adequate engineering measures employed within the basement to limit impacts from flooding events.

The overall design of the site's stormwater system will account for the increase in impervious areas associated with building works. An appropriately sized underground on-site detention system will be installed as part of construction works to collect all stormwater flows and to ensure that it discharges into Council's drainage system at pre-development levels. This will ensure there is no increase to flood affectation resulting from the development of this site.

Waste

Waste management will be a key consideration for the development of this site. Its location limits the ability of site contractors to utilise the Bong Bong Street road reserve or footpath for construction activities including the storage of materials or waste facilities.

Demolition

The existing buildings on site will be required to be demolished prior to any excavation works commencing on site. Demolition will need to be undertaken in accordance with Australian Standards. Due to the age of buildings on site, it is expected that asbestos containing materials will be encountered. **Conditions 8 and 44** will ensure that appropriate measures are in place to dispose of these materials to appropriately licenced facilities to handle this hazardous waste material.

Excavation

Significant volumes of excavated soils will be generated from the site. Appropriate testing will need to be undertaken of extracted soil prior to disposal if it is to be deemed to be Virgin Extracted Natural Material. If the soil does not meet this standard. It will be required to be disposed of at an appropriately



licenced facility. **Condition 34** requires that a detailed waste management plan be prepared that details the process for testing of soil and disposal processes if found to be contaminated.

Construction

During construction, the following management strategies will be required to be implemented to minimise the volume of waste that ends up in the landfill:

- All fixtures and fittings will be made to measure;
- All materials will be ordered in accordance with a bill of quantities;
- Recycled materials will be utilised wherever possible;
- Measures will be taken to ensure the construction contractor appropriately disposes of waste and where possible recycles materials;
- Sorting of different waste streams on site where possible to maximise reuse and recycling opportunities or the nomination of a contractor with comprehensive waste management abilities so that different waste streams are sorted at their facility to minimise landfill waste; and
- Measures will be taken to ensure the construction contractor is aware of the waste management procedures and adheres to appropriate guidelines.

Ongoing Waste

A Waste Management Plan has been prepared by Tziallas Omeara Architecture Studio as part of the application which addresses the ongoing management of waste during the operational phase of the development to ensure impacts on the local area are minimised. The proposed Waste Management Plan includes private waste collection on site.

Green waste is anticipated to be minimal on the site, with majority of the landscape on site being managed by a private contractor who will be responsible for the removal of any large volumes of green waste which arise from the communal open spaces on the site.

It is considered that the proposed development will not have an adverse impact on the local area arising from waste.

Noise and Vibration

The proposal is sited on Bong Bong Street, the major arterial road servicing Bowral from the north and the site is also located opposite the railway line that forms the main south freight line between Melbourne and Sydney. Noise and Vibration are a key consideration for future residents within the site and appropriate measures should be incorporated into the final design of the dwellings prior to construction to ensure that amenity impacts do not result. **Condition 36** (Discussed above) will require that adequate sound proofing be installed as part of construction to achieve prescribed noise levels within living and sleeping spaces.

External to the development, the future operation of the site is not expected to generate sufficient levels of noise to warrant any specialised treatments.

Safety, Security and Crime Prevention

The development of this site will further aid in the activation of the northern end of the Bowral CBD. The inclusion of 8 dwellings on this site will extend the hours in which residents are active in this area of town, with the current buildings only being occupied during business hours. The site is designed with 6 dwellings directly



addressing the street frontage, providing improved passive surveillance of the public space with direct overlooking from habitable windows within the site. The 2 rear dwellings have been located so as to ensure that passive surveillance opportunities still remain along the access walk to these sites, with the southern dwelling along the front boundary providing views to the front doors of these dwellings. The internal design has taken into account the principle of reducing blind corners and areas for concealment within the site.

(c) *the suitability of the site for the development,*

The proposed development is deemed appropriate for the locality given the site is located within the B4 Mixed Use zone wherein the proposed development is permitted within Council consent.

The proposed development has been carefully designed in order to maximise the use of the available site area for commercial opportunities whilst including a substantial residential component consistent with the planning objectives for the B4 Mixed Use zone. Off street car parking is proposed via basement car parking in order to minimise this component from the architectural merit of the proposed new buildings and to maximise the efficient and orderly use of the site for commercial and residential purposes.

There are no constraints posed by adjacent developments that would prohibit this proposal. There are adequate utilities and services available to the proposed development where necessary. The air quality and microclimate are appropriate for the development, there are no hazardous land uses or activities nearby, and ambient noise levels are suitable for the development.

The site is not subject to natural hazards including slip, mass movement or bushfires other than flooding. How this development has addressed potential flooding, has been addressed within this report. The soil characteristics are appropriate for the development, and there are no critical habitats, or threatened species, populations, ecological communities or habitats on the site. The development will not prejudice future agricultural production and there are no known mineral or extractive resources on the site.

(d) *any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.

(e) *the public interest.*

On balance, the development is not considered contrary to any known federal, state or local government interests, nor any wider community interests.

COMMUNICATION AND CONSULTATION

Pre-lodgement Meeting

The development was not discussed at any formal pre-lodgement meeting with Council officers.



Community Engagement

Neighbour Notification and Advertising / Public Participation

The development application was Neighbour Notified and Advertised for a period of 31 days between 05 October 2016 and 04 November 2016, attracting 20 submissions (19 objections and 1 in support). The issues raised in the submissions are identified and discussed below:

1. Demolition of existing buildings

The majority of submissions received expressed concern at the demolition of the existing buildings contained on site. Comments centred on the contributing factor that the buildings play in the Heritage Conservation Area that overlays the site and that there was a lack of any assessment of this value in the submitted application.

Comment – The consideration of heritage value of the proposed scheme was one of the key focuses throughout the assessment of this application. The applicant commissioned a Heritage Impact Statement to be prepared for the site as part of the submitted documentation. This identified that the removal of these structures was supportable subject to appropriate reporting be undertaken prior to removal and that any new building constructed on this site be in character with the overlaying Heritage Conservation Area. To ensure that this outcome was achieved, the application was reviewed initially by Council's Heritage Advisor who required a number of amendments to the design be made. As the assessment of the application developed, through a number of iterations to the design, the Heritage Advisor remained involved providing additional comment throughout. The resultant building form is the conclusion of this process and is deemed by Council to be a good design result in respect to the surrounding building context.

2. Loss of views from adjacent dwellings

A small number of submissions indicated that views to distant landmarks would be lost from their bedroom and study areas due to the development of the subject site.

Comment – The development of the subject site is proposed to be within all relevant development standards that apply to the site, including height and FSR controls. The impacts to distant views from the private space of adjacent dwellings should only be a consideration for proposed development where a variation to development controls is requested, with this not the case for this application. Of consideration, however, is the impact that the proposal has on views to key landmarks surrounding the site from the public domain. The location of the site means that it is not easily viewed from the public domain, with the main view corridor being from the south towards Mount Gibraltar to the north. The proposal is located within the foreground of this view but will be consistent with surrounding buildings, including the Floria apartments which are located directly behind the site from this viewpoint.

3. Solar access

One submission raised concern about the solar access impacts associated with the proposal. This submission related to a dwelling located within the adjacent Floria apartments located to the north of the site in respect to their south facing windows.

Comment – A review of the proposed developments shadow diagrams indicates that there is no impact from overshadowing of the proposed development on the adjacent Floria apartments located to the north. The shadow diagrams provided show only minimal impacts to the site located to the south of the subject site. The proposal has included an access path along the southern boundary to create a setback from this



boundary, meaning that the majority of the overshadowing impacts are contained within the site.

4. Privacy Impacts

Concern was raised by a number of the residents within the adjacent Floria apartments about overlooking and loss of privacy from the proposed development.

Comment – During Council’s assessment of the application, focus was placed on the interaction of the subject site with the adjacent Floria Apartments. This was in respect to privacy and solar access impacts that resulted from the close relationship that these two sites would have once fully developed. As part of the rework undertaken by the applicant in this regard, two commercial units and a dwelling were removed from the rear portion of the site reducing the development within the rear portion of the site. Further, adjustments to the two remaining dwellings in this portion of the site was undertaken to reorientate windows and terrace spaces to reduce overlooking and privacy impacts. The resultant design sees these two dwellings being orientated to look into their own internal courtyards rather than out over the adjacent properties. Whilst the height and proximity of the terrace space remains, screening is proposed within this area of the site to restrict views to the north into the adjacent Floria apartment complex.

5. Commercial use of site

A number of the submissions received expressed concerns about the viability of the commercial spaces noting their small size and location.

Comment – This aspect is not a consideration in the assessment of a Development Application of this nature. However, during the assessment of the application this issue was raised in discussions with the applicant. They indicated in these discussions that they currently work in a space in close proximity to the site that offers these types of commercial leases and that they were consistently let. They indicated that there is a market demand for these type of spaces that is currently under supplied in the Bowral area.

6. Excessive development

The majority of submissions received voiced concern that the proposal would be an overdevelopment of the site, with 10 dwellings and 4 commercial units proposed.

Comment – Through the assessment of the application and consultation with the applicant, the scale of the development has been significantly reduced. The final proposal seeks approval for 2 commercial units (instead of the 4 initially proposed) and 8 dwellings (instead of the 10 initially included in the scheme). This yield from the development is deemed to be appropriate for the site noting that the scheme is located within the mixed use zone, is well under the FSR and height permissible for the site and does not result in any adverse environmental impacts within and surrounding the site.

7. Increased Traffic

Three submissions detailed concern with the increase to traffic that would result from the proposal, with the increase in the number of commercial units and dwellings on site compared to the existing situation not supportable by the existing road network.

Comment – As discussed above, and contained within the submitted Traffic Impact and Parking Assessment, the proposal will only result in a minor increase to traffic flows in this location. When compared to the carrying capacity of the road, this increase is insignificant. It is noted that significant upgrades are earmarked for Bong

Bong Street and Station Street within the vicinity of the site which will improve traffic flow substantially. In addition, the proposal includes the extension of the existing raised median within the centre of Bong Bong Street to stop right turn in and right turn out movements from both the basement garage and Right of Carriageway in effect improving north bound traffic movements.

8. Construction impacts to adjacent property

Concern was raised by a number of residents of the adjacent Floria apartments about the impacts associated with construction on the site. These concerns centred on noise and dust generation, vehicle movements within and around the site, hours of works and damage to their property.

Comment – Standard conditions of consent have been imposed to control these impacts. The applicant will be required to prepare a Construction Management Plan prior to any works commencing that will detail how all these issues will be addressed. Specifically, this will detail how dust will be controlled and erosion/sediment control achieved, what the hours of works will be and how traffic will be managed in and around the site. How material delivery and waste removal will be managed, damage to adjacent properties as well as council assets will be ensured through the requirement to prepare dilapidation reports pre and post excavation and construction works.

9. Access to site

Access to the site, both from the northern Right of Carriageway and the southern basement ramp, were concerns raised in a number of submissions. These concerns related to pedestrian safety in the vicinity of the site and the appropriateness of the use of Right of Carriageway.

Comment – The initial scheme proposed the main entry to the site to be by the Right of Carriageway located to the north of the site, with the basement garage accessed in this location. The concerns indicated that this concentration of traffic flows directly adjacent the boundary of the Floria apartments would create adverse impacts to residents. The initial discussions with the applicant expressed concerns about this arrangement and the proposal was consequently amended to locate the basement entry to its current arrangement on the southern side of the front elevation. This location for the basement entry has been extensively assessed by both Council and RMS and has been deemed safe and appropriate for the proposal. Of note, sightlines from this location are deemed adequate for safety in respect to vehicle movements along Bong Bong Street as well as for vehicles departing the site in viewing pedestrian movements along the adjacent footpath.

10. Security of Basement Garage

Concern was raised about the security of the basement garage, with a mix of both residential and commercial car spaces. This arrangement would result in resident's car spaces being co-located with customer parking for the two commercial spaces.

Comment – The management process for how the basement car parking space will operate is a consideration of the owner of the property and is not a consideration required by the Consent Authority for a Development Application. It is expected that this aspect of the proposal will be further clarified prior to the issue of a Construction Certificate.



11. Car parking

Concern was raised about a lack of on-site car parking provision, with particular concern about the lack of on-street parking locations adjacent to the site.

Comment – Car parking was initially deficient in the first iteration of the scheme presented to Council. With reduction in the overall yield of the scheme, the proposed parking rates have become compliant. In fact, the ultimate scheme has on over provision of parking spaces as required to the Bowral Town DCP.

12. Heritage Conservation Area

Submissions in a number of instances indicated that the proposed development of the site was not consistent with the stated intent by Council to preserve the heritage value of the Conservation Area. The majority of submissions indicated that the proposed façade design, included colours and materials, did not achieve the heritage character of the surrounding area.

Comment – As discussed elsewhere in this report, the heritage impacts of this proposal have been a key consideration throughout the assessment of the proposal. Council has relied heavily on Council's engaged Heritage Advisor to work with the applicant's architects to achieve the desired design and material treatments for the site to be consistent with the heritage character elements that Council desire to emulate.

13. Utility provision

Adjacent residents raised concern about the adequacy of utility provision in the area. These concerns centred on stormwater drainage and sewerage services to the site.

Comment – As part of Council's Development Engineering review of the proposal, consideration was given to the adequacy of these Council assets to service the site. This review identified that current services are adequate subject to the developer of the site meeting a number of conditions included in the draft Notice of Determination.

14. Lack of Green Space within site and surrounding area

A number of submissions raised concern of the lack of green space proposed within the site as well as within the surrounding areas. Submission called for this site to be purchased by Council and incorporated into the overall green space network of the area.

Comment – Council's Strategic Plans for Bowral do not require additional public open space within this area, instead looking to activate this area through mixed use developments such as the one proposed. The green space proposed is deemed to be adequate for the site. The site is within walking distance to Corbett Gardens and the Cherry Tree Walk, which provide passive recreation. Appropriate landscape treatments have been included within the front façade consistent with the surrounding commercial environment. Landscaping within the rear of the site is adequate for the style of dwellings proposed for private recreational use.

15. Fire risk associated with buildings in close proximity

One submission received raised concern as to the fire risk posed to adjacent buildings by constructing the proposed development in close proximity to existing buildings.

Comment – The fire risk posed is manageable through the appropriate design of the buildings post approval of the development application. The proposed relationship of

buildings within this site is no different to other similar situations in regional and metropolitan areas.

16. Building setbacks

A number of submissions raised concern about the proposed side and rear setbacks for the site. Notably, the rear setback of the back dwellings from the adjacent Floria apartments to the north.

Comment – During Council’s assessment of the application, focus was placed on the interaction of the subject site with the adjacent Floria Apartments. This was in respect to privacy and solar access impacts that resulted from the close relationship that these two site would have once fully developed. As part of the rework undertaken by the applicant in this regard, two commercial units and a dwelling were removed from the rear portion of the site reducing the development within the rear portion of the site. Further, adjustments to the two remaining dwellings in this portion of the site was undertaken to reorientate windows and terrace spaces to reduce overlooking and privacy impacts. The building setbacks weren’t altered to any large degree, with the proposed setbacks deemed to be adequate for a mixed use zone in close proximity to the Bowral CBD.

17. Waste collection

Concern was raised that waste collection was proposed to occur from the kerbside, with residents individually bringing bins out for collection by Council pickup, would result in an unsightly number of bins and significant delays whilst the refuse truck made its pick up.

Comment – This concern was raised with the applicant during the assessment of the application, with Council’s preferred approach to waste management to be managed by a private contractor. The application was amended to include a central waste storage area which was be accessed by a private waste collection vehicle instead of relying on Council’s kerbside pickup. The waste room is proposed to be located at the end of the Right of Carriageway to the north of the site, with the manoeuvring space within this area designed to accommodate this sized vehicle. The waste truck will be able to undertake a three point turn at the rear of the site and access Bong Bong Street on completion in a forward direction.

18. Located in Flood prone area

Concern was raised that the basement garage would be subject to flooding in wet weather requiring it to be pumped out at community expense.

Comment – As discussed previously within this report, Council’s Development Engineers have indicated that adequate measures are in place in respect to flood impacts to ensure that the basement garage for this site will not be adversely impacted by flood events.

Internal Communication and Consultation

Referrals	Advice/Response/Conditions
Accredited Certifier	No objection to proposed development; recommended conditions of consent specify relevant requirements.
Development Engineer	Development engineering referral, including comments from Council Water and Sewer Engineer, Traffic and Transport Engineer and Drainage Engineer, has determined that the application is supportable subject to a range of recommended conditions of consent contained within Attachment 1 .
Contributions Planner	No objection to proposed development; recommended conditions of consent specify relevant requirements including contributions payable.
Tree and Vegetation Officer	No objection to proposed development; recommended conditions of consent specify relevant requirements.
Heritage Advisor	Following extensive negotiation throughout the assessment of the application, Council's Heritage Advisor has determined that the application is supportable subject to a range of recommended conditions of consent contained within Attachment 1 .

External Communication and Consultation

Referrals	Advice/Response/Conditions
Roads and Maritime Services	RMS has provided numerous rounds of comments to achieve the desired outcome in respect of Bong Bong Road. Remaining issues have been incorporated into the recommended condition of consent.
Water NSW	No objection to proposed development; recommended conditions of consent specify relevant requirements.

SUSTAINABILITY ASSESSMENT

• **Environment**

The development's potential environmental impacts are discussed earlier in this report.

• **Social**

There are no social issues in relation to this report.

• **Broader Economic Implications**

There are no broader economic implications in relation to this report.

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- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

RELATIONSHIP TO CORPORATE PLANS

Operational Plan 2018–19: OP181 Assess and certify applications related to development.

COUNCIL BUDGET IMPLICATIONS

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010*, applicable state environmental planning policies, and the Bundanoon Town Plan Development Control Plan.

OPTIONS

The options available to Council are:

Option 1

Determine development application 16/0821 by granting consent, subject to the recommended conditions of consent specified in **Attachment 1**.

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Option 2

Determine development application 16/0821 by refusal, and provide reasons for Council's determination.

Option 1 is the recommended option to this report.

CONCLUSION

Provided that the recommended conditions of consent are complied with, the development is considered satisfactory with respect to the relevant provisions of applicable environmental planning instruments, development control plans and Council policies, and is not expected to have a significant negative impact on the environment or the character and amenity of the locality.

ATTACHMENTS

1. 16/0821 Locality Map & Aerial Image - *circulated under separate cover*
2. 16/0821 Draft Notice of Determination - *circulated under separate cover*
3. 16/0821 Architectural Plans - *circulated under separate cover*

Mark Pepping
Deputy General Manager Corporate, Strategy and Development Services

Friday 5 April 2019

12 OPERATIONS FINANCE AND RISK

12.1 Tender for Trade Services and Minor Works

Reference:	6330/19.2 to 19.6
Report Author:	Coordinator Procurement and Fleet
Authoriser:	Chief Financial Officer
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to present the evaluation of the Request for Tender for the following Trade Services and Minor Works Panel Tenders:

- RFT 6330/19.2 Bulk Materials;
- RFT 6330/19.3 Building & Joinery Services;
- RFT 6330/19.4 Facility Cleaning Services;
- RFT 6330/19.5 Kerb and Gutter & Concreting Services;
- RFT 6330/19.6 Pavement Linemarking Services.

RECOMMENDATION

1. **THAT** in relation to the report concerning Tender for Trade Services and Minor Works - Council adopts the recommendations contained within the Closed Council report – Item 22.1.

OR

2. **THAT** the report concerning the Tender for Trade Services and Minor Works - be considered in Closed Council – Item 22.1. This report is confidential in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

Note: In accordance with Council's Code of Meeting Practice, immediately after a motion to close part of a meeting to the public has been moved and seconded, debate on the motion should be suspended to allow the public to make representations to Council as to why the item should not be considered in Closed Council.

REPORT

BACKGROUND

Council conducted an open tender process to seek appropriately qualified and experienced contractors for five tenders relating to trade services and minor works. The five tenders cover seven different trade services and minor works categories and the intention is to form panel arrangements with the successful tenderers.

Council currently has thirteen panel tenders in place for various trade services and minor works categories. These subject tenders will replace the following contracts:

- Bulk Materials;
- Building & Joinery Services;
- Building Maintenance & Building Cleaning Services;
- Kerb and Gutter & Concreting Services;
- Pavement Linemarking Services;

Tenders were sought for these contracts for the following reasons:

1. As per Council's previous panel tender report, the extension options under these panel arrangements were to be used as a method of phasing in contract renewals so that future panel arrangements do not all require to be tendered at the same time.
2. These contracts were identified by staff as underperforming.

These panel arrangements will support Council's operational areas in carrying out their functions in accordance with Council's Procurement Guidelines. By establishing panel arrangements, Council will have the necessary systems and processes for ensuring contractor compliance, at the same time as ensuring its procurement processes are fair and transparent.

REPORT

Council sought tenders for suitable and qualified contractors to provide a schedule of rates tender for the scope of works. The full scope of works was detailed in the tender documents.

In accordance with the *Local Government (General) Regulation 2005* part 7, section 163(1), Council is required to invite tenders where estimated expenditure is greater than \$150,000 (GST inclusive).

The contract period for 6330/19.2 Bulk Materials will be one (1) year plus a one (1) year extension option (possible total of two (2) years). Future contract extensions will be exercised at Council's discretion and will be based on performance and competitiveness of the panel.

The contract period for all other tenders will be two (2) years plus a 2 x one (1) year extension options (possible total of four (4) years). Future contract extensions will be exercised at Council's discretion and will be based on performance and competitiveness of the panels.



ENCOURAGING LOCAL CONTRACTOR PARTICIPATION

Council's Procurement Policy and Guidelines position on Local Participation is as follows:

"Council's procurement activities are to encourage and support local industry and economic activity within the LGA, where it is efficient to do so, while achieving the Council's overall 'value-for-money' objective".

Council has undertaken the following initiatives as part of this tender process to encourage submissions from locally qualified contractors:

- **Tender Documentation**

The tender documentation was reviewed and appropriately sized to suit market capacity and encourage competition. Council's response schedule documentation remained concise, only asking for relevant information specific to each contract. This was to ensure each respondent had fulfilled all the mandatory tender requirements and also to ensure submissions conformed with the requirements of the tender.

- **Advertising and Promotion**

In addition to ensuring tenders were advertised in accordance with Council's Procurement Guidelines, a separate media release promoting these tenders was published on the 22 January 2019. This was circulated to all local and regional print, electronic and radio media and also appeared on Council's social media networks.

- **Pre-Lodgement Briefing**

A pre-lodgement tender briefing was held on the 31 January 2019 with interested contractors encouraged to attend. The tender briefing covered Council's tendering process and contractor engagement under the panel arrangement. Representatives from Council's relevant operational areas attended to answer any technical questions raised by respondents during the briefing. 16 representatives from various companies attended this session.

LOCAL TENDER PARTICIPATION

The table shown below outlines the local contractor participation in the tender process:

Tender / Category	Total Number	Local Contractors	% Local
6330/19.2 Supply of Bulk Materials	13	4	31%
6330/19.3 Building & Joinery Services - Building	7	2	29%
6330/19.3 Building & Joinery Services - Joinery	5	2	40%
6330/19.4 Facility Cleaning Services	14	2	14%
6330/19.5 Kerb, Gutter & Concreting Services - K&G	6	1	17%
6330/19.5 Kerb, Gutter & Concreting Services -Concrete	6	1	17%
6330/19.6 Pavement Linemarking Services	3	0	0%

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ADVERTISING

The tender advertising period for four out of the five tenders was from the 22 January 2019 to 19 February 2019 (28 days). The tender for 6330/19.2 Bulk Materials closed one week earlier, from the 22 January 2019 to 12 February 2019 (21 days).

The tenders were advertised as follows:

Newspaper / Website	Date Advertised
Newspaper – Sydney Morning Herald	22 January 2019
Newspaper – Southern Highlands News	23 & 30 January 2019
Wingecarribee Shire Council Media Release	22 January 2019
Council's Website	Duration of the advertising period
Council's e-Tendering Website	Duration of the advertising period

TENDERS RECEIVED

Provided in the following tables are a summary of the submissions received for each tender:

RFT 6330/19.2 Bulk Materials

A total of thirteen (13) tender submissions were received.

Company Name	Location	Postcode
Benedict Pty Ltd	Belrose, NSW	2085
Boral Resources (NSW) Pty Ltd	North Ryde, NSW	2113
Cleary Bros (Bombo) Pty Ltd	Port Kembla, NSW	2505
Concrete Recyclers (Group) Pty Ltd	Camelia, NSW	2142
Denrith Pty Ltd	Goulburn, NSW	2580
Gunlake Quarries NSW Pty Ltd	Marulan, NSW	2579
Highland Sand & Gravel	Moss Vale, NSW	2577
Highlands Sand & Soil	Braemar, NSW	2575
Liloch Pty Ltd	Canyonleigh, NSW	2577
Oberon Quarries Pty Ltd	Oberon, NSW	2787
Soilco Pty Ltd	Kembla Grange, NSW	2526
Stefanutti Construction Pty Ltd	Unanderra, NSW	2526
SUEZ Recycling & Recovery Pty Ltd	Rhodes, NSW	2138

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RFT 6330/19.3 Building & Joinery Services

A total of seven (7) tender submissions were received.

Company Name	Location	Postcode
Assett Group Services Pty Ltd	North Parramatta, NSW	2151
Chandolin Construction	Robin Hill, NSW	2795
Crossgrove Pty Ltd	Bowral, NSW	2576
Dezign	Wetherill Park, NSW	2164
Dobsonei Pty Ltd	Burradoo, NSW	2576
Modern Building Solutions	Colebee, NSW	2761
Programmed Facility Management	Unanderra, NSW	2526

RFT 6330/19.4 Facility Cleaning Services:

A total of fourteen (14) tender submissions were received.

Company Name	Location	Postcode
Advanced National Services Pty Ltd	Yatala, QLD	4207
Boab Services Pty Ltd	Albion Park Rail, NSW	2527
Brightfield Management Pty Ltd	Somersby, NSW	2250
Comfort Cleaning Pty Ltd	Moss Vale, NSW	2577
GAVS Group Pty Ltd	Banksmeadow, NSW	2019
Menzies International (Australia) Pty Ltd	Malvern, VIV	3144
Modern Building Solutions	Colebee, NSW	2761
Nahir Cleaning Services	Tahmoor, NSW	2573
Northern Contract Cleaning Pty Ltd	Balmain, NSW	2041
Pacific Cleaning Pty Ltd	Botany, NSW 2019	2019
Pahwa Group of Companies	Guildford,	2161
RD Cleaning Professionals Pty Ltd	Wentworthville, NSW	2145
Shayona Business (NSW) Pty Ltd	Liverpool, NSW	2170
Teilwent Pty Ltd	Young, NSW	2594

RFT 6330/19.5 Kerb, Gutter & Concrete Services

A total of six (6) tender submissions were received.

Company Name	Location	Postcode
BMI Contracting Pty Ltd	Appin, NSW	2560
D Digian Company	Horsley Park, NSW	2175
Flocco Formcrete Structures Pty Ltd	Pheasants Nest, NSW	2574
HYC Concreting Services	Arncliffe, NSW	2205
Planet Civil Pty Ltd	Arncliffe, NSW	2205
South Syd Concrete Pty Ltd	Bowral, NSW	2576

RFT 6330/19.6 Pavement Linemarking Services

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A total of three (3) tender submissions were received.

Company Name	Location	Postcode
Complete Linemarking Services Pty Ltd	Wetherill Park, NSW	2164
Lockton's Traffic Solution	Queanbeyan East, NSW	2620
Wollongong Linemarking Services Pty Ltd	Corrimal, NSW	2518

LATE TENDERS

A total of three (3) tender submissions were received as late (therefore non-conforming):

Tender	Company Name	Postcode
RFT 6330/19.3 Building & Joinery Services	Prestige Building	2575
RFT 6330/16.35 Kerb, Gutter & Concrete	Earth Civil Contracting	2571
RFT 6330/16.26 Pavement Linemarking	Red Squirrel Pty Ltd	2871

TENDER EVALUATION

A Procurement Evaluation Plan was developed which outlined the pre-determined selection criteria, the criteria weightings, and members of the tender evaluation panel.

Each submission was evaluated against the specified criteria by the tender evaluation panel with a scoring system based from 0 to 10 and weighted according to the pre-determined criteria.

MANDATORY SELECTION CRITERIA

The following table represents mandatory criteria applicable to all five tenders:

Criteria
Public Liability Insurance - \$20 million
Products Liability Insurance - \$20 million (only for RFT 6330/19.2 Bulk Materials)
Workers Compensation OR [Self Employed] Personal Accident and Illness Insurance or Personal Income Protection
Motor Vehicle Comprehensive Insurance



IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

The 2018/19 Adopted Budget (including four year forward estimates) includes funding for maintenance activities undertaken by Council's operational areas. Ongoing expenditure relating to these services will be monitored and reviewed in line with adopted budget estimates and as part of future Quarterly Reviews of the Budget.

CONSULTATION

Internal Consultation

Extensive consultation took place between Council's procurement area and operational areas. This consultation included scope, technical requirements and evaluation methodologies.

External Consultation

A pre-lodgement tender briefing was also held on the 31 January 2019. The tender briefing covered Council's tendering process and contractor engagement under each panel arrangement and allowed for questions from respondents to be addressed by Council officers.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

These tenders have been conducted in accordance with Part 7 of the *Local Government (General) Regulation 2005*.

RELATED COUNCIL POLICY

Council's Procurement Guidelines have been used to inform the tender process.

CONCLUSION

The tender evaluation summary and recommendation are documented in the report to Council's Closed Committee.

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ATTACHMENTS

There are no attachments to this report.

12.2 Berrima Road Deviation - Project Update

Reference:	7810/28
Report Author:	Manager Project Delivery
Authoriser:	Deputy General Manager Operations, Finance and Risk
Link to Community	
Strategic Plan:	Work in partnership to ensure a safe road network

PURPOSE

The purpose of this report is to provide Council with an update on the project delivery and funding challenges with respect to the Berrima Road Deviation project.

RECOMMENDATION

1. **THAT Council note the contents of this report.**
2. **THAT Council undertake the necessary works to make the project “shovel ready” for future grant applications. This will include finalising the relocation of existing services, property acquisitions and topsoil and seed the constructed road embankment with an estimated total cost \$4.4M for the revised project scope.**
3. **THAT Council advise the Department of Infrastructure, Regional Development and Cities that due to a significant number of issues Council will not be able to complete the approved works by the 31 March 2020 deadline and will therefore have to let the funding agreement lapse.**

REPORT

BACKGROUND

The required upgrade of the Berrima Rail crossing has been considered for some years as part of the Moss Vale Enterprise Corridor with Council applying for a series of grants from State and Federal Government from 2008 to 2011, all of which were unsuccessful.

The project is intended to divert Berrima Road away from the existing level crossing near Boral Cement Works to a bridge over the train line further east. The existing T-junction intersection at Berrima Road and Taylor Avenue will be replaced with a B-triple truck capacity roundabout and approximately 600m of new road constructed to remove a sharp bend.

In November 2014 Council submitted an application under the National Stronger Regions Fund to the Federal Department of Infrastructure and Regional Development. The application stated a total estimate project cost of \$9.205M in 2015 dollars with Council contributing \$4.603M.

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The application was successful with Council entering into a Funding Agreement in May 2016. Under the funding agreement Council was required to commence construction within 12 months of signing the agreement.

REPORT

The initial project estimate used for the grant application was based on an estimate developed by Quantity Surveyors, Altus Page Kirkland, for works associated with the development of the Moss Vale Enterprise Corridor. The works were estimated in 2010 at approximately \$7.87M.

This Altus Page Kirkland (2010) figure was subsequently escalated at approximately 4.00% per annum to provide the \$9.2M figure in 2014 dollars, which was then used in the 2014 National Stronger Regions Fund grant application.

Project Design

Council engaged Opus International to provide detailed design services for the project in August 2016. The detailed design was intended to be completed by the end of 2016. It is important to note that it is not uncommon for detailed design for large scale infrastructure projects to commence only once project funding has been secured.

Ongoing delays were encountered with the delivery of the project design. Council were provided with a variety of reasons for the delays, but ultimately it became apparent that the resulting delays were due to staffing instability as a result of a takeover of Opus International. Ultimately, WSP took over Opus in early 2018, but in the meantime, the entire project design team had left the organisation.

WSP staff reviewed the Opus International design and identified a number of significant deficiencies in the proposed design. WSP then undertook a full and comprehensive redesign of the project to ensure compliance with the various standards. This work was undertaken at no additional cost to Council but resulted in a further delay in the provision of the full detailed design for the project.

Bulk Earthworks

Once Council officers became aware that the detailed design would not be completed in time to meet the funding deed construction commencement timing, WSP design team were then instructed to develop a bulk earthworks package which would allow work to commence on the project within the timeline required under the grant provisions.

The bulk earthworks contract was competitively tendered and awarded to Stefanutti Constructions Pty Ltd with works commencing in October 2017. Work commenced on the southern road embankment to avoid the northern end of the site which is constrained by existing high voltage electrical services across the site.

The construction of the southern embankment has been completed and the contractor has disestablished the site until it is possible to start work on the northern embankment.

As part of the bulk earthworks project, Council has utilised stockpiled material that was stored at sites on Berrima Road and in Braemar. The project has allowed Council to reuse

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approximately 65,000m³ of material as well as rehabilitating the two spoil sites for potential future uses.

It is estimated that the potential cost of disposal of this volume of material @ \$100/tonne (Council's Resource Recovery Centre disposal fees are currently \$414.60/tonne plus transport for inert waste), represents a potential saving to Council of \$11.7M.

Further, to import and place this volume of quarried material for the road embankments is estimated as \$108/m³, whereas the material from the spoil sites has been tested, transported and placed for \$49/m³. This represents a potential saving of \$3.8M to the project.

In addition, Council intends to utilise an estimated 3,000m³ of spoil material from the Kirkham Road South project as part of the northern embankment construction, which represents a further potential saving of \$1.25M, based on a tendered disposal cost of \$1.34M.

Electrical Relocations

Council has been working closely with a suitably qualified electrical designer to develop plans for the relocation of the high voltage power lines on the northern end of the site.

The development of the designs has been protracted; involving negotiations with Endeavour Energy to determine the scope of works. The energy supply services are critical links to the Cement Works so have been carefully considered by Endeavour Energy.

Incorporating the requirements of Endeavour Energy into the design of the high voltage electrical service relocations has resulted in a significant increase to the cost estimate for the works. The original 2010 estimate for the electrical relocation work was only \$160k to simply relocate the power lines underground, but the latest estimate is \$1.259M including a 30% contingency.

The ongoing delays related to obtaining approvals for the electrical relocations has ultimately resulted in Council not being able to meet the project timeframes under the National Stronger Regions Fund funding agreement. The extensive delays have also significantly affected the project costs with escalation costs for civil infrastructure works estimated at 6.5% to 8.0% per annum.

Once Council obtains the required design approvals, it will then be necessary to tender the relocation works, the contractor must then negotiate an approval for the required power outage from Endeavour Energy before the works can be carried out. The electrical relocation works must be carried out before it is possible to commence the construction of the northern road embankment.

Subject to confirmation by Endeavour Energy, the work to undertake the connections for the relocation works may be limited to the two week shutdown period, which usually occurs around the Christmas/New Year period, to minimise impacts on the Cement Works. This will, in turn, further delay the opportunity for Council to commence the bulk earthworks for the northern embankment, and in turn, further delaying the completion of the project.



Project Budget

The original project budget was prepared by Quantity Surveyors Altus Page Kirkland. The project estimate was developed in relation to works associated with the Moss Vale Enterprise Corridor development and was estimated at approximately \$7.87M. This figure was used in an unsuccessful application to the Federal Government National Stronger Regions Fund in 2011.

This figure was escalated to \$9.2M for the funding application under the National Stronger Regions Fund submitted by Council in November 2014.

Council further engaged engineering design company Parsons Brinkerhoff to prepare an estimate for a concept design of the project in March 2016. This estimate was calculated to be \$7.75M, but excluded the electrical relocations and had a target accuracy of +/- 25%.

Throughout the detailed design work undertaken by Opus International, Council was not made aware of any substantial concerns regarding the available budget for the project; which was estimated at \$9.2M in the original engagement for the design development.

In August 2018, Council became aware of a potential (and substantial) increase in the project estimates. WSP, who had since taken over the design of the project provided Council with a draft estimate based on the completed project tender design. The estimate was prepared by a third party, Macdonald International Engineers, who are approved by RMS to developed estimates for RMS projects.

The designers were requested to undertake a review of the estimate based on the level of funding available to deliver the project (\$9.2M) and to also re-consider the contingency amount which was considered high for a completed design at 22%. The consultants were also requested to investigate options to also further reduce the project estimate by changing the roundabout to a T-intersection to reduce the scale of pavement works for the project.

Council received revised estimates from WSP on 7 December 2018.

The revised estimates for the remaining works were as follows (including 19% contingency):

- \$12.27M for the roundabout; or
- \$11.49M for a T-intersection;

In addition, there are additional costs including:

- Property Costs (estimated) - \$280,000
- Outstanding design fees - \$84,000;
- Fee contingencies - \$35,000;
- Project Management - \$300,000;

Therefore, the total estimate to complete the outstanding works for the project is:

- \$12.97M for the roundabout; or
- \$12.19M for the T-intersection;

Given the revised estimate provided by WSP, if Council were to deliver the project based on the original scope (roundabout option), noting that expenditure to date is \$2.18m, the funding shortfall for the project is estimated as \$5.95M, with a total project cost of \$15.15m.



Two significant factors have contributed to project cost increases; firstly the project scope for the relocation of the high voltage electricity services across the site has significantly been altered. It is apparent that the original estimates were simply based on a rate to put the services underground at an estimated cost of \$160,000 in 2010. But following development of the detailed design for the works in 2017, in consultation with Endeavour Energy, these works are currently estimated at \$1.26M (including 30% contingency), with a reinstatement of overhead high voltage power lines required.

The majority of the remaining additional cost is largely attributable to cost escalation over the ensuing period since the funding application was submitted. Based on a construction cost escalation factor of 6%, a \$9.205M project costing from 2014 would require cost escalation increases to \$13.06M or an additional \$3.85M for the project to be delivered during 2020.

Project Way Forward

Due to ongoing delays in obtaining the necessary design approvals for the relocation of the high voltage power lines, Council is unable to complete the project works to satisfy the timeframes of the funding agreement with the grant programme required to close at the end of June 2020, requiring final works and claims for funding to be submitted by the end of March 2020.

It is therefore recommended that the works on the site are reduced to enable the project to be in a position to be “shovel ready” for any future grant funding opportunity.

It is recommended the Council undertake the following works:

- Negotiate with the relevant property owner in relation to the proposed land swap;
- Complete the property acquisition from the relevant adjacent property owner;
- Complete the service relocations for electrical, Telstra, and Jemena;
- Topsoil and seed the southern embankment to protect it for the future;
- Pay remaining consultants fees;

Based on current estimates these works could be completed for approximately \$2.2M. Current expenditure for the project to date is approximately \$2.2M which would bring the total cost to \$4.4M.

This would leave Council with a “shovel ready” project with land acquisitions complete and external impediments removed to leaving a grassed mound until the future completion of the project can be undertaken and a simpler and shovel ready project to deliver for future grant funding when available.

Managing Future Funding Applications for Infrastructure Projects

The development of this project has highlighted the difficulties for Council to deliver grant funded projects when only high level planning has been used as the basis of a funding application. Significant work has recently been undertaken by Council officers to develop a risk assessment framework in relation to project scoping and budget development for all future projects.

In reality the ability to satisfactorily undertake adequate scoping and budget development for large infrastructure projects, such as Berrima Road, represents a significant cost to Council,

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as it can really only be achieved by undertaking full detailed design in consultation with the various external agencies that may impact the project.

For example, the proposed Moss Vale Bypass will involve collaboration and negotiation with a number of external agencies including;

- Australian Rail Track Corporation;
- APA Group (Gas pipeline);
- Telstra;
- Jemena;
- Endeavour Energy;

In the case of the Berrima Road Deviation project, the design development costs have been in the vicinity of \$500,000. This represents a significant cost to Council for a project that, if a grant application had not been successful, may have remain unfunded for a number of years before a funding opportunity became available.

This will remain challenging for Council, however where the level of risk (financial and operational) is considered too high, Council officers will advise Council of this risk and any mitigating strategies which could be employed to reduce risk (and the associated cost).

Moving forward, Council officers will identify any additional budget funding required for large scale infrastructure projects to ensure that cost escalation is considered as part of the annual budget process. While this will be challenging, it is one of the key contributing factors to the current budget situation for this project.

Council has also made approaches to State Government agencies about the possibility of obtaining funding for design development for significant projects, but this is generally not supported. The Safe & Secure Water Program does provide funding for project designs and Council currently has applications in place for the design of the upgrades of the Moss Vale and Bowral Sewage Treatment Plants.

IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

This report does not require a decision of Council which would have an impact on its Improvement Plan.

Any decision to proceed with the project without the funding secured under the National Stronger Regions Fund would require Council to review its options under its adopted Long Term Financial Plan.

COMMUNICATION AND CONSULTATION

Community Engagement

Council has issued a number community engagement updates in relation to the project via the YourSayWingecarribee website and community updates.

Internal Communication and Consultation

Executive

Project Delivery

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Assets

Infrastructure Services

Chief Financial Officer

External Communication and Consultation

Discussions have been held with:

- The Federal Government funding body;
- Design consultant;
- High voltage electrical design consultant;
- Endeavour Energy
- Boral and Austral (adjoining property owners);

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

Delays in delivering this project may partly-contribute to the lack of activity within the Moss Vale Enterprise Corridor, however there are other more significant factors which are also contributing to this.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

This report outlines the conditions and timeframes of the Funding Agreement which must be adhered to in delivering this project.

COUNCIL BUDGET IMPLICATIONS

Council has allocated \$4.6M from internal cash reserves to provide matched funding for this project.

Based on current estimates, the additional work required to complete the necessary land acquisitions, utility relocations and site finalisation could be completed for approximately \$2.2M. Current expenditure for the project to date is approximately \$2.2M which would bring the total cost to \$4.4M.

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RELATED COUNCIL POLICY

Nil

OPTIONS

The options available to Council are:

Option 1

Abandon the project in its current state and provide the minimal work required to topsoil and seed the constructed road embankment. Estimated total cost \$2.25M.

Option 2

Undertake works to make the project “shovel ready” for future grant applications. This will include finalising the relocation of existing services, property acquisitions and topsoil and seed the constructed road embankment. Estimated total cost \$4.4M.

Option 3

Continue to develop the project to completion at the risk of losing the Federal Government funding for the project. Estimated total (potential) cost \$15.2M.

Option 2 is the recommended option to this report.

CONCLUSION

It is acknowledged that the outcome in relation to this project is not what Council was expecting and whilst there are good and valid reasons for the delays in relation to external approvals, property matters etc. which have been outlined in the report, project scoping and the grant application completed and submitted in 2014 for the project have been found wanting.

The forward commitment to Council is that the organisation has been on a continuous improvement path for project scoping within the organisation, particularly over the past 2 years. There has been and continues to be much greater collaboration between the Assets team (who have project scoping and budget development responsibility) and the various Project delivery areas of Council (infrastructure Services – day labour projects), Water and Sewer Operations and Project Delivery Team (outsourced contracted works).

Project scoping now involves a multiple level sign off with much more robust risk assessment processes that identify and plan for environmental, heritage, planning, regulatory, external agency approval and most importantly the impact of time delays on project costs. Where ever practical council staff will be presenting a capital works programme with a two stage approach, investigation and detailed design in year 1 with a detailed project costing developed, with project delivery in year two or a future year with appropriate cost escalation factors built in. A similar approach is preferred for significant grant applications; however government policy does not currently favour this approach with very few opportunities to receive funding to get projects “shovel ready” prior to a grant application being made.

It is proposed therefore that a different approach is used when future grant opportunities present themselves, particularly with large infrastructure projects in excess of \$1M dollars

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where very limited investigation or design work has been undertaken to inform project estimates.

Experience has shown that even after using professional quantity surveyors project costings are being underestimated, particularly when projects are not “shovel ready”, therefore in future significant contingencies (40% to 50%) will be included where a project is not “shovel ready” if a grant application is to proceed. The impact of external agency requirements for projects will not be possible to accurately assess without detailed designs and appropriate approvals.

This approach whilst more robust may be challenged by funding agencies and will require a considered and defensible response, and may result in a lower success rate for grant projects that are not shovel ready where a smaller contingency is achievable. It is also highlighted that the use of Benefit Cost ratios (BCR) is now a major determining factor in assessment of applications by funding authorities and the inclusion of larger contingencies which detrimentally impact the BCR of projects being considered for funding.

In summary, the following strategies are being utilised going forward to ensure consistent delivery of well scoped, adequately funded fit for purpose projects delivered on time, within budget and to agreed quality:

- (a) Significant improvements around identifying project “risk factors” and ensuring that project scope and budget adequately mitigate those risk factors
- (b) A collaborative project scoping and sign off process involving the assets team and the relevant project delivery team.
- (c) A preference for a two (2) staged approach to significant capital works projects with an investigation and design project to bring projects to a shovel ready status – year (1), followed by a project delivery phase in year (2).

ATTACHMENTS

There are no attachments to this report.



12.3 Proposed Sale - 10 Frankland Street Mittagong

Reference:	PN 556900
Report Author:	Property and Projects Officer
Authoriser:	Deputy General Manager Operations, Finance and Risk
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

PURPOSE

The purpose of this report is to provide Council with an update on the proposed sale of 10 Frankland Street, Mittagong. The Deputy General Manager Operations Finance & Risk will provide a verbal update in Closed Council.

RECOMMENDATION

THAT the report concerning the update to Councillors on the proposed sale of 10 Frankland Street, Mittagong be considered in closed Council. This report is confidential in accordance with section 10A(2) of the Local Government Act, 1993, under clause 10(A)(2)(c) as it contains information that would, if disclosed, confer a commercial advantage on a person with who the council so conducting (or proposes to conduct) business.

NOTE: In accordance with Council's Code of Meeting Practice, immediately after a motion to close part of a meeting to the public has been moved and seconded, Council may allow members of the public to make representations to the meeting, before any part of the meeting to why the item should not be considered in Closed Council.

ATTACHMENTS

There are no attachments to this report.

Barry W Paull
Deputy General Manager Operations, Finance and Risk

Friday 5 April 2019



13 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

13.1 Development Applications Determined from 7 March 2019 to 24 March 2019

Reference: 5302
Report Author: Team Leader Business Support
Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Provide a mixture of housing types that allow residents to meet their housing needs at different stages of their lives and support affordable living

PURPOSE

The purpose of this report is to update Councillors on Development Applications Determined for the period 7 March 2019 to 24 March 2019. It is noted that the reporting period for this month has been reduced in order to make future reporting periods easier to administer.

RECOMMENDATION

THAT the information relating to the lists of Development Applications Determined for the period 7 March 2019 to 24 March 2019 be received and noted.

APPROVED APPLICATIONS BY DATE RANGE Date range: 7 March 2019 to 24 March 2019

	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
1	19/1223.02	20 Balaclava Street Balaclava NSW 2575 Lot 61 DP 1232450	E Mathew, S Saju	Dwelling House	27/02/2019	0	13	13	12/03/2019
2	19/0516.02	16 Kimberley Drive Bowral NSW 2576 Lot 23 DP 749890	I Finlayson, J Nyberg	Section 4.55 Modification (Additional Terrace & Alterations)	15/02/2019	0	23	23	11/03/2019
3	19/1197	18 Carlisle Street Bowral NSW 2576 Lot 79 DP 83524	H Herrmann, A Herrmann	Residential Alterations (Studio)	13/02/2019	0	26	26	12/03/2019
4	19/1242	4 Braeside Drive Bowral NSW 2576 Lot 36 DP 711066	D Yates	Residential Alterations and Additions (Shed)	20/02/2019	0	29	29	22/03/2019

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	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
5	19/0133	11 Birriga Avenue Bundanoon NSW 2578 Lot 6 DP 9429	B Jurcevic	Dwelling House and Detached Studio	25/07/2018	168	61	229	13/03/2019
6	19/0958	17 William Street Bundanoon NSW 2578 Lot 1 DP 8627	V Durrani	Dual Occupancy (Attached)	17/12/2018	0	80	80	08/03/2019
7	19/1134	Durham Farm 200 Durham Road Bundanoon NSW 2578 Lot 46 DP 751289	V Russell, P Asimus	Demolish existing dwelling. Construct new dwelling house	31/01/2019	0	35	35	08/03/2019
8	19/1174	12 Birriga Avenue Bundanoon NSW 2578 Lot 23 DP 9429	DI Spinks	Residential Alterations and Additions (Extension)	08/02/2019	0	35	35	15/03/2019
9	19/1337	11 Bamburgh Place Bundanoon NSW 2578 Lot 6 DP 1102297	P Hogan, F Hogan	Residential Alterations and Additions (Extensions and internal alterations)	13/03/2019	0	7	7	20/03/2019
10	19/0365	34 Elizabeth Street Burradoo NSW 2576 Lot 15 DP 801191	Nativ Holdings Pty Ltd	Subdivision (2 Lots)	04/09/2018	152	31	183	07/03/2019
11	19/0893	1d Hoddle Street Burrawang NSW 2577 Lot 4 DP 734409	M McRae	Subdivision (Boundary Adjustment)	04/12/2018	0	93	93	08/03/2019
12	19/1235	59 Hoddle Street Burrawang NSW 2577 Lot 2 DP 1205025	J Anstey, J Anstey	Dwelling House	20/02/2019	0	31	31	23/03/2019
13	19/1216	6 Geebung Close Colo Vale NSW 2575 Lot 212 DP 1245987	T Brown, K Brown	Residential Alterations and Additions (Shed)	18/02/2019	0	30	30	20/03/2019
14	18/0465	650 Sallys Corner Road Exeter NSW 2579 Lot 6 DP 1179540	Sally's Corner Pty Ltd	Water Storage Facility (Farm Dam)	23/04/2018	186	142	328	19/03/2019
15	19/1024	Rockleigh Road Exeter NSW 2579 Lot 13 DP 1154427	K Stevens, K Payne	Dwelling House	03/01/2019	0	70	70	15/03/2019
16	14/0668.08	Cablesgrey 662 Wombeyan Caves Road High Range NSW 2575 Lot 14 DP 713511	J Richards, L Richards	Section 4.55 Modification (Revise Stormwater Management Plan)	21/11/2018	0	120	120	21/03/2019
17	19/0418	35 Boronia Avenue Hill Top NSW 2575 Lot 21 Sec 4 DP 6221	K Kumar, V Kumar	Dwelling House	12/09/2018	43	140	183	15/03/2019

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	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
18	19/0851	1 Ashley Place Hill Top NSW 2575 Lot 3 DP 778055	A Gow, J Gow	Residential Alterations and Additions (Detached Garage and Carport)	26/11/2018	0	107	107	14/03/2019
19	19/0004	1640 Joadja Road Joadja NSW 2575 Lot 7 DP 858859	A Medway	Dwelling House and garage	02/07/2018	113	148	261	21/03/2019
20	19/0689.03	1771 Kangaloon Road Kangaloon NSW 2576 Lot 22 DP 1229390	C Francis, S O'Neill	Section 4.55 Modification (Reduce dwelling size)	15/03/2019	0	4	4	20/03/2019
21	19/0991	1785 Kangaloon Road Kangaloon NSW 2576 Lot 11 DP 802189	H Vlahakis	Residential Alterations and Additions (Extensions and Swimming Pool)	20/12/2018	0	81	81	11/03/2019
22	17/0561.02	540 Joadja Road Mandemar NSW 2575 Lots 3-4 DP 808296 & Lot 1 DP879474 & Lot 1 DP1177037 (Lot 1 DP 879474 Coal Rights)	I Carter	Section 4.55 Modification (Remove conditions pertaining to Construction Certificate)	11/01/2019	0	68	68	21/03/2019
23	17/0015.01	240 Old Hume Highway Mittagong NSW 2575 Lot 3 Sec 1 DP 111201	I Balchin	Section 4.55 Modification (Remove Conditions 3 & 4 pertaining to Section 138)	15/01/2019	0	65	65	21/03/2019
24	18/0381	RSL Club 148-150 Old Hume Highway Mittagong NSW 2575 Lot 1 DP 1086496 Lot 2 DP 1086496	Mittagong RSL Club	Commercial Alterations and Additions to Mittagong RSL Club	06/04/2018	220	123	343	Council Approved 13/03/2019
25	19/0990.01	Old South Road Mittagong NSW 2575 Part Lot 83 DP 751282 Part Lot 84 DP 751282	M Hughes	Section 4.55 Modification (Amend 88B Instrument to remove building entitlement on proposed Lot 842)	11/03/2019	0	10	10	21/03/2019
26	19/0999	7 Bracken Street Mittagong NSW 2575 Lot 1 DP 869824	M Fox, K Fox	Dual Occupancy (Detached) & Subdivision (2 Lots)	21/12/2018	0	84	84	15/03/2019
27	19/1015	19 Robinson Street Mittagong NSW 2575 Lot 137 DP 1247015	D Turland, S Turland	Dwelling House and Attached Secondary Dwelling	02/01/2019	13	65	78	22/03/2019

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	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
28	19/1250	654 Range Road Mittagong NSW 2575 Lot 3 DP 1236691	A Semple, J Semple-Nolan	Farm Building	21/02/2019	0	28	28	22/03/2019
29	19/1284	1220 Old South Road Mittagong NSW 2575 Lot 1 DP 1006329	P Purnell, S Purnell	Residential Alterations and Additions (Garage)	01/03/2019	0	17	17	18/03/2019
30	16/1014.05	12a Bellevue Avenue Moss Vale NSW 2577 Lot 2 DP 1220383	J Vella, J Vella	Section 4.55 Modification (Additional Tree Removal)	27/02/2019	0	20	20	19/03/2019
31	18/0619.01	597 Argyle Street Moss Vale NSW 2577 Part Lot 1 DP 1075066	J Jarrett, C Jarrett	Section 4.55 Modification (Subdivision Boundary Adjustment)	24/01/2019	0	42	42	07/03/2019
32	19/0642	1 Warrawong Drive Moss Vale NSW 2577 Lot 105 DP 1232222	Ruxley Bay No 3 Pty Ltd	Subdivision (2 Lots), Dual Occupancy (Detached)	24/10/2018	71	70	141	15/03/2019
33	19/0643	14 Torulosa Drive Moss Vale NSW 2577 Lot 142 DP 1232222	Ruxley Bay No 3 Pty Ltd	Dual Occupancy (Detached)	24/10/2018	80	64	144	18/03/2019
34	19/0655	Kilwinning 344 Headlam Road Moss Vale NSW 2577 Lot 2 DP 774529	S Hanrahan, F Hanrahan	Dwelling House and Farm Stay Accommodation	25/10/2018	32	101	133	08/03/2019
35	19/0830	9 Lansdown Place Moss Vale NSW 2577 Lot 21 DP 1102698	Carrabilly Pty Limited	Subdivision (6 Lots)	22/11/2018	62	52	114	18/03/2019
36	19/0967	9 Dengate Crescent Moss Vale NSW 2577 Lot 38 DP 252203	G North, M North	Dwelling House	18/12/2018	9	83	91	21/03/2019
37	19/1118	50 Baker Street Moss Vale NSW 2577 Lot 4023 DP 1242576	S White	Dwelling House	29/01/2019	17	31	48	19/03/2019
38	19/1135	3 Chapman Street Moss Vale NSW 2577 Lot 5 DP 26575	S Ward, J Ward	Residential Alterations and Additions (Internal alterations, Deck and Garage)	01/02/2019	0	36	36	09/03/2019
39	19/0745	2 McGuinness Drive Mount Murray NSW 2577 Lot 2 DP 627558	J Delhaas, C Delhaas	Residential Alterations and Additions (Extensions & Patio)	09/11/2018	52	73	125	15/03/2019

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	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
40	17/1406.04	Whitfield Lane Renwick NSW 2575 Lot 201 DP 1174912	Minister For Community Services & Assistant Minister For Health For Her Most Gracious Majesty Queen Elizabeth II	Section 4.55 Modification (6 month Extension for Deferred Commencement Condition 1 - Registration of 2 Lot Subdivision)	27/02/2019	0	12	12	12/03/2019
41	19/1062	18 Solomon Street Renwick NSW 2575 Lot 1322 DP 1234992	B Patel, I Patel	Dwelling House	16/01/2019	39	15	54	12/03/2019
42	19/1123	54 Challoner Rise Renwick NSW 2575 Lot 1257 DP 1221207	J Boyan, A Boyan	Dwelling House	30/01/2019	27	12	39	11/03/2019
43	19/1129	9 Solomon Street Renwick NSW 2575 Lot 1316 DP 1234992	KI Cook	Dwelling House	31/01/2019	23	11	34	07/03/2019
44	19/1193	39 Challoner Rise Renwick NSW 2575 Lot 1249 DP 1221207	BI Kallus	Dwelling House	12/02/2019	10	17	27	12/03/2019
45	19/1198	37 Maxted Street Renwick NSW 2575 Lot 48 DP 1221206	TA Halliday, KS Halliday	Dwelling House	14/02/2019	0	21	21	07/03/2019
46	19/1218	3 Roty Avenue Renwick NSW 2575 Lot 82 DP 1221206	E Joubert, M Joubert	Dwelling House	18/02/2019	4	19	23	13/03/2019
47	19/1236	42 Green Street Renwick NSW 2575 Lot 1304 DP 1234992	H Yen	Dwelling House	20/02/2019	9	17	26	19/03/2019
48	19/1246	25 George Cutter Avenue Renwick NSW 2575 Lot 1350 DP 1234992	Sampol Pty Ltd	Dwelling House	21/02/2019	5	20	25	19/03/2019
49	19/1287	32 Renwick Drive Renwick NSW 2575 Lot 1023 DP 1163906	Allworth Constructions Pty Limited	Residential Alterations and Additions (Extensions)	01/03/2019	0	7	7	08/03/2019
50	19/1288	30 Renwick Drive Renwick NSW 2575 Lot 1022 DP 1163906	Allworth Constructions Pty Limited	Residential Alterations and (Extensions)	01/03/2019	0	7	7	08/03/2019
51	19/1290	8 Roty Avenue Renwick NSW 2575 Lot 115 DP 1221206	P Velusamy, Y Palanisamy	Dwelling House	01/03/2019	0	20	20	22/03/2019

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	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
52	19/1298	13 Allen Avenue Renwick NSW 2575 Lot 101 DP 1221206	J Loveridge, C Loveridge	Residential Alterations and Additions (Swimming Pool)	04/03/2019	0	14	14	19/03/2019
53	19/1330	8 Solomon Street Renwick NSW 2575 Lot 1327 DP 1234992	J Allan, C Garard	Dwelling House	12/03/2019	0	9	9	22/03/2019
54	16/1365.02	5161 Illawarra Highway Robertson NSW 2577 Lot 2 DP 1019037	T Gardner, M Robinson	Section 4.55 Modification (Relocate studio/shed to eastern side of house)	22/02/2019	0	12	12	07/03/2019
55	18/0423.01	22 Caalong Street Robertson NSW 2577 Lot 1 DP 128039	TE Moran	Section 4.55 Modification (Relocate boundary line)	24/10/2018	115	25	140	Council approved 27/03/2019
56	19/0873	53 Shierlaw Road Robertson NSW 2577 Lot 192 DP 751302 Lot 1 DP 821765	M Holmes	Section 4.55 Modification (Removal of condition to connect to power supply grid)	30/11/2018	0	111	111	21/03/2019
57	19/0904	10b Drapers Road Willow Vale NSW 2575 Lot 3 DP 1247842	J Williams, A Williams	Secondary Dwelling	06/12/2018	11	83	94	11/03/2019
58	17/1068	6 Park Street Wingello NSW 2579 Lot 2 DP 709269	M Leighton-Daly, A Leighton-Daly	Subdivision (9 Lots)	09/08/2017	582	6	588	LEC determined 21/03/2019
59	19/0485	24 Sundown Lane Yerrinbool NSW 2575 Lot 623 DP 878683	G Zerafa, K Zerafa	Shed to store wood shavings for Poultry operation	25/09/2018	154	20	174	19/03/2019
60	19/1149	7 Kent Street Yerrinbool NSW 2575 Lot 2 DP 1234983	L Smith, Le Woods	Dwelling House	04/02/2019	5	30	35	11/03/2019
61	19/1256	101 Sunrise Road Yerrinbool NSW 2575 Lot 65 DP 11780	K Gray	Residential Alterations and Additions (Shed)	22/02/2019	0	25	25	20/03/2019

REFUSED APPLICATIONS

	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
1	19/0711	4a Gordon Road Bowral NSW 2576 Lot 352 DP 1166093	P Hodgson, L Hodgson	Subdivision (2 Lots)	05/11/2018	98	28	126	12/03/2019

Reasons for Refusal:

1. The existing right of carriageway burdening Lot 351 DP1166093 is not sufficiently wide to allow safe vehicular entry and exit to and from the proposed lots. Council is therefore not satisfied by the application or its accompanying information that the development can comply with Note 3 to Table D1.1 of Council's Development Design Specification D1: Geometric Road Design, which specifies:

"The provision of combined driveway/accessways, battleaxe handles and internal driveways will be considered on a case-by-case basis. The road reserve width in access handles serving single battle-axe allotments may be reduced to no less than 6.0m wide."

In addition, Council is not satisfied by the application or its accompanying information that the development can comply with the requirement of clause 3.2.2 of AS/NZS 2890.1:2004 and Council's Standard Drawing SD110, in conjunction, for provision of vehicle passing facilities at least 5.5m wide within the proposed development's access driveway.

Given the above, and having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development unsatisfactory with respect to the following provisions of the Bowral Town Plan Development Control Plan:

- The Urban Function objectives specified at section A2.2.2 (a) and (b):
 - (a) Improvement of traffic and parking management within the town
 - (b) Minimisation of vehicular and pedestrian conflicts
- The Garaging and Driveways control specified at section C2.12.2 (i) that driveways are to be located a minimum of 1.0m from any side boundary.

(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

2. Having regard to section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979, Council considers the development likely to have significant negative impacts in terms of:
Site design (size, shape and design of allotments, easements and roads)
Access, transport and traffic (safe entry and exit of vehicles).

(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

3. Having regard to section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979, Council considers the land unsuitable for the development.

(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

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4. Having regard to section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979, Council considers the development not to be in the public interest.
(S.4.15(1)(a)(b)(c)(d)(e) of the Environmental Planning & Assessment Act 1979)

	Application ID	Primary Property	Owner	Description	Date Lodged	Days Stopped	Assess Days	Total Days	Date Finalised
2	19/0442	2 Warrawong Drive Moss Vale NSW 2577 Lot 137 DP 1232222	M Carroll, R Carroll	Subdivision (2 Lots), Dual Occupancy (Detached)	17/09/2018	0	175	175	12/03/2019

Reasons for Refusal:

1. Having regard to section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979 and clause 1.9A (1) and (2) (a) of Wingecarribee Local Environmental Plan 2010, the development is contrary to the requirement of a Restriction on the Use of Land burdening the land pursuant to section 88B of the Conveyancing Act 1919 that the registered proprietors of the land shall ensure that each dwelling is limited to one storey in height.

[Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979]

2. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development's built height and scale contrary to the residential amenity objective specified at section A2.2.4 (b) of the Moss Vale Town Plan Development Control Plan:
(b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character.

[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]

3. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development's built height and scale contrary to the residential zoned land objective specified at section C1.2 (b) of the Moss Vale Town Plan Development Control plan:
(b) New residential development which is sympathetic with existing streetscapes and neighbourhood character.

[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]

4. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development's built height and scale contrary to the low density housing objectives specified at section C2.2 (a) and (b) of the Moss Vale Town Plan Development Control Plan that all low density residential development shall:
(a) Maintain and improve the amenity and character of residential areas in (locality).
(b) Ensure that development is of a type, scale, height, bulk and character compatible with existing streetscape characteristics.

[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]

5. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development's built height and scale contrary to the building height objective specified by section C2.9.1 (a) of the Moss Vale Town Plan Development Control Plan:
(a) Retention of a low scale domestic residential character (or appropriate alternative depending on locality).

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[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]

6. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development's built height and scale contrary to the objective specified by section C2.11.1 (c) of the Moss Vale Town Plan Development Control Plan, regarding dwellings on corner allotments:
- (c) *The design of both dwellings reflects the scale and density of surrounding development.*

[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]

7. Having regard to section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979, Council considers the development's design unsatisfactory with respect to the garaging and driveways objectives specified by section 2.12.1 (a) and (d) of the Moss Vale Town Plan Development Control Plan:
- (a) *Garages are located to minimise the dominance of garages and driveways in the streetscape.*
- (d) *Driveways shall be designed and located so as to be recessive in the streetscape.*

[Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979]

8. Having regard to section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979, Council considers the development likely to have significant negative impacts with respect to:
- (a) The character and amenity of the locality and streetscape
- (b) The scale (bulk, height, mass) and character of the development and development in the locality
- (c) Facilitation of cumulative effects of similar developments that are contrary to intended or expected built character in the locality.

[Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979]

9. Having regard to section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979, Council considers the land unsuitable for the development, noting:
- (a) Council considers the development's built height and scale incompatible with intended or expected built character in the locality, and
- (b) Council considers the land's topography not conducive to development as proposed without substantial contravention of:
- (i) A Restriction on the Use of Land burdening the land pursuant to section 88B of the Conveyancing Act 1919 specifying that the registered proprietors of the land shall ensure that each dwelling is limited to one storey in height, and
- (ii) Relevant objectives and controls specified by the Moss Vale Town Plan Development Control Plan.

[Section 4.15 (1) (c) of the Environmental Planning and Assessment Act 1979]

10. Having regard to section 4.15 (1) (d) of the Environmental Planning and Assessment Act 1979, Council received submissions by way of objection to the development, on the following valid grounds:
- (a) Contravention of a Restriction on the Use of Land burdening the land pursuant to section 88B of the Conveyancing Act 1919 specifying that the registered proprietors of the land shall ensure that each dwelling is limited to one storey in height
- (b) Excessive built height and scale
- (c) Unsuitability of the land for the development
- (d) Inconsistency with intended or expected built character and amenity in the locality.

[Section 4.15 (1) (d) of the Environmental Planning and Assessment Act 1979]

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11. Having regard to section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979, Council considers there to be no overriding public interest in favour of granting consent for the development.

[Section 4.15 (1) (d) of the Environmental Planning and Assessment Act 1979]

ATTACHMENTS

There are no attachments to this report.



13.2 Development Applications Received from 7 March 2019 to 24 March 2019

Reference: 5302
 Report Author: Team Leader Business Support
 Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Effective and efficient Council service delivery is provided within a framework that puts the customer first

PURPOSE

The purpose of this report is to update Councillors and Development Applications Received in the period of 7 March 2019 to 24 March 2019. It is noted that the reporting period for this month has been reduced in order to make future reporting periods easier to administer.

RECOMMENDATION

THAT the information relating to Development Applications Received from 7 March 2019 to 24 March 2019 be received and noted.

RECEIVED APPLICATIONS BY DATE RANGE Date range: 7 March 2019 to 24 March 2019

	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
1	19/0682.04	38 Merrigang Street Bowral NSW 2576 Lot 8 DP 9661	Merrigang Street Pty Ltd	Section 4.55 Modification (New External Door from Staff Room)	21/03/2019		#PENDING		
2	19/1317	87 Boardman Road Bowral NSW 2576 Lot 18 DP 882935	C Kunz, S Kunz	Residential Alterations and Additions (Extensions)	07/03/2019		#PENDING		
3	19/1319	2 Sir James Fairfax Circuit Bowral NSW 2576 Lot 200 DP 1239600	J Vassallo	Dwelling House	08/03/2019		#PENDING		

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	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
4	19/1335	97 Sir James Fairfax Circuit Bowral NSW 2576 Lot 107 DP 1231974	J Foster, S Foster	Dwelling House	13/03/2019		#PENDING		
5	19/1359	3 Caroline Avenue Bowral NSW 2576 Lot 126 DP 1231974	C Lombard	Dwelling House	19/03/2019		#PENDING		
6	19/1361	3 Rosemary Crescent Bowral NSW 2576 Lot 27 DP 792830	D Longley, V Longley	Residential Alterations and Additions (Carport)	19/03/2019		#PENDING		
7	19/1367	53 Sir James Fairfax Circuit Bowral NSW 2576 Lot 239 DP 1239600	J Whitfield, R Thompson	Dwelling House	21/03/2019		#PENDING		
8	19/1380	26 Sir James Fairfax Circuit Bowral NSW 2576 Lot 434 DP 1248107	A Robinson, E Simpson	Dwelling House	22/03/2019		#PENDING		
9	13/0541.02	7 Hamilton Avenue Bowral NSW 2576 Lot 82 DP 1065886	Rosemary Pty Limited	Section 4.55 Modification (Re-site Secondary Dwelling)	13/03/2019		#PENDING		
10	17/1717.01	72 Greasons Road Bundanoon NSW 2578 Lot 35 DP 1036791	C Rocca, P Rocca	Section 4.55 Modification (Amend conditions pertaining to Access Driveway, Stormwater Drainage System Design and 88B Instrument)	07/03/2019		#PENDING		
11	19/1337	11 Bamburgh Place Bundanoon NSW 2578 Lot 6 DP 1102297	P Hogan, F Hogan	Residential Alterations and Additions (Extensions & Internal Alterations)	13/03/2019		#APPROVED	20/03/2019	

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	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
12	16/1198.09	2 Charlotte Street Burradoo NSW 2576 Lot 811 DP 1176908	Harbison Memorial Retirement Village, Harbison Memorial Retirement Village	Section 4.55 Modification (Amend Building Layout / Staging Sequence of Stage 2 Masterplan)	07/03/2019		#PENDING		✓
13	19/1345	6 Sutherland Park Drive Burradoo NSW 2576 Lot 14 DP 1220167	K Collins, J Collins	Dwelling House, Detached Garage and Swimming Pool	14/03/2019		#PENDING		
14	19/1360	16 Stratford Way Burradoo NSW 2576 Lot 28 DP 1003235	C Allsop	Residential Alterations and Additions (Extensions)	19/03/2019		#PENDING		
15	15/1101.04	443 Old Coowong Road Canyonleigh NSW 2577 Lot 3 DP 1183492	A Hoggan	Section 4.55 Modification (Internal Alterations & Extensions)	11/03/2019		#PENDING		
16	19/1349	9 Elm Street Colo Vale NSW 2575 Lot 4 Sec 17 DP 2944 Lot 17 Sec 17 DP 2944	I Stokes, D Stokes	Dwelling House	15/03/2019		#PENDING		
17	19/1350	2179 Kangaloon Road East Kangaloon NSW 2576 Lot 2 DP 1077400 & Ep 43445	Wildwood Hill Holdings Pty Ltd	Continued Use (Secondary Dwelling)	15/03/2019		#PENDING		
18	19/1322	118 Devon Road Exeter NSW 2579 Lot 2 DP 1244858	KI Morris	Dwelling House	11/03/2019		#PENDING		
19	19/1353	Wombaroo 162 Black Spring Road High Range NSW 2575 Lot 1 DP 1158096	The Outdoor Education Group C/ Charlie Hurrey	Dining Facility (Extend Kitchen)	18/03/2019		#PENDING		
20	19/1329	7 Elizabeth Way Hill Top NSW 2575 Lot 4 DP 712057	Cn Hillier	Farm Building	12/03/2019		#PENDING		

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	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
21	19/1338	50 Colo-Hilltop Road Hill Top NSW 2575 Lot 5 DP 1110074	R Purdon, T Attard	Dwelling House	13/03/2019		#PENDING		
22	19/0689.03	1771 Kangaloon Road Kangaloon NSW 2576 Lot 22 DP 1229390	C Francis, S O'Neill	Section 4.55 Modification (Reduce dwelling size)	15/03/2019		#APPROVED	20/03/2019	
23	19/1354	1721 Kangaloon Road Kangaloon NSW 2576 Lot 22 DP 1067852	G Tollis, A Tollis	Residential Alterations and Additions (Extensions, Internal Alterations)	18/03/2019		#PENDING		
24	19/0990.01	Old South Road Mittagong NSW 2575 Part Lot 83 DP 751282 Part Lot 84 DP 751282	M Hughes	Section 4.55 Modification (Amend 88B Instrument to remove building entitlement on proposed Lot 842)	11/03/2019		#APPROVED	21/03/2019	
25	19/1358	320 Diamond Fields Road Mittagong NSW 2575 Lot 10 DP 872275	Rovalblue Pty Ltd	Dual Occupancy (Detached)	19/03/2019		#PENDING		
26	14/0824.01	Playing Field 51 Church Road Moss Vale NSW 2577 Lot 1 DP 576684	Wingecarribee Shire Council	Section 4.55 Modification (Extension)	14/03/2019		#PENDING		
27	19/1315	6 Torulosa Drive Moss Vale NSW 2577 Lot 113 DP 1232222	J Wood, F Wood	Dwelling House	07/03/2019		#PENDING		
28	19/1320	8 Vale Road Moss Vale NSW 2577 Lot 1 DP 1237886	R E Springett Pty Ltd	Subdivision (Boundary Adjustment)	08/03/2019		#PENDING		
29	19/1323	4 Northcott Place Moss Vale NSW 2577 Lot 174 DP 1095417	Ma Murphy	Residential Alterations and Additions (Shed)	11/03/2019		#PENDING		
30	19/1371	17 Joyce Street Moss Vale NSW 2577 Lot 4050 DP 1242576	M Suro, K Suro	Dwelling House	21/03/2019		#PENDING		

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	Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
31	19/1374	Throsby Manor 1a Throsby Street Moss Vale NSW 2577 Lot 1 DP 617915	Parosobe Pty Ltd	Commercial Alterations and Additions (Extensions)	21/03/2019		#PENDING		
32	19/1378	9 Torulosa Drive Moss Vale NSW 2577 Lot 120 DP 1232222	S Ryan, J Richardson	Residential Alterations and Additions (Shed)	22/03/2019		#PENDING		
33	18/0489.06	71 Mary Street Renwick NSW 2575 Lot 104 DP 1240439	R Thomas	Section 4.55 Modification (Alterations)	11/03/2019		#PENDING		
34	19/1327	58 Challoner Rise Renwick NSW 2575 Lot 1255 DP 1221207	K Ratcliffe, A Ratcliffe	Dwelling House	11/03/2019		#APPROVED	25/03/2019	
35	19/1330	8 Solomon Street Renwick NSW 2575 Lot 1327 DP 1234992	J Allan, C Garard	Dwelling House	12/03/2019		#APPROVED	22/03/2019	
36	19/1341	15 Allen Avenue Renwick NSW 2575 Lot 100 DP 1221206	P Jolly, J Alex	Dwelling House	14/03/2019		#PENDING		
37	19/1351	19 George Cutter Avenue Renwick NSW 2575 Lot 1336 DP 1234992	M Gill	Dwelling House	18/03/2019		#PENDING		
38	19/1356	2 Challoner Rise Renwick NSW 2575 Lot 1 DP 1221206	Manson Family Investments Pty Limited	Dwelling House	18/03/2019		#PENDING		
39	19/1370	26 Maxted Street Renwick NSW 2575 Lot 1216 DP 1221207	R Hill, J Hill	Dwelling House	21/03/2019		#PENDING		
40	19/1379	21 George Cutter Avenue Renwick NSW 2575 Lot 1337 DP 1234992	AC Arnold, G Arnold	Dwelling House	22/03/2019		#PENDING		
41	19/1336	470 Fountaindale Road Robertson NSW 2577 Lot 11 DP 701442	A Alexander	Residential Alterations and Additions (Extensions)	13/03/2019		#PENDING		

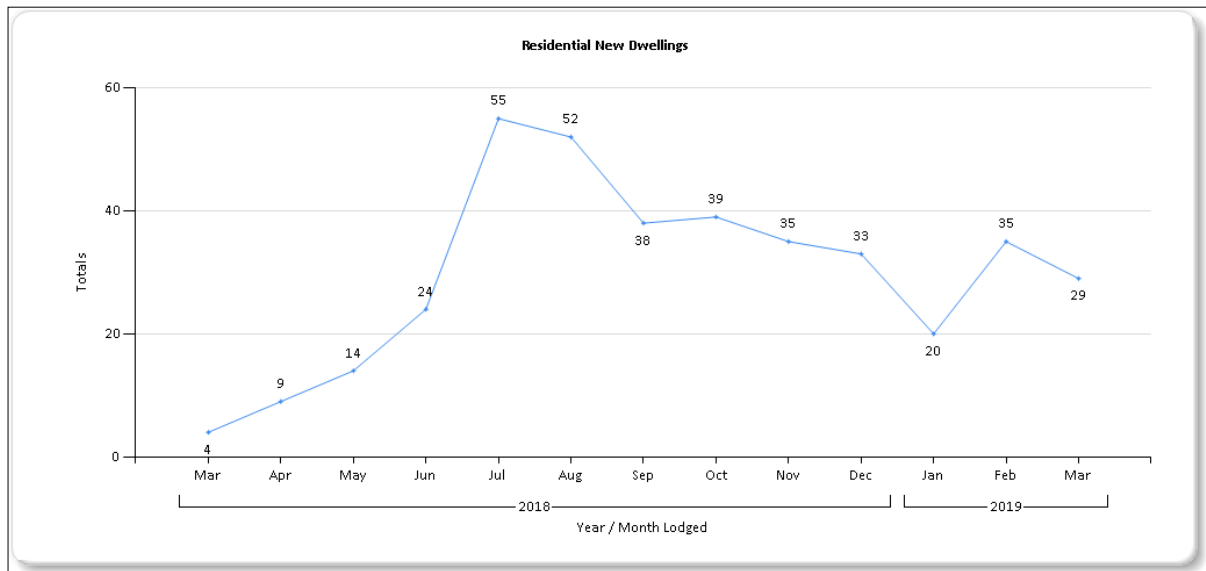
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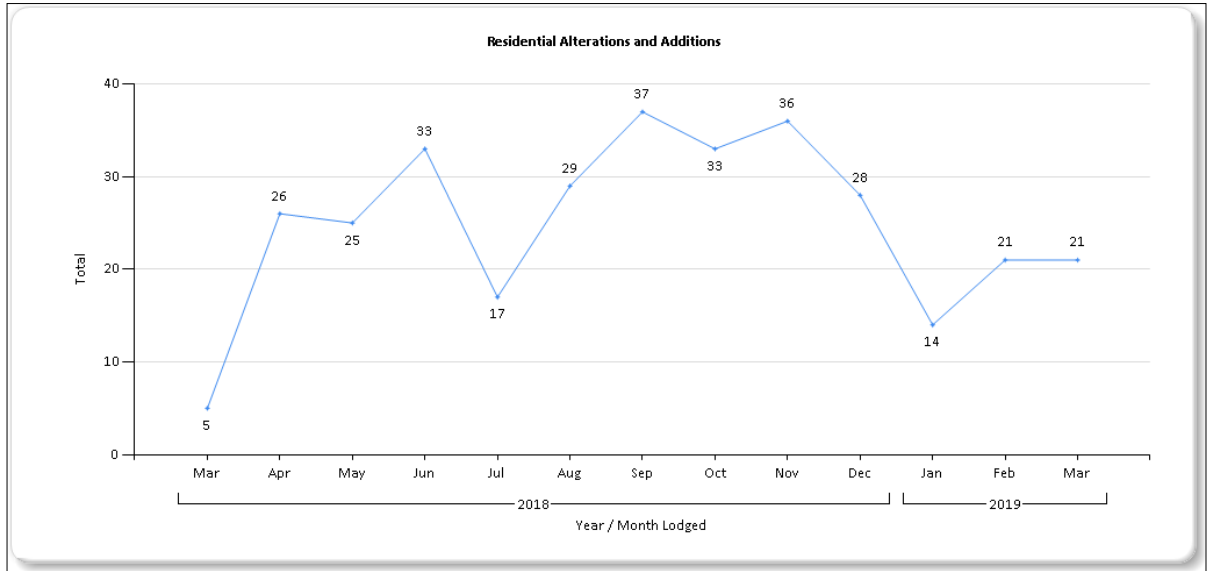
Application ID	Primary Property	Owner	Description	Date Lodged	Council	Decision	Determined Date	Weekly Circular
42 19/1369	4991 Illawarra Highway Robertson NSW 2577 Lot 2 DP 559280	S Dennett, S Dennett	Residential Alterations and Additions (Extensions & Internal Alterations)	21/03/2019		#PENDING		
43 19/1352	991 Belmore Falls Road Wildes Meadow NSW 2577 Lot 8 DP 1049006	F Eggert, C Fearnley	Residential Alterations and Additions (Shed)	18/03/2019		#PENDING		
44 19/1362	Rotherwood 101 Rotherwood Road Wildes Meadow NSW 2577 Lot 2 DP 553705 & Lots 76/250/261 DP 751262	V Donovan	Subdivision (2 Lots)	20/03/2019		#PENDING		
45 19/1366	18 Carlton Street Willow Vale NSW 2575 Lot 15 Sec 16 DP 792	P Jones, C Crestani	Dwelling House and Detached Garage	21/03/2019		#PENDING		



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ATTACHMENTS

There are no attachments to this report.

13.3 DA 07/1004.01 - Section 4.55 Modification - Change Of Use From Transitional Group Home To Permanent Group Home - 15 Parmenter Court, Bowral

Reference: 07/1004.01
Report Author: Development Assessment Planner
Authoriser: Group Manager Planning, Development and Regulatory Services

Link to Community Strategic Plan: Improve opportunities for people to ‘have their say’ and take an active role in decision making processes that affect our Shire through diverse engagement opportunities

PURPOSE

The purpose of this report is to consider an application to modify Development Consent 2007/1004 which seeks to change the approved use of the site from a transitional group home to a permanent group home at Lot 109, DP1043085, 15 Parmenter Court, Bowral. This report is prepared for determination and recommends APPROVAL, with no change to the conditions of consent and a change to the description of the development only (**Attachment 1**).

RECOMMENDATION

THAT the application to modify Development Consent 2007/1004 for a change of use to a permanent group home at Lot 109 DP 1043085, No 15 Parmenter Court, Bowral be APPROVED subject to the attached notice of consent as described in Attachment 1 to the report.

REPORT

BACKGROUND

The site has operated as a “transitional group home” in accordance with Development Consent DA 07/1004 since December 2007.

The original Development consent DA 07/1004 was approved by a resolution of Council at the Ordinary Meeting of 7 November 2007 (Agenda Item SI-vEP2). The consent was granted for a “Respite Centre – community Facility” and the assessment report stated that the proposal fit the definition of a “transitional group home” within State Environmental Planning Policy No.9 – Group Homes (SEPP 9). SEPP 9 has since been repealed.

The proposal included a plan of the dwelling indicating four bedrooms and a study room. The report indicated 4 on-site parking spaces existed.

There were 17 objections lodged in response to the original development application raising concerns with parking, traffic, noise, waste management and antisocial behavior. The property history shows further complaints about the operation of the premises have been

limited to a single neighbour and that these matters are adequately addressed in existing conditions of consent.

REPORT

Subject Site

The site is legally described as Lot 109 DP 1043085 with the street address of 15 Parmenter Court, Bowral.

The site area is approximately 855m². The lot is approximately 21m wide. The existing dwelling has been used since 2007 as a 'transitional group home' (see 'Development History' section of this report).

The existing dwelling is single storey and hard stand parking and vehicle maneuvering area with capacity for four (4) vehicles and accessible paths of travel are located within the front setback.

The site is flat. Landscaping is limited to small conventional shrubs within the site and small street trees in the footpath reserve. Photos of the site are provided below.

Photographs of the site and surrounds are included in Figures 1 to 4.



(Attachment 2 – Location Photographs) Figure 1: Aerial photo of site and surrounds - site outlined red (Source: Nearmaps)



(Attachment 2) Figure 2: Site as viewed from the north west showing accessible entry porch and doorway



(Attachment 2) Figure 3: Site as viewed from the south west showing car parking and hard stand areas within the front setback



(Attachment 2) Figure 4: Neighbouring battle-axe driveway adjacent to the northern boundary of the site and electricity sub station



Locality

The site is located in a low density residential area and surrounded by detached dwellings most of which are single storey. The northern corner of the site is adjacent to an electricity substation and the north east boundary is adjacent to the battle-axe driveway of a neighbouring residential property which enhances separation from the dwelling to the north of the site.

Proposed Development

The application seeks to modify the existing consent to change the description of the use of the site from “transitional group home” to “permanent group home”. The applicant’s Statement of Environmental Effects notes that the modification does not change the site and dwelling in any way and does not change the number of people present on the site at any time.

The modification will not change the manner in which the site is used other than the overnight stays for people with a disability will be of longer duration rather than short term respite stays. The Statement of Environmental Effects notes that the change is appropriate in response to changing trends in the demand for services since the introduction of the NDIS whereby demand for respite care has reduced locally and there has been an increased demand for long term supported accommodation.

Environmental Planning and Assessment Act, 1979

The modification is a minor adjustment to the nature of the use of the site.

The previous approved use fitted the definition of a “*transitional group home*” as described above.

The proposed modified use is to fit the description of a “*permanent group home*” which is defined in the Standard Instrument and in State Environmental Planning Policy (Affordable Rental Housing) 2009 as detailed below.

The character and nature of the use and the intensity of the use of the site are fundamentally the same as that approved with the current consent. The proposal remains substantially the same development quantitatively and qualitatively and meets the requirements for a modification as set out in Section 4.55(1A).

State Environmental Planning Policies (SEPPs)

The application has been considered with regard to the relevant provisions of applicable SEPPs, including:

- SEPP 55—Remediation of Land
- SEPP (Sydney Drinking Water Catchment) 2011
- SEPP (Affordable Rental Housing) 2009



State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. Council is satisfied that the land is not a site of possible contamination and the continued residential use will not result in risks to human health or the environment. Therefore, no further assessment of contamination is required.

State Environmental Planning Policy (Infrastructure) 2007 (“ISEPP”)

ISEPP clause 57 effectively specifies that development for the purpose of health services facilities, which includes medical centres, is permitted with consent in Zone R2 Low Density Residential. Section 3.28 (1) (a) of the Environmental Planning and Assessment Act 1979 specifies that in the event of an inconsistency between a SEPP and a local environmental plan, there is a general presumption that the SEPP prevails. Permissibility under ISEPP’s provisions thus prevails in the event of a contrary provision of Wingecarribee Local Environmental Plan (WLEP) 2010. In short, the development’s medical centre component is permissible on the land with consent even though the purpose of a Medical Centre is a prohibited use under WLEP 2010.

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)

The proposed use as a permanent group home is subject to the provisions of the SEPP ARH.

The aims of the SEPP ARH relevant to this application are as follows:

- “(a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation”*

The proposal is consistent with the aims of the Policy.

In accordance with this SEPP, the Disability Trust fits the definition of a “social housing provider” part (g) of the definition which is as follows:

“social housing provider means any of the following:

- (a) the Department of Human Services,*
- (b) the Land and Housing Corporation,*

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- (c) a registered community housing provider,
- (d) the Aboriginal Housing Office,
- (e) a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998,
- (f) a local government authority that provides affordable housing,
- (g) **a not-for-profit organisation that is a direct provider of rental housing to tenants.**

Division 7 to the SEPP ARH applies to Group Homes. The definition of a “permanent group home” is listed in clause 42 as follows:

“permanent group home means a dwelling:

(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and

(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.”

Clause 42 includes Zone R2 Low Density Residential Zone as a prescribed zone.

Clause 43 to the SEPP ARH permits a permanent group home in Zone R2 only with consent. Clause 43 states as follows:

“43 Development in prescribed zones

(1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out:

(a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or

(b) with consent in any other case.”

Clause 45 allows a group home to be Complying Development subject to specific criteria including that the development does not result in the group home containing more than 10 bedrooms as well as criteria in Schedule 2 and Clauses 1.18(1)(h) and 1.19(1)(b). Complying development cannot be inconsistent with the requirements of any existing consent applying to the land and therefore this modification application supersedes the requirements of clause 45 and Schedule 2.

Clause 46 to the SEPP ARH states as follows:

“46 Determination of development applications

(1) A consent authority must not:

(a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or

(b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.

(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.



This report recommends the modification be approved and therefore Clause 46(1) does not apply. A permanent group home is permissible with consent in accordance with the SEPP ARH Clause 43 and therefore satisfies Clause 46(2). No other conditions of the existing consent DA 2007/1004 are recommended to be changed nor sought to be changed in accordance with this application. Therefore, the matter is consistent with clause 46(1)(b).

As the premises do not currently fit the definition of a “low rental building” the provisions of Part 3 to the SEPP ARH do not apply.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The site is located within the Warragamba Drinking Water Catchment. Compliance with the provisions of the SEPP and associated guidelines is therefore required to consider water quality. The proposed development satisfies the requirements of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 as there are no works and no activities which would have an impact on water quality and quantity in the catchment.

Local Environmental Plans

Wingecarribee Local Environmental Plan 2010 (the LEP)

The provisions of the SEPP ARH (detailed above) prevail over the provisions of WLEP 2010 to the extent that there is any inconsistency.

The application has been considered with regard to the LEP’s relevant provisions, including:

- Clause 2.3—Zone objectives and Land Use Table

Clause 2.3 Zone objectives and land use table

WLEP 2010 applies Zone R2 Low density residential to the site. Group homes are permitted with consent in Zone R2.

The objectives for all development in Zone R2 are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents”*

The proposal is consistent with the first objective by providing housing that is compatible with the low density environment and which meets the needs of the community. The second objective is not applicable.

As there are to be no changes to the built structure on the site the development standards for height of buildings and floor space ratio do not apply to the assessment of the application. Notwithstanding the existing building complies with these development standards.

Clause 7.10 applies to development in Zone R2 and states development consent must not be granted unless essential services are available or that adequate arrangements have been made for essential services. No changes are required to the existing essential services currently connected to the site and these are satisfactory to support the proposed use. Therefore, the proposal is consistent with Clause 7.10.

In summary the proposal is consistent with the relevant requirements of WLEP 2010.



Development Control Plans

Bowral Town Plan Development Control Plan (the DCP)

The original development application was lodged prior to the adopted version of Bowral Township Development Control Plan. The current DCP was originally adopted 10 March 2010 and became effective from 16 June 2010.

In the interest of abundant caution this assessment report provides the following check with respect to the relevant provisions of the DCP. Objectives and controls that are not relevant to the application have been omitted from this assessment checklist.

The application has been considered with regard to the DCP's applicable provisions, including:

- Part A—Provisions applicable to all land
 - Section 2—General objectives
 - A2.2—Objectives of this Plan
 - A2.2.1 – Economic Function
 - A2.2.4 Residential Amenity
 - A2.2.5 – Residential Diversity
 - A2.2.6 – Visual Amenity
 - A2.2.8 – Environmental Sustainability
 - A2.2.9 – Public Domain
 - Section 8 – Safer by Design
- Part C—Provisions applicable to residential zoned land
 - Section 1.2—Overall objectives
 - Section 4 – Other forms of residential development

The proposed development satisfies the requirements under each of the sections mentioned above. Provided below are comments in relation to certain sections where more detailed assessment comments are provided.

The development site is within the mapped land subject to the Bowral DCP. An assessment of the proposal against the relevant sections of the DCP follows:

Part A Section 2.2 Objectives of the Plan

The proposal maintains the economic and urban function of the town centre being a residential use of an existing dwelling that will not impact on the surrounding properties and will generate activities that support the local town socially and economically.

Part A Section 2.2.1 Economic Function

Objectives:

- (a) Enhance the role of Bowral within the overall economic structure of Wingecarribee Shire.*
- (b) Recognise and enhance the role of Bowral as an important retail and service centre providing for the needs of the surrounding community and visitors to the region.*



- (c) Recognise and enhance the role of Bowral as an important employment generator*
- (d) Encourage appropriate site amalgamation and redevelopment to provide a range of business and retail opportunities throughout the town.*

The proposal supports residential use of an existing dwelling as well as supportive employment. Residents and staff are expected to patronise local services and facilities in Bowral to support local economic function.

Part A Section 2.2.2 Urban Function

Objectives:

- (a) Improvement of traffic and parking management within the town.*
- (b) Minimisation of vehicular and pedestrian conflicts*
- (c) Provision of a safe and accessible network of pedestrian links throughout the town.*
- (d) Improvement of connections to public transport facilities*

The Statement of Environmental Effects indicates residents will continue to be provided with transport services in the form of a shared 8-seater passenger vehicle for transport to local services and facilities. This shared transport will make efficient use of existing traffic and parking facilities in the local area and result in no change to the pattern of traffic generation currently characteristic of the site. Adequate space is provided within the front setback of the site for parking and manoeuvring to protect the safe movement of vehicles and pedestrians in adjoining road and footpath reserves.

Part A Section 2.2.4 Residential Amenity

Objectives:

- (a) Conserve the unique characteristics of existing residential areas of the Bowral township*
- (b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character*
- (c) Ensure that residential development includes sustainable principles such as energy and water efficiency, using sustainable building products where ever possible.*
- (d) Contribute to the enhancement of the urban amenity*
- (e) Ensure that there is no light spill from any new development which would adversely impact on surrounding residents, including diminishment of the night sky experience*

The modification will not substantially change the character and nature of the current use which has been previously assessed as compatible with the residential locality. Existing conditions of consent are considered appropriate. There is no substantiated history of use of the site in a manner which has been contrary to the character and amenity of the neighbourhood as recorded in the historic and operational files related to the site. No additional conditions are considered necessary and no conditions can be imposed specific to the use as a group home as determined by clause 46(1)(b) to the SEPP ARH.



Part A Section 2.2.5 Residential Diversity

Objectives:

- (a) Promote a mix of housing types to increase residential choice within the town, particularly around bus and rail connections.*
- (b) Encourage appropriate site amalgamation and redevelopment to provide a range of residential opportunities throughout the town*

Amalgamation is not required. The proposal maintains diversity of residential accommodation in the locality and meets a social need in the community.

Part A Section 2.2.6 Visual Amenity

Objectives:

- (a) Demonstrate an appreciation of the existing streetscape*
- (b) Enhance the character of individual streets within the town through appropriate built form design.*
- (c) Provide areas of private open space which can make a positive contribution to the overall visual amenity of the locality*

There will be no change to the external appearance of the site and therefore no change to the visual amenity. The site is not conspicuous by its use and suitably blends with the streetscape.

Part A Section 3 – Biodiversity

No works are proposed. No detrimental impacts.

Part A Section 4 - Water Management

No works are proposed. No detrimental impacts.

Part A Section 6 – Vegetation Management and Landscaping

No works are proposed. No improvements are necessary. No detrimental impacts.

Part A Section 8 Safer by Design

The site is to be used for residential purposes. Assistance and care staff will be present on site at all times. The presence of trained staff is considered adequate for the ongoing safe management and operation of the premises in a manner consistent with CPTED Principles. The setout of the space, access and paths of travel for people with a disability and sufficient on-site parking are acceptable.

Part C Residential Zoned Land

Part C 1.2 Overall Objectives

- (a) Conservation of the unique characteristics of the residential areas of Bowral, particularly in the case of the identified Conservation Areas*
- (b) New residential development which is sympathetic with existing streetscapes and neighbourhood character*
- (c) New residential development that is energy efficient, provides good amenity, and is safe and attractive*
- (d) Residential development which meets the needs of a range of community and demographic types, including smaller households, older people, people with a disability or people requiring group accommodation*

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The modification will have no impact on heritage items and heritage conservation areas. The proposal is consistent with Objective (d) in particular by providing a form of residential accommodation which meets the special and diverse needs of the community.

Section 4 – Other forms of residential development

Part C 4.1 Introduction

The Introduction notes Group Homes are permissible with consent in Zone R2.

Part C4.2 Objectives

- (i) To provide a range of housing types throughout Bowral*
- (ii) To provide a greater range of affordable housing options*
- (iii) To ensure the location of affordable accommodation is close to transport, shops and services*
- (iv) To integrate new development into established areas by maintaining streetscape and building quality*
- (v) To ensure new development preserves the quality of the built environment for all existing and future residents*
- (vi) To encourage development of a high standard of architectural merit and design*
- (vii) To ensure that new residential development provides appropriate private open space for residents.*

The modification is consistent with the abovementioned objectives in that it will provide a variety of housing which adds to the diversity of residential accommodation in Bowral. The group home is a form of affordable accommodation and whilst it is not within walking distance to the commercial town centre – the daily operation of the premises includes shared transport with an 8-seater passenger vehicle which is considered highly appropriate to the circumstances. The group home is compatible with the residential setting and streetscape and the location of private recreational open space is compatible with the pattern of private open space areas and driveway spaces of surrounding residential properties.

Overall the modification is consistent with the relevant objectives and controls to the Bowral DCP.

Section 4.15 Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:*
 - (i) any environmental planning instrument, and*

The application has been considered with regard to the relevant provisions of applicable environmental planning instruments (SEPPs and the LEP), as discussed above.
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority*



that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Not applicable.

(iii) *any development control plan, and*

The application has been considered with regard to the relevant provisions of the applicable Bowral Town Plan Development Control Plan, as discussed above.

(iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable.

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Not applicable.

(v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Context and setting

The modification results in no change to the context and setting of the site and no qualitative or quantitative change to the nature and intensity of the use of the site.

(c) *the suitability of the site for the development,*

The site is suitable for a permanent group home as discussed above with regard to the provisions of SEPP ARH.

(d) *any submissions made in accordance with this Act or the regulations,*

No submissions have been received.

(e) *the public interest.*

On balance, the development is not considered contrary to any known federal, state or local government interests, nor any wider community interests. It is consistent with the relevant adopted planning provisions and therefore is in the public interest. Existing conditions of consent adequately address issues of neighborhood amenity and compatibility.

IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

Relationship to Operational Plan 2018–19: OP181 Assess and certify applications related to development.

COMMUNICATION AND CONSULTATION

Community Engagement

The development application was Neighbour Notified between 8 June 2018 and 4 July 2018. No submissions were received.

Internal Communication and Consultation

The application did not require internal referral.

External Communication and Consultation

The application did not require referral to any external authority.

Pre-lodgement Meeting

The development was not discussed at any formal pre-lodgement meeting with Council officers.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

The development supports the need for supplying appropriate housing for people in the community with particular needs.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

COUNCIL BUDGET IMPLICATIONS

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;
- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;

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- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time; standard wording
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010*, applicable state environmental planning policies, and the Bowral Town Plan Development Control Plan.

OPTIONS

The options available to Council are:

Option 1

Determine the Modification Application 07/1004.01 to modify Application 07/1004 by granting consent subject to the recommended Conditions of Consent as specified in **Attachment 1**.

Option 2

Refuse the Modification Application 07/1004.01 to modify Application 07/1004 and provide reasons for Council's determination.

Option 1 is the recommended option to this report.

CONCLUSION

Provided that the description of the approved development is modified to a 'permanent group home', the modification is considered satisfactory with respect to the relevant provisions of applicable environmental planning instruments, development control plans and Council policies, and is not expected to have a significant negative impact on the environment or the character and amenity of the locality.

ATTACHMENTS

1. 07/1004.01 Draft Notice of Determination
2. 07/1004.01 Locality Map & Aerial Image



10 April 2019

The Disability Trust
 PO Box 395
 FAIRY MEADOW NSW 2519

NOTICE OF DETERMINATION OF A MODIFICATION TO A DEVELOPMENT APPLICATION

Pursuant to section 80(1) and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979

APPLICATION NO:	07/1004.01
APPLICANT:	The Disability Trust
OWNER:	The Disability Trust
PROPERTY DESCRIPTION:	Lot 109 DP 1043085
PROPERTY ADDRESS:	15 Parmenter Court, BOWRAL NSW 2576
PROPOSED DEVELOPMENT:	Permanent Group Home
DETERMINATION:	Determined by granting of CONSENT.
CONSENT TO OPERATE FROM:	10 April 2019
CONSENT TO LAPSE ON:	10 April 2024 (if use not commenced prior)

Rights of Appeal

If you are dissatisfied with the determination of Council (including determination of a review under section 82A of the *Environmental Planning and Assessment Act 1979*) you may appeal to the New South Wales Land and Environment Court within 6 months after the date on which you receive the notice of determination or review, if your application was lodged after 27th February 2011. Otherwise the appeal period is 12 months after the date in which you receive this notice.

Review of Determination

You have the right to request a review of determination under section 82A of the *Environmental Planning and Assessment Act 1979*, provided that this determination is not made with respect to an integrated development. The determination cannot be reviewed after the time limit for making an appeal to the Land and Environment Court expires or after an appeal to the is disposed of by the court.

Nicholas Wilton
 Group Manager
 Planning, Development and Regulatory
 Services

10 April 2019
 Date of Determination

Civic Centre, Elizabeth St, Moss Vale, NSW 2577. PO Box 141, Moss Vale. t. (02) 4868 0888 f. (02) 4869 1203
 e. mail@wsc.nsw.gov.au ABN 49 546 344 354

www.wsc.nsw.gov.au

Working with you



DA 07/1004.01 Lot 109 DP 1043085

SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

ADMINISTRATION CONDITIONS

1. Development Description

Purpose of Development: **Permanent Group Home** - in accordance with plans prepared by Devine Pioneer, Plan Nos 251076 dated 17 September 2002, 1/6 and 251076 dated 21 June 2002, 2/6 except where amended by any conditions below.

The conditions of the consent and reasons for their imposition follow:

GENERAL - DEVELOPMENT CONSENT CONDITIONS

2. Compliance

The **Permanent Group Home** is to operate in accordance with the approved plans and documentation submitted with the application and subject to the conditions below, to ensure the development is consistent with Council's consent.

3. Inspections by the Principal Certifying Authority - Mandatory Critical Stage Inspections

24 hours prior to the covering of the following works, the principal certifying authority appointed pursuant to Section 81(2)(b) of the *Environmental Planning and Assessment Act 1979* shall be notified that works are ready for inspection. (Note that all inspections below must be booked in and those in **bold type** are mandatory critical stage inspections under the Act and must be carried out by the Principal Certifying Authority. If these inspections are not carried out by the Principal Certifying Authority an Occupation Certificate cannot be issued.)

General compliance with plans and conditions of DA and Construction Certificate (if any) will be checked during each inspection (on-site facilities including builder's toilet, erosion control measures and shoring).

(a) Final inspection prior to use of the building;

The above listed works may not be covered until approval is obtained from the Principal Certifying Authority or his/her duly appointed delegate.

4. Use not to Commence

The approved use is not to commence until the proposed development has been completed in accordance with this consent and any other Council approvals which may be required, and a final inspection carried out and approved by Council staff.

5. Building Works



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No building works or structural alterations are approved by this development application.

6. Number of Residents

The maximum number of residents on the premises at any one time shall not exceed five (5) persons.

7. Advertising Structure

BEFORE ANY ADVERTISING STRUCTURE IS ERECTED / DISPLAYED the written approval of Council shall first be obtained. (The form of such application should be discussed with Council staff before it is lodged.)

Council advises that signage shall be assessed against Development Control Plan No 33.

NOTE: No further Council consent is required for a sign located in shop windows or doors that meets Council's "Exempt Development" criteria in Wingecarribee Local Environmental Plan 1989.

8. Occupation Certificate

The building, or part of the building, shall not be occupied or used until such time as an Occupation Certificate has been issued in respect of it.

9. Fire Safety Issues

(a) A fire blanket, fire extinguisher and for fire/heat detector shall be installed in the kitchen.

(b) Deadlocks requiring an internal key release shall not be provided on guests or external doors.

(c) Smoke Detection and Alarm System - Class 1(b) Dwellings

An approved smoke detection alarm system and evacuation lighting must be installed and maintained in the dwelling in accordance with Part 3.7.2.4 and 3.7.2.5 of the Housing Provisions, Building Code of Australia. For your information the following will satisfy the above: -

(d) A smoke detector with battery backup and wired to mains power where available, must be located on or near the ceiling: -

- (i) in every bedroom; and
- (ii) in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and
- (iii) on each storey.

(b) A system of lighting must be installed to assist evacuation of occupants



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in the event of a fire; and

- (i) be activated by the required smoke alarm; and
- (ii) consist of: -
 - A. a light incorporated within the smoke alarm; or
 - B. the lighting located in the corridor, hallway or area served by the smoke alarm.

END OF CONDITIONS

NOTES / ADVISORY MATTERS:

1. The approval granted by the Council does NOT consider nor negate or vary any private easement, covenant or restriction. The owner is advised to investigate any encumbrance or restriction that may be noted on the title to the land.
2. Review of Determination

In accordance with the provisions of section 8.2 to 8.5 inclusive of the *Environmental Planning and Assessment Act 1979* (as amended) the applicant can request Council to review this determination. The request shall be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.
3. Right of Appeal

Sections 8.7 and 8.10 of the *Environmental Planning and Assessment Act 1979* gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Sections 8.7 and 8.10 do not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.



(Attachment 2) Figure 1: Aerial photo of site and surrounds - site outlined red (Source: Nearmaps)



(Attachment 2) Figure 2: Site as viewed from the north west showing accessible entry porch and doorway



Figure 3: Site as viewed from the south west showing car parking and hard stand areas within the front setback



Figure 4: Neighbouring battle-axe driveway adjacent to the northern boundary of the site and electricity sub station

13.4 Draft Code of Conduct and Procedures for the Administration of the Code of Conduct

Reference: 101/15
Report Author: Group Manager Corporate and Community
Authoriser: Deputy General Manager Corporate, Strategy and Development Services

Link to Community

Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The Model Code of Conduct for Local Councils in NSW and the Procedures for the Administration of the Code of Conduct for Local Councils in NSW were prescribed on 14 December 2018.

This report provides an overview of the key changes to the Model Code and proposes the public exhibition of the Wingecarribee Shire Council draft Code of Conduct and Procedures for the Administration of the Code of Conduct which are based on the Model Code and associated procedures.

RECOMMENDATION

1. **THAT** Council endorse the Draft Code of Conduct and Procedures for the Administration of the Code of Conduct for public exhibition for a period of 28 days noting that submissions will be accepted during the exhibition period and for a further 14 days following closure of the exhibition period.
2. **THAT** a further report be submitted to Council following the public exhibition period.

REPORT

BACKGROUND

The Model Code of Conduct for Local Councils in NSW and the associated procedures for the Administration of the Model Code of Conduct for Local Councils in NSW were prescribed on 14 December 2018. The Model Code of Conduct is prescribed under section 440 of the *Local Government Act 1993* (LGA) and the *Local Government (General) Regulation 2005* (the Regulation).

Councils must adopt the new Model Code of Conduct and Procedures within 6 months of prescription, (14 December 2018 – 14 June 2019). Councils' existing adopted codes of conduct and procedures will remain in force until councils adopt a new code of conduct and procedures, based on the Model Code of Conduct and Procedures prescribed under the LGA and Regulation.

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It should be noted that the 2018 Model Code of Conduct and Procedures only apply from 14 June 2019 or the date they are adopted by each council (whichever is first). They are not retrospective. For any allegations that relate to behaviour or conduct that occurred prior to the new Model Code and Procedures being adopted by council, the previous versions of the Model Code and Procedures apply.

Council may include supplementary provisions in its adopted code of conduct and may also impose more onerous requirements than those prescribed under the Model Code of Conduct. However, councils must not dilute the standards prescribed in the Model Code of Conduct.

The Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW are prescribed under section 440AA of the LGA and Regulation. Under section 440AA, each council is required to adopt procedures for the administration of their adopted code of conduct based on the Model Procedures prescribed under the LGA and Regulation. Councils' adopted procedures may contain provisions that supplement the Model Procedures, but a council's adopted procedure has no effect to the extent that it is inconsistent with the Model Procedures prescribed under the Regulation.

REPORT

Model Code of Conduct

The Model Code of Conduct for Local Councils in NSW prescribes the minimum ethical and behavioural standards all council officials in NSW are required to comply with. In doing so it seeks to:

- prescribe uniform minimum ethical and behavioural standards for all councils in NSW
- provide clear guidance to council officials on the minimum ethical and behavioural standards expected of them as council officials
- provide clear guidance to local communities on the minimum ethical and behavioural standards they can expect of the council officials who serve them
- promote transparency and accountability
- promote community confidence in the integrity of the decisions councils make and the functions they exercise on behalf of their local communities, and
- promote community confidence in the institution of local government.

The Model Code of Conduct has been reviewed every four years to address new and emerging issues and to reflect shifting community standards and expectations. The 2018 version of the Model Code of Conduct is the fourth iteration. Key changes include:

- incorporation of the pecuniary interest provisions previously contained in the LGA and Regulation
- new standards relating to discrimination and harassment, bullying, work health and safety, behaviour at meetings, access to information and maintenance of council records
- new rules governing the acceptance of gifts including mandatory reporting
- new ongoing disclosure requirement for councillors and designated persons requiring disclosure of new interests in returns of interests within three months of becoming aware of them

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- councillors will be required to disclose in their returns of interests whether they are a property developer or a close associate of a property developer.

In addition to the mandatory provisions of the Model Code of Conduct, it is proposed that an additional clause is added in relation to the use of social media. The clause was included in the consultation draft released by the Office of Local Government however it was omitted from the final model code. The following clause has been included in the draft Code of Conduct recommended to Council through this report as it is considered good meeting practice:

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

- a) is offensive, humiliating, threatening or intimidating to other council officials or those that deal with the council*
- b) contains content about the council that is misleading or deceptive*
- c) divulges confidential council information*
- d) breaches the privacy of other council officials or those that deal with council*
- e) contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or*
- f) could be perceived to be an official comment on behalf of the council where you have not been authorised to make such comment;*
- g) shows council staff in the conduct of their duties and/or at staff events without the written consent of the staff member/s and the General Manager*
- h) is intended for staff and councillors only such as internal newsletters, communications and correspondence.*

The Wingecarribee Shire Council draft Code of Conduct has been drafted based on the Model Code of Conduct and includes the proposed supplementary provision above (See **Attachment 1**).

Procedures for the Administration of the Code of Conduct

The 2018 version of the Procedures for the Administration of the Code of Conduct is the second iteration. The first iteration of the Procedures was prescribed in March 2013 in support of amendments to the LGA that required the adoption of procedures for the administration of council's adopted codes of conduct based on a prescribed Model Procedure. Changes have been made to the Procedures to address the following issues:

- the role of the general manager in the receipt and initial management of code of conduct complaints about councillors
- the ability of complainants, who are unhappy with decisions of the council, to misuse councils' codes of conduct by repackaging routine complaints as "code of conduct complaints"
- the lack of recourse against members of the public who inappropriately disclose information about complaints they have made under a council's code of conduct.

No supplementary provisions have been proposed for inclusion in the draft Procedures for the Administration of the Code of Conduct. See **Attachment 2** for The Wingecarribee Shire Council draft Procedures for the Administration of the Code of Conduct

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Public Exhibition

There are no provisions in the LGA relating to the public exhibition of a draft code of conduct or procedures for the administration of the code of conduct. However, it is considered best practice to give public notice of the draft code and associated procedures for a period of 28 days prior to its adoption. Any submissions required during the public exhibition period will be reported to Council.

IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There is no impact on Council's Fit for the Future Improvement Plan

COMMUNICATION AND CONSULTATION

Community Engagement

It is proposed that the draft Code of Conduct and Procedures for the Administration of the Code of Conduct is placed on public exhibition for a period of 28 days.

Internal Communication and Consultation

Councillors

Executive

External Communication and Consultation

Office of Local Government

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Model Code of Conduct for Local Councils in NSW and the associated procedures for the Administration of the Model Code of Conduct for Local Councils in NSW were prescribed on 14 December 2018. All NSW councils must adopt the new Model Code of Conduct and Procedures within 6 months of prescription, i.e. 14 December 2018 – 14 June 2019.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



COUNCIL BUDGET IMPLICATIONS

Nil

RELATED COUNCIL POLICY

Access to Information and Interaction with Staff Policy

Draft Code of Meeting Practice

OPTIONS

The options available to Council are:

Option 1

Council place the draft Code of Conduct and Procedures for the Administration of the Code of Conduct on public exhibition for a period of 28 days, after which time they will be reported to Council for adoption with a summary of any submissions receive.

Option 2

Council adopt the Code of Conduct and Procedures for the Administration of the Code of Conduct without a public exhibition period.

Option 1 is the recommended option to this report.

CONCLUSION

Council is required to adopt a Code of Conduct and Procedures for the Administration of the Code of Conduct by 14 June 2019. It is proposed that the Wingecarribee Shire Council draft Code of Conduct and Procedures for the Administration of the Code of Conduct which are based the Model Code and associated procedures are placed on public exhibition for a period of 28 days.

ATTACHMENTS

1. Draft Code of Conduct
2. Procedures for the Administration of the Code of Conduct



Wingecarribee Shire Council Draft Code of Conduct

For Public Exhibition April 2019

2019



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PART 1 INTRODUCTION

This draft Wingecarribee Shire Council Code of Conduct (draft Code of Conduct) is based on Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) and is made under section 440 of the *Local Government Act 1993* (“LGA”) and the *Local Government (General) Regulation 2005* (“the Regulation”).

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

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

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

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

Supplementary provisions based on best practice proposed for inclusion in the draft Code of Conduct are indicated in by purple font (**purple font**).

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

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

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

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

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

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



PART 2 DEFINITIONS

In this code the following terms have the following meanings:

LGA	the <i>Local Government Act 1993</i>
administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of “council committee”
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
conduct	includes acts and omissions
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 4000 of the LGA

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local planning panel	a local planning panel constituted under the <i>Environmental Planning and Assessment Act 1979</i>
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation
the Regulation	the Local Government (General) Regulation 2005
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to



PART 3 GENERAL CONDUCT OBLIGATIONS

General conduct

- 3.1 You must not conduct yourself in a manner that:
- is likely to bring the council or other council officials into disrepute
 - is contrary to statutory requirements or the council's administrative requirements or policies
 - is improper or unethical
 - is an abuse of power
 - causes, comprises or involves intimidation or verbal abuse
 - involves the misuse of your position to obtain a private benefit
 - constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (*section 439*).

Fairness and equity

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

Harassment and discrimination

- 3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status, infectious disease, carer's responsibilities or political, religious or other affiliation.
- 3.7 For the purposes of this code, "harassment" is any form of behaviour towards a person that:
- is not wanted by the person
 - offends, humiliates or intimidates the person, and
 - creates a hostile environment.

Bullying

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, "bullying behaviour" is any behaviour in which:
- a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons and

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- b) the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive, threatening or intimidating conduct
 - b) belittling or humiliating comments
 - c) spreading malicious rumours
 - d) teasing, practical jokes or 'initiation ceremonies'
 - e) exclusion from work-related events
 - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
 - g) displaying offensive material
 - h) pressure to behave in an inappropriate manner.
- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
 - b) disciplinary action for misconduct
 - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
 - d) directing a worker to perform duties in keeping with their job
 - e) maintaining reasonable workplace goals and standards
 - f) legitimately exercising a regulatory function
 - g) legitimately implementing a council policy or administrative processes.

Work health and safety

- 3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a) take reasonable care for your own health and safety
 - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
 - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety
 - d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
 - e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
 - f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.



Land use planning, development assessment and other regulatory functions

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

Binding caucus votes

- 3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.16 For the purposes of clause 3.15, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.17 Clause 3.15 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.
- 3.18 Clause 3.15 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

Obligations in relation to meetings

- 3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or

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- b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
 - c) deliberately seek to impede the consideration of business at a meeting.



PART 4 PECUNIARY INTERESTSWhat is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
 - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
 - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your “relative” is any of the following:
 - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
 - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

What interests do not have to be disclosed?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- (a) your interest as an elector
 - (b) your interest as a ratepayer or person liable to pay a charge
 - (c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code

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- (d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
- (e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
- (f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
- (g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
- (h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
- (i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
 - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
 - ii) security for damage to footpaths or roads
 - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
- (j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
- (k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,
- (l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
- (m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
- (n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
- (o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.



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

What disclosures must be made by a designated person?

- 4.8 Designated persons include:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the LGA
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person’s duty as a member of staff or delegate and the person’s private interest
- (d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council’s functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member’s duty as a member of the committee and the member’s private interest.

- 4.9 A designated person:

- (a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- (b) must disclose pecuniary interests in accordance with clause 4.10.

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

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

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

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

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

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



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

What disclosures must be made by council advisers?

- 4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.
- 4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

What disclosures must be made by a councillor?

- 4.20 A councillor:
- (a) must prepare and submit written returns of interests in accordance with clause 4.21, and
 - (b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

Disclosure of interests in written returns

- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:
- (a) becoming a councillor or designated person, and
 - (b) 30 June of each year, and
 - (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- (a) they made and lodged a return under that clause in the preceding 3 months, or
 - (b) they have ceased to be a councillor or designated person in the preceding 3 months.

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- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
 - 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.
 - 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
 - 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
 - 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
 - (a) at any time during which the matter is being considered or discussed by the council or committee, or
 - (b) at any time during which the council or committee is voting on any question in relation to the matter.
- 4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.
- 4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
 - (a) a member of, or in the employment of, a specified company or other body, or
 - (b) a partner of, or in the employment of, a specified person.

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

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- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:
- (a) the matter is a proposal relating to:
 - (i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or
 - (ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
 - (b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
 - (c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.
- 4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:
- (a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
 - (b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.
- 4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
 - (b) that it is in the interests of the electors for the area to do so.
- 4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.
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PART 5 NON-PECUNIARY CONFLICTS OF INTEREST

What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
 - a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that

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the council official has a close personal relationship with, or another person living in the same household

- b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
- c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
- d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
- e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
- f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.

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

- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
- b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.

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

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

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

5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from

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

Political donations

- 5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.
- 5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) the major political donor has a matter before council,
- you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.
- 5.17 For the purposes of this Part:
- a) a “reportable political donation” has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*
 - b) “major political donor” has the same meaning as it has in the *Electoral Funding Act 2018*.
- 5.18 Councillors should note that political donations that are not a “reportable political donation”, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.
- 5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

- 5.20 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interest in the matter is permitted to participate in consideration of the matter if:
- a) the matter is a proposal relating to:
 - i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council’s area, or
 - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council’s area, and
 - b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person’s principal place of residence, and
 - c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

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- 5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
 - b) that it is in the interests of the electors for the area to do so.
- 5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business or employment

- 5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.
- 5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.
- 5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.
- 5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.
- 5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:
- a) conflict with their official duties
 - b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted
 - c) require them to work while on council duty
 - d) discredit or disadvantage the council
 - e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with council

- 5.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must

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avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

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



PART 6 PERSONAL BENEFIT

- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.
- 6.2 A reference to a gift or benefit in this Part does not include:
- a) a political donation for the purposes of the *Electoral Funding Act 2018*
 - b) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
 - c) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
 - d) free or subsidised meals, beverages or refreshments of token value provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
 - i) the discussion of official business
 - ii) work-related events such as council-sponsored or community events, training, education sessions or workshops
 - iii) conferences
 - iv) council functions or events
 - v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

- 6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.
- 6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

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

- 6.5 You must not:
- a) seek or accept a bribe or other improper inducement
 - b) seek gifts or benefits of any kind
 - c) accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty
 - d) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9

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- e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
- f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer–supplier relationship with the competition organiser
- g) personally benefit from reward points programs when purchasing on behalf of the council.

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

- a) the nature of the gift or benefit
- b) the estimated monetary value of the gift or benefit
- c) the name of the person who provided the gift or benefit, and
- d) the date on which the gift or benefit was received.

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

Gifts and benefits of token value

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

- a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed \$50
- b) gifts of alcohol that do not exceed a value of \$50
- c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
- d) prizes or awards that do not exceed \$50 in value.

Gifts and benefits of more than token value

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

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

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

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

“Cash-like gifts”

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

Improper and undue influence

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

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



PART 7 RELATIONSHIPS BETWEEN COUNCIL OFFICIALSObligations of councillors and administrators

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
 - b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate
 - c) contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
 - d) contact or issue instructions to any of the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.
- 7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

Obligations of staff

- 7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.
- 7.5 Members of staff of council must:
- a) give their attention to the business of the council while on duty
 - b) ensure that their work is carried out ethically, efficiently, economically and effectively
 - c) carry out reasonable and lawful directions given by any person having authority to give such directions
 - d) give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them
 - e) ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

Inappropriate interactions



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

- a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
- d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
- e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting
- f) councillors and administrators being overbearing or threatening to council staff
- g) council staff being overbearing or threatening to councillors or administrators
- h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
- i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- j) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
- l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.



PART 8 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

- 8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

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

Refusal of access to information

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



Use of certain council information

- 8.9 In regard to information obtained in your capacity as a council official, you must:
- a) subject to clause 8.14, only access council information needed for council business
 - b) not use that council information for private purposes
 - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council
 - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

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

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

- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
- b) protect confidential information
- c) only release confidential information if you have authority to do so
- d) only use confidential information for the purpose for which it is intended to be used
- e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body
- g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

8.12 When dealing with personal information you must comply with:

- a) the *Privacy and Personal Information Protection Act 1998*
- b) the *Health Records and Information Privacy Act 2002*
- c) the Information Protection Principles and Health Privacy Principles
- d) the council's privacy management plan
- e) the Privacy Code of Practice for Local Government

Use of council resources

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

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- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
 - b) the representation of employees with respect to grievances and disputes
 - c) functions associated with the role of the local consultative committee.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a) for the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.

Internet access and social media

- 8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.
- 8.21 You must not use social media to post or share comments, photos, videos, electronic recordings or other information that:
- a) is offensive, humiliating, threatening or intimidating to other council officials or those that deal with the council
 - b) contains content about the council that is misleading or deceptive
 - c) divulges confidential council information
 - d) breaches the privacy of other council officials or those that deal with council
 - e) contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or
 - f) could be perceived to be an official comment on behalf of the council where you have not been authorised to make such comment
 - g) shows council staff in the conduct of their duties and/or at staff events without the written consent of the staff member/s and the General Manager



- h) is intended for staff and councillors only such as internal newsletters, communications and correspondence.

Council record keeping

- 8.22 You must comply with the requirements of the *State Records Act 1998* and the council's records management policy.
- 8.23 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and the council's approved records management policies and practices.
- 8.24 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.
- 8.25 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the *State Records Act 1998*.

Councillor access to council buildings

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



PART 9 MAINTAINING THE INTEGRITY OF THIS CODE

Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to bully, intimidate or harass another council official
 - b) to damage another council official's reputation
 - c) to obtain a political advantage
 - d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
 - e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - f) to avoid disciplinary action under the Procedures
 - g) to take reprisal action against a person for making a complaint alleging a breach of this code
 - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
 - i) to prevent or disrupt the effective administration of this code under the Procedures.

Detrimental action

- 9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.
- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to employment
 - d) dismissal from, or prejudice in, employment
 - e) disciplinary proceedings.

Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.

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- 9.8 You must comply with a practice ruling made by the Office under the Procedures.
- 9.9 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

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

- 9.10 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.
- 9.11 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.
- 9.12 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.13 You must not disclose information about a complaint you have made alleging a breach of this code or a matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.
- 9.14 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act 1994*.

Complaints alleging a breach of this Part

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



**SCHEDULE 1: DISCLOSURES OF INTERESTS AND OTHER MATTERS IN
WRITTEN RETURNS SUBMITTED UNDER CLAUSE 4.21**Part 1: PreliminaryDefinitions

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

address means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

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

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

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

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

interest means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.



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

occupation includes trade, profession and vocation.

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

property includes money.

return date means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

relative includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

travel includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:* A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. *References to interests in real property:* A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.
4. *Gifts, loans etc. from related corporations:* For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.



Part 2: Pecuniary interests to be disclosed in returns

Real property

5. A person making a return under clause 4.21 of this code must disclose:
 - a) the street address of each parcel of real property in which they had an interest on the return date, and
 - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
 - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
 - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
 - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

Gifts

9. A person making a return under clause 4.21 of this code must disclose:
 - a) a description of each gift received in the period since 30 June of the previous financial year, and
 - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
 - a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
 - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
 - c) the donor was a relative of the donee, or
 - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:
 - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
 - b) the dates on which the travel was undertaken, and

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-
- c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
13. A financial or other contribution to any travel need not be disclosed under this clause if it:
- a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
 - b) was made by a relative of the traveller, or
 - c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
 - d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
 - e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
 - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
 - g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
 - b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
 - c) the nature of the interest, or the position held, in each of the corporations, and
 - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
 - b) required to apply its profits or other income in promoting its objects, and
 - c) prohibited from paying any dividend to its members.
17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

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

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

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

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

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

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

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:
- a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
 - b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
 - c) a description of the position held in each of the unions and associations.
22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.



Sources of income

26. A person making a return under clause 4.21 of this code must disclose:
- a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
 - b) each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- a) in relation to income from an occupation of the person:
 - (i) a description of the occupation, and
 - (ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
 - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
 - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
 - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.
29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a) on the return date, and
 - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
 - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and

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- (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
- b) the person was liable to pay the debt to a relative, or
- c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
- d) in the case of a debt arising from the supply of goods or services:
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
- e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

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



SCHEDULE 2: FORM OF WRITTEN RETURN OF INTERESTS SUBMITTED UNDER CLAUSE 4.21

'Disclosures by councillors and designated persons' return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).
2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.
6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

Important information

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

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

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

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

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

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

as at [return date]

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

[councillor's or designated person's signature]
[date]

A. Real Property

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

B. Sources of income

1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June

[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

**13.4 Draft Code of Conduct and Procedures for the
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C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
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D. Contributions to travel

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

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

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

G. Positions in trade unions and professional or business associations

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

H. Debts

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

I. Dispositions of property

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

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

J. Discretionary disclosures



SCHEDULE 3: FORM OF SPECIAL DISCLOSURE OF PECUNIARY INTEREST SUBMITTED UNDER CLAUSE 4.37

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

Important information

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

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

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

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

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

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

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

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

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

to be held on the day of 20 .

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

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

Councillor's signature

Date

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

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

**13.4 Draft Code of Conduct and Procedures for the
Administration of the Code of Conduct**

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



Wingecarribee Shire Council

Draft Procedures for the Administration of the Code of Conduct

For Public Exhibition April 2019

2019

13.4 Draft Code of Conduct and Procedures for the
Administration of the Code of Conduct

ATTACHMENT 2 Procedures for the Administration of the
Code of Conduct



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13.4 Draft Code of Conduct and Procedures for the Administration of the Code of Conduct**ATTACHMENT 2 Procedures for the Administration of the Code of Conduct****PART 1 INTRODUCTION**

These draft Procedures for the Administration of the Code of Conduct (draft procedures) are based on the Procedures for the Administration of the Model Code of Conduct (“the Model Code Procedures”) and are prescribed for the administration of the Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”).

The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* (“the LGA”) and the *Local Government (General) Regulation 2005* (“the Regulation”). Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every council (including county councils) and joint organisation to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

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

Note: References in these procedures to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code Procedures, joint organisations should adapt them to substitute the terms “board” for “council”, “chairperson” for “mayor”, “voting representative” for “councillor” and “executive officer” for “general manager”.

Note: In adopting the Model Code Procedures, county councils should adapt them to substitute the term “chairperson” for “mayor” and “member” for “councillor”.

Note: Parts 6, 7, 8 and 11 of these procedures apply only to the management of code of conduct complaints about councillors (including the mayor) or the general manager.

13.4 Draft Code of Conduct and Procedures for the
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Code of Conduct**PART 2 DEFINITIONS**

In these procedures the following terms have the following meanings:

LGA	the <i>Local Government Act 1993</i>
administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
code of conduct	a code of conduct adopted under section 440 of the LGA
code of conduct complaint	a complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures
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	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee
councillor	any person elected or appointed to civic office, including the mayor, and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
council official	any councillor, member of staff of council, administrator, council committee member, delegate of council and, for the purposes of

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	clause 4.16 of the Model Code of Conduct, council adviser
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
external agency	a state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police
general manager	includes the executive officer of a joint organisation
ICAC	the Independent Commission Against Corruption
joint organisation	a joint organisation established under section 400O of the LGA
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	the Office of Local Government
investigator	a conduct reviewer
the Regulation	the <i>Local Government (General) Regulation 2005</i>
respondent	a person whose conduct is the subject of investigation by a conduct reviewer under these procedures
wholly advisory committee	a council committee that the council has not delegated any functions to

13.4 Draft Code of Conduct and Procedures for the
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Code of Conduct**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 including through a joint organisation or another regional body associated with the councils.
- 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 conduct reviewer, 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
 - ii) law
 - iii) public administration
 - iv) public sector ethics
 - 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 eligible to be a conduct reviewer 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 An incorporated or other entity may be appointed to a council's panel of conduct reviewers where the council is satisfied that all the persons who will be

13.4 Draft Code of Conduct and Procedures for the Administration of the Code of Conduct**ATTACHMENT 2 Procedures for the Administration of the Code of Conduct**

undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

- 3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.10 The council may terminate the panel of conduct reviewers at any time by resolution. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.
- 3.11 When the term of the panel of conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.12 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 if they continue to meet the selection and eligibility criteria for membership of the panel.

The appointment of an internal ombudsman to a panel of conduct reviewers

- 3.13 Despite clause 3.6(d), an employee of a council who is the nominated internal ombudsman of one or more councils may be appointed to a council's panel of conduct reviewers with the Office's consent.
- 3.14 To be appointed to a council's panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.
- 3.15 An internal ombudsman appointed to a council's panel of conduct reviewers may also exercise the functions of the council's complaints coordinator. For the purposes of clause 6.1, an internal ombudsman who is a council's complaints coordinator and has been appointed to the council's panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.
- 3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to a council's panel of conduct reviewers.

The appointment of complaints coordinators

- 3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of the council, the complaints coordinator should be a senior and suitably qualified member of staff.

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- 3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.
- 3.19 The general manager must not undertake the role of complaints coordinator.
- 3.20 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*.
- 3.21 The role of the complaints coordinator is to:
- coordinate the management of complaints made under the council's code of conduct
 - liaise with and provide administrative support to a conduct reviewer
 - liaise with the Office and
 - 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 shows or tends to show conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council's code of conduct if proven.
- 4.2 The following are not "code of conduct complaints" for the purposes of these procedures:
- complaints about the standard or level of service provided by the council or a council official
 - complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official
 - complaints about the policies or procedures of the council
 - complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.3 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 the council's routine complaints management processes.

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When must a code of conduct complaint be made?

- 4.4 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.
- 4.5 A complaint made after 3 months may only be accepted if the general manager or their delegate, or, in the case of a complaint about the general manager, the mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist 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?

- 4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 4.7 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.
- 4.8 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.
- 4.9 The general manager or their delegate, 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.
- 4.10 Notwithstanding clauses 4.6 and 4.7, where the general manager becomes aware of a possible breach of the council's code of conduct, they 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?

- 4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.
- 4.12 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.
- 4.13 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.

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- 4.14 The mayor or their delegate, 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.
- 4.15 Notwithstanding clauses 4.11 and 4.12, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, they 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?Delegation by general managers and mayors of their functions under this Part

- 5.1 A general manager or mayor may delegate their functions under this Part to a member of staff of the council or to a person or persons external to the council other than an external agency. References in this Part to the general manager or mayor are also to be taken to be references to their delegates.

Consideration of complaints by general managers and mayors

- 5.2 In exercising their functions under this Part, general managers and mayors may consider the complaint assessment criteria prescribed under clause 6.31.

What complaints may be declined at the outset?

- 5.3 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where they are satisfied that the complaint:
- is not a code of conduct complaint, or
 - subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
 - is trivial, frivolous, vexatious or not made in good faith, or
 - relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
 - is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

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

- 5.4 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.

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- 5.5 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
 - 5.6 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.
 - 5.7 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
 - 5.8 Code of conduct complaints about members of staff of council must be managed 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.
 - 5.9 Sanctions for breaches of the code of conduct by 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, council advisers and council committee members to be dealt with?

- 5.10 The general manager is responsible for the management of code of conduct complaints about delegates of council and council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.11 The general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.12 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.
- 5.13 Where the general manager decides to take no action in relation to 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 and this shall finalise the consideration of the matter under these procedures.
- 5.14 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 delegates of council or council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation,

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informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

5.15 Where the general manager resolves a code of conduct complaint under clause 5.14 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.

5.16 Sanctions for breaches of the code of conduct by delegates of council and/or council committee members 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 in such a time and form specified by the general manager
- c) prosecution for any breach of the law
- d) removing or restricting the person's delegation
- e) removing the person from membership of the relevant council committee.

5.17 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.16, 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 the council's code of conduct that the alleged conduct is in breach of) must be put to the person who is 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 5.16.

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

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

5.19 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?

5.20 The general manager must refer the following code of conduct complaints about councillors to the Office:

- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
- b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)

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- c) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
 - d) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.21 Where the general manager refers a complaint to the Office under clause 5.20, the general manager must notify the complainant of the referral in writing.
- 5.22 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.
- 5.23 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.24 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 Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.25 Where the general manager resolves a code of conduct complaint under clause 5.24 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.26 The general manager must refer all code of conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the complaints coordinator.

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

- 5.27 The mayor must refer the following code of conduct complaints about the general manager to the Office:
- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
 - b) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
 - c) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.

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- 5.28 Where the mayor refers a complaint to the Office under clause 5.27, the mayor must notify the complainant of the referral in writing.
- 5.29 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.
- 5.30 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.31 Where the mayor considers it to be practicable and appropriate to do so, the mayor may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.32 Where the mayor resolves a code of conduct complaint under clause 5.31 to the mayor's satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.33 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the complaints coordinator.

How are complaints about both the general manager and the mayor to be dealt with?

- 5.34 Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:
- a) delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager where the allegation is not serious, or to a person external to the council, or
 - b) refer the matter to the complaints coordinator under clause 5.26 and clause 5.33.

Referral of code of conduct complaints to external agencies

- 5.35 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.

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- 5.36 The general manager, mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.
- 5.37 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 5.38 Referral of a matter to an external agency shall finalise consideration of the matter under these procedures unless the council is subsequently advised otherwise by the referral agency.

Disclosure of the identity of complainants

- 5.39 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 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.
- 5.40 Clause 5.39 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.41 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.
- 5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.43 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.
- 5.44 Where a complainant councillor makes a request under clause 5.41, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

13.4 Draft Code of Conduct and Procedures for the Administration of the Code of Conduct**ATTACHMENT 2 Procedures for the Administration of the Code of Conduct**Code of conduct complaints made as public interest disclosures

- 5.45 These procedures do not override the provisions of the *Public Interest Disclosures Act 1994*. Code of conduct complaints that are made as public interest disclosures under that Act 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.
- 5.46 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.
- 5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the general manager or the mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994*.

Special complaints management arrangements

- 5.48 The general manager may request in writing that the Office 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.
- 5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if 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.
- 5.50 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.
- 5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these procedures.
- 5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall notify the complaints coordinator in writing of their determination and the reasons for their

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determination. The complaints coordinator must comply with the recommendation of the assessing OLG officer.

5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the general manager, review the arrangement to determine whether it should be renewed or amended.

5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.

PART 6 PRELIMINARY ASSESSMENT OF CODE OF CONDUCT COMPLAINTS ABOUT COUNCILLORS OR THE GENERAL MANAGER BY CONDUCT REVIEWERSReferral of code of conduct complaints about councillors or the general manager to conduct reviewers

6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager that have not been referred to an external agency or declined or resolved by the general manager, mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the 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 Office.

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. Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.

6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:

- a) they have a conflict of interest 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 (other than contracts relating to the exercise of their functions as a conduct reviewer) 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 value that, when aggregated, exceeds \$100,000, or

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- d) at the time of the referral, they or their employer are the council's legal service provider 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 interest 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 5.2 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, including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.
- 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.
- 6.9 Conduct reviewers must comply with these procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.
- 6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:
- a) comply with these procedures in their consideration of the matter, or
 - b) comply with a lawful and reasonable request by the complaints coordinator, or
 - c) exercise their functions in a timely or satisfactory manner.
- 6.11 Where the complaints coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer

- 6.12 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.
- 6.13 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

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- b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
 - 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, a voluntary apology or an undertaking not to repeat the offending behaviour
 - d) to refer the matter to an external agency
 - e) to investigate the matter.
- 6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.
- 6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.
- 6.16 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.
- 6.18 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.
- 6.19 The resolution of a code of conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, 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.
- 6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 6.22 The conduct reviewer may only determine 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

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- b) that the alleged conduct is sufficiently serious to warrant investigation, and
 - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.23 In determining whether a matter is sufficiently serious to warrant investigation, the conduct reviewer is to consider the following:
- a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the council
 - b) the likely impact of the alleged conduct on the reputation of the council and public confidence in it
 - c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence
 - d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.
- 6.24 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 and notify the complaints coordinator in writing of the outcome of their assessment.
- 6.25 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

- 6.26 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.
- 6.27 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under clause 6.13(c).
- 6.28 The general manager or mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.
- 6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), 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.
- 6.30 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), 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.

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Code of Conduct**Complaints assessment criteria

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

- a) whether the complaint is a code of conduct complaint for the purpose of these procedures
- b) whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council's code of conduct
- c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
- d) whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code of conduct
- e) whether the complaint raises issues that would be more appropriately dealt with by an external agency
- f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of
- g) 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, a voluntary apology or an undertaking not to repeat the offending behaviour
- h) whether the issue/s giving rise to the complaint have previously been addressed or resolved
- i) any previous proven breaches of the council's code of conduct
- j) whether the conduct complained of forms part of an ongoing pattern of behaviour
- k) whether there were mitigating circumstances giving rise to the conduct complained of
- l) the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23)
- m) the significance of the conduct or the impact of the conduct for the council
- n) how much time has passed since the alleged conduct occurred
- o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

**PART 7 INVESTIGATIONS OF CODE OF CONDUCT COMPLAINTS ABOUT
COUNCILLORS OR THE GENERAL MANAGER**What matters may a conduct reviewer investigate?

- 7.1 A conduct reviewer (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.
- 7.2 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

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writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.

- 7.3 The general manager or the mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

- 7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:
- a) disclose the substance of the allegations against the respondent, 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) advise the respondent of the requirement to maintain confidentiality, and
 - e) invite the respondent to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice, and
 - f) provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 7.5 The respondent may, within 7 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 respondent to identify the substance of the allegation against them.
- 7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.
- 7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within at least 14 days or such other period specified by the investigator in the amended notice.
- 7.8 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 complainant, the complaints coordinator and 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, advise them of the requirement to maintain confidentiality, and
 - c) invite the complainant to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice.

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Written and oral submissions

- 7.9 Where the respondent 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.
- 7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 7.11 Prior to preparing a draft report, the investigator must give the respondent an opportunity to address the investigator on the matter being investigated. The respondent may do so in person or by telephone or other electronic means.
- 7.12 Where the respondent 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 respondent.
- 7.13 Where the respondent accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the respondent only. They must not speak on behalf of the respondent or otherwise interfere with or disrupt proceedings.
- 7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

- 7.15 Investigations are to be undertaken without undue delay.
- 7.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 7.18 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.
- 7.19 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.

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

- 7.20 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, a voluntary apology or an undertaking not to repeat the offending behaviour, 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, a voluntary apology or an undertaking not to repeat the offending behaviour, or
 - c) refer the matter to an external agency.
- 7.21 Where an investigator determines to exercise any of the options under clause 7.20 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.
- 7.22 The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the respondent, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.
- 7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these procedures.
- 7.25 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 7.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

- 7.26 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.
- 7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within at least 14 days or such other period specified by the investigator.

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- 7.28 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 at least 14 days or such other period specified by the investigator.
- 7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 7.31 Where the respondent 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.
- 7.32 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

- 7.33 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 7.23.
- 7.34 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.
- 7.35 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.
- 7.36 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, practices or procedures
 - b) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
 - c) that the respondent be counselled for their conduct

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- d) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative
- e) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the recommendation
- f) that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
- g) that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the council meeting at which the matter is considered
- h) in the case of a breach by the general manager, that action be taken under the general manager's contract
- i) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA
- j) 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 LGA, and
 - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.37 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, practices or procedures
- b) that a person or persons undertake any training or other education.

7.38 In making a recommendation under clause 7.36, 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 respondent has remedied or rectified their conduct
- d) whether the respondent has expressed contrition
- e) whether there were any mitigating circumstances
- f) the age, physical or mental health or special infirmity of the respondent
- g) whether the breach is technical or trivial only
- h) any previous proven breaches
- i) whether the breach forms part of an ongoing pattern of behaviour
- j) the degree of reckless intention or negligence of the respondent
- 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 in general 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 disciplinary action as opposed to taking no action or taking informal action
- p) what action or remedy would be in the public interest.

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- 7.39 Where the investigator proposes to make a recommendation under clause 7.36(j), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.
- 7.40 At a minimum, the investigator's final report must contain the following information:
- a) a description of the allegations against the respondent
 - 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 matter warranted investigation (having regard to the criteria specified in clause 6.23)
 - d) a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means
 - e) a description of any attempts made to resolve the matter by use of alternative means
 - f) the steps taken to investigate the matter
 - g) the facts of the matter
 - h) the investigator's findings in relation to the facts of the matter and the reasons for those findings
 - i) the investigator's determination and the reasons for that determination
 - j) any recommendations.
- 7.41 The investigator must provide a copy of their report to the complaints coordinator and the respondent.
- 7.42 At the time the investigator provides a copy of their report to the complaints coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:
- a) the investigator's findings in relation to the facts of the matter and the reasons for those findings
 - b) the investigator's determination and the reasons for that determination
 - c) any recommendations, and
 - d) such other additional information that the investigator considers may be relevant.
- 7.43 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.
- 7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraph (a) only, 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.

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- 7.45 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (b) or (c) only, 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.
- 7.46 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)), 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

- 7.47 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)).
- 7.48 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.
- 7.49 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 interest in relation to the matter unless otherwise required to do so under the code of conduct.
- 7.50 Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation/s.
- 7.51 Once the respondent has made their 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.
- 7.52 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 7.53 Prior to imposing a sanction, the council may by resolution:

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- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
 - b) seek an opinion from the Office in relation to the report.
- 7.54 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 Office.
- 7.55 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 7.56 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the respondent.
- 7.57 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 7.58 The council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.
- 7.59 A council may by resolution impose one or more of the following sanctions on a respondent:
- a) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
 - b) that the respondent be counselled for their conduct
 - c) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative
 - d) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the resolution
 - e) that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the resolution
 - f) that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the meeting
 - g) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach
 - h) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA
 - i) in the case of a breach by a councillor:
 - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
 - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.
- 7.60 The council is not obliged to adopt the investigator's recommendation/s. Where the council proposes not to adopt one or more of the investigator's recommendation/s, the council must resolve not to adopt the recommendation/s and state in its resolution the reasons for its decision.

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- 7.61 Where the council proposes to impose a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator in their final report, the council must state in its resolution the reasons for its decision.
- 7.62 Where the council resolves not to adopt the investigator's recommendation/s or imposes a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator, the complaints coordinator must notify the Office of the council's decision and the reasons for it.

PART 8 OVERSIGHT AND RIGHTS OF REVIEWThe Office's powers of review

- 8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under a council's code of conduct where it is concerned that a person has failed to comply with a requirement prescribed under these procedures or has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct in their consideration of a matter.
- 8.2 The Office may direct any person, including the council, to defer taking further action in relation to a matter under consideration under the council's code of conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.
- 8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the complaints coordinator and any other affected persons, of the outcome of the review.

Complaints about conduct reviewers

- 8.4 The general manager or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.
- 8.5 The general manager must notify the complainant of the referral of their complaint about the conduct reviewer in writing.
- 8.6 The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

Practice rulings

- 8.7 Where a respondent and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).
- 8.8 Where the Office receives a request in writing for a practice ruling, the Office 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.
- 8.9 Where the Office makes a practice ruling, all parties must comply with it.

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8.10 The Office may decline to make a practice ruling. Where the Office 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.

Review of decisions to impose sanctions

8.11 A person who is the subject of a sanction imposed under Part 7 of these procedures other than one imposed under clause 7.59, paragraph (i), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.

8.12 A review under clause 8.11 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 in imposing its sanction, the council has failed to comply with a requirement under these procedures.

8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.

8.14 The Office may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.

8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.

8.16 The Office will undertake a review of the matter on the papers. However, the Office may request that the complaints coordinator provide such further information that the Office 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 Office.

8.17 Where a person requests a review under clause 8.11, the Office may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Office.

8.18 The Office must notify the person who requested the review and the complaints coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.

8.19 Where the Office considers that the investigator or the council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed.

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- 8.20 In the case of a sanction implemented by the general manager or mayor under clause 7.45, where the Office recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of the Office'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 Office's recommendation in doing so.
- 8.21 In the case of a sanction imposed by the council by resolution under clause 7.59, where the Office recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for the Office'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 Office's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 8.22 Where, having reviewed its previous decision in relation to a matter under clause 8.21, the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

PART 9 PROCEDURAL IRREGULARITIES

- 9.1 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.
- 9.2 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 10 PRACTICE DIRECTIONS

- 10.1 The Office may at any time issue a practice direction in relation to the application of these procedures.
- 10.2 The Office will issue practice directions in writing, by circular to all councils.

13.4 Draft Code of Conduct and Procedures for the Administration of the Code of Conduct

ATTACHMENT 2 Procedures for the Administration of the Code of Conduct



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- 10.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

PART 11 REPORTING STATISTICS ON CODE OF CONDUCT COMPLAINTS ABOUT COUNCILLORS AND THE GENERAL MANAGER

- 11.1 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 (the reporting period)
 - b) the number of code of conduct complaints referred to a conduct reviewer during the reporting period
 - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints
 - d) the number of code of conduct complaints investigated by a conduct reviewer during the reporting period
 - e) without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period
 - f) the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and
 - g) the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.
- 11.2 The council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.

PART 12 CONFIDENTIALITY

- 12.1 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.
- 12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.
- 12.3 Prior to seeking the Office's consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission within at least 14 days or such other period specified by the general manager or their delegate, and consider any submission made by them.

**13.4 Draft Code of Conduct and Procedures for the
Administration of the Code of Conduct**

**ATTACHMENT 2 Procedures for the Administration of the
Code of Conduct**



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- 12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.
- 12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:
- a) the complainant
 - b) the complaints coordinator
 - c) the Office, and
 - d) any other person the general manager or their delegate considers should be notified of the determination.
- 12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2.
- 12.7 Clause 12.6 does not override any entitlement a person may have to access to council information under the *Government Information (Public Access) Act 2009* or to receive information under the *Public Interest Disclosures Act 1994* in relation to a complaint they have made.



13.5 Draft Code of Meeting Practice

Reference: 100/5
Report Author: Group Manager Corporate and Community
Authoriser: Deputy General Manager Corporate, Strategy and Development Services

Link to Community

Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code) was prescribed on 14 December 2018 and comprises of mandatory and non-mandatory provisions.

This report provides a draft Code of Meeting Practice (draft Code) for Council's consideration to place on public exhibition. The draft Code includes all mandatory provisions of the Model Meeting Code. It is also proposed that some of the non-mandatory provisions are included in Council's draft Code along with best practice supplementary provisions.

It is a statutory requirement that the Code of Meeting Practice be placed on public exhibition for a period of 28 days. Submissions can be received for a further 14 days at the conclusion of the formal exhibition period.

RECOMMENDATION

1. **THAT Council endorse the Draft Wingecarribee Shire Council Code of Meeting Practice for public exhibition for a period of 28 days, noting that submissions will be accepted during the exhibition period and for a further 14 days following closure of the exhibition period.**
2. **THAT a further report will be brought back to council following the public exhibition period.**

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



REPORT

BACKGROUND

The Model Meeting Code was prescribed on 14 December 2018 (**Attachment 1**). Amendments made to the *Local Government Act 1993* (LGA) in August 2016 by the Local Government Amendment (Governance and Planning) Act 2016 (the Phase 1 amendments) provided for a Model Meeting Code to be prescribed by the *Local Government (General) Regulation 2005* (the Regulation).

Following an extensive consultation process, a Model Meeting Code has been prescribed under the Regulation and the existing meetings provisions of the Regulation have been repealed.

Council must adopt a new Code of Meeting Practice by 14 June 2019. It should also be noted that Council and committees of councils of which all the members are councillors (that is established by Council in accordance with clause 21.2 of the draft Code) must conduct their meetings in accordance with the code of meeting practice adopted by the council.

REPORT

The Model Meeting Code has been designed to achieve a range of outcomes, including:

- promoting, as the principal object of meetings, the making of decisions by the governing bodies of councils that are in the best interests of the council and the community as a whole
- promoting more accessible, orderly, effective and efficient meetings and to provide councils with the tools to achieve these outcomes
- prescribing principles to inform the way in which meetings are conducted and to prescribe meeting rules that are consistent with these principles
- codifying areas of common practice across councils in a way that is clear, efficient, leads to better informed and more effective decision making and that is consistent with the requirements of the LGA
- promoting greater consistency between councils across the State in key areas of meetings practice without losing the ability to allow some variation in practice to meet local needs or expectations
- allowing greater flexibility in the conduct of meetings to accommodate a range of potential scenarios that were not addressed by the previous prescribed meeting rules
- simplifying the language used to make the prescribed meeting rules more accessible and easier to understand
- modernising the rules to accommodate current and emerging technologies (e.g. electronic notice and webcasting).

The Model Meeting Code has two elements:

- Mandatory provisions (indicated in black font) that reflect the existing meetings provisions of the Act and update and enhance the meetings provisions previously prescribed under the Regulation to reflect contemporary meetings practice by councils.

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- Non-mandatory provisions (indicated in red font) that cover areas of meetings practice that are common to most councils but where there may be a need for some variation in practice between councils based on local circumstances. The non-mandatory provisions also operate to set a benchmark based on what the Office of Local Government considers best practice.

Councils are required to adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code prescribed by the Regulation. A council's adopted meeting code must not contain provisions that are inconsistent with the mandatory provisions. As such, Council's adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code and any other supplementary provisions adopted by Council as long as they are not inconsistent with the mandatory provisions.

Council's draft Code of Meeting Practice (**Attachment 1**) has been developed based on the Model Meeting Code. This includes all mandatory requirements plus inclusion of a supplementary provision for a mandatory clause, one amendment to a mandatory clause, the inclusion of a number of the non-mandatory clauses and the inclusion of a non-mandatory clause with amendment. Further details are provided below.

Supplementary Provision for Mandatory Requirements

All councils are required to webcast meetings of the council and committees of which all members are councillors from 14 December 2019. The webcasting requirement may be met by posting an audio or video recording of the meeting on the council's website. To meet this requirement clause 5.19 includes the following supplementary provision,

“(a) Audio visual recordings of the open meetings of the council and committees of which all members are councillors (committees of council) will be live streamed through Council's website.”

Amendment to Mandatory Clause

The Office of Local Government has advised that councils are able to amend clause 10.22 of the Model Meeting Code to allow the duration of speeches to be for a time that is less than five (5) minutes. As such the draft Code of meeting practice has amended the duration of speeches in clause 11.22 to three (3) minutes in accordance with Council's resolution at Council meeting on 27 March 2019 MN 137/19.

Included Non – Mandatory Clauses

It is proposed that the following non-mandatory clauses are included in Council draft Code of Meeting Practice:

- Giving notice of business to be considered at council meetings (clauses 3.12) – requires the General Manager to prepare response in relation to a notice of motion that has legal, strategic, financial or policy implications in the agenda for the meeting
- Pre-meeting briefing sessions (clauses 3.32-3.37) – to be held before the ordinary meeting however councillors cannot debate or make preliminary decisions and is not open to the public
- Public Forums/ Visitor Items (clauses 4.1-4.19 and 5.1-5.11) – as per current convention, it is proposed that public forums will be held as a part of the council meeting. Procedures for the conduct of the public forum are outlined. In addition the current practice of Visitor Items has been maintained the draft Meeting Code.
- The quorum of the meeting (clauses 6.13-6.14) – allows for cancellation of the council meeting where it is apparent that there will be lack of a quorum or because of risk to the safety and welfare of attendees

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- Mode of Address (clauses 8.1 -8.4) - for Mayor, Chairperson, councillors and staff
- Order of Business for Ordinary Meetings (clause 9.1) – reflects order of business as per Council’s current adopted Code of Meeting Practice excluding those not allowed under the Model Meeting Code
- Dealing with items by exception (clauses 14.1-14.7) – deals with multiple items in one resolution where no councillor wishes to speak against the recommendation
- Expulsion from meeting (clauses 16.14 and 16.19) – deals with how to expel a member of the public and councillor from a meeting
- Rescinding and altering council decisions (clauses 18.10, 18.12-18.14) – altering or rescinding a resolution relating to a development application and dealing with rescission motions at the same meeting at which it’s been considered
- Recommitting resolutions (clauses 18.15 -18.20) – only allowed to correct to correct any error, ambiguity or imprecision in the council’s resolution or to confirm the voting on the resolution
- Time limits on council meetings (clauses 19.1-19.5) – time at which a meeting should conclude, dealing with extensions of time and adjourning a meeting.

Included Non Mandatory Clause with Amendment

The non-mandatory requirement in relation to a notice of motion, mayoral minutes and motions requiring the expenditure of funds (clauses 3.13,10.10, 11.9 respectively) has been included however it has been amended to require such recommendations to be referred to Council’s Finance Committee (Committee of the Council) for consideration.

Changes to Current Meeting Practices

Council’s current adopted Code of Meeting Practice includes a number of meeting practices which under the Model Meeting Code are not allowable. The Model Meeting Code specifies that business cannot be considered at a meeting unless:

- a councillor has given due notice of the business (clause 10.1)
- it directly relates to a matter already before the Council (clause 10.2)
- a motion is passed to have the business considered at the meeting and is ruled by the Chairperson to be of great urgency (clause 10.3)

As such, the provision for ‘Business Arising’ in Council’s current Code of Meeting Practice has not been included in the draft Code.

The Model Meeting Code also stipulates that a question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.14 (clause 10.14). Therefore, the provision for ‘General Business Questions’ and ‘Questions from the Public’ have not been incorporated in the draft Code.

Public Exhibition

In accordance with section 361 of the LGA, Council is required to exhibit its draft of the Code of Meeting Practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft code. It is proposed that the draft Code be placed on public exhibition from 12 April to 10 May with public submission accepted until 24 May 2019. Following this, a further report will be presented to Council summarising any submissions received prior to the adoption of the Code of Meeting Practice.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There is no impact on Council's Fit for the Future Improvement Plan.

COMMUNICATION AND CONSULTATION

Community Engagement

In accordance with section 361 of the LGA Council is required to exhibit its draft of the Code of Meeting Practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft code.

Internal Communication and Consultation

Councillors

Executive

External Communication and Consultation

Office of Local Government

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Model Code of Meeting Practice for Councils in NSW was prescribed on 14 December 2018. All NSW councils must adopt the new Code of Meeting Practice within 6 months of prescription, i.e. 14 December 2018 – 14 June 2019. In addition, all councils must publicly exhibit their meeting codes for 28 days and accept submissions for 42 days in accordance with section 361 of the LGA.

COUNCIL BUDGET IMPLICATIONS

Nil

RELATED COUNCIL POLICY

Draft Code of Conduct

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Draft Procedures for the Administration of the Code of Conduct

OPTIONS

To ensure Council meets legislative requirements there is only one option available which is to publicly exhibit the draft Code of Meeting Practice for 28 days and accept submissions for 42 days.

CONCLUSION

The draft Code of Meeting Practice is based on the Model Code of Meeting Practice. In accordance with section 361 of the LGA Council is required to place the draft on public exhibition for 28 days and accept submission for 42 days. Following the consideration of public submissions a subsequent report will be presented to Council summarising any submissions received for the adoption of the Code of Meeting Practice.

ATTACHMENTS

1. Draft Code of Meeting Practice
2. Model Code of Meeting Practice for Local Councils in NSW 2018



Wingecarribee Shire Council DRAFT CODE OF MEETING PRACTICE

For Public Exhibition
April 2019

2019



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1 INTRODUCTION

This draft Code of Meeting Practice (draft Code) for Wingecarribee Shire Council is based on the Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) and is made under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2005* (the Regulation).

This Code applies to all meetings of councils and committees of councils of which all the members are councillors in accordance with clause 21.2 of this code (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Council must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

Council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, the code of meeting practice adopted by Council must not contain provisions that are inconsistent with the mandatory provisions of the Model Meeting Code.

The provisions of the Model Meeting Code that are not mandatory are indicated in **red font**. It is proposed that not all non-mandatory provisions are included in Council's draft Code. Those that are not proposed to be included are indicated by red font with strikethrough (~~red font~~).

Supplementary provisions proposed for inclusion in the draft Code are indicated in purple font (**purple font**).

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.



2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

Transparent: Decisions are made in a way that is open and accountable.

Informed: Decisions are made based on relevant, quality information.

Inclusive: Decisions respect the diverse needs and interests of the local community.

Principled: Decisions are informed by the principles prescribed under Chapter 3 of the Act.

Trusted: The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.

Respectful: Councillors, staff and meeting attendees treat each other with respect.

Effective: Meetings are well organised, effectively run and skilfully chaired.

Orderly: Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

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3 BEFORE THE MEETING

Timing of ordinary council meetings

3.1 Ordinary meetings of the Council will be held on the on the second and fourth Wednesdays of each month between February and November, and on the second Wednesday of December. No meetings shall be held in January. Meetings will commence at 3.30 pm.

~~3.2 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.~~

~~**Note: Councils must use either clause 3.1 or 3.2**~~

Note: Under section 365 of the Act, councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.

Extraordinary meetings

3.2 If the mayor receives a request in writing, signed by at least two (2) councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The mayor can be one of the two councillors requesting the meeting.

Note: Clause 3.2 reflects section 366 of the Act.

3.3 The mayor, in consultation with the general manager, or the general manager, in consultation with the mayor, may call an extraordinary meeting without the need to obtain the signature of two (2) councillors to consider urgent business. For the purpose of clause 3.3, urgent business is any matter that, in the opinion of the mayor or the general manager, requires a decision by the council before the next scheduled ordinary meeting of the council.

Notice to the public of council meetings

3.4 The council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the council.

Note: Clause 3.4 reflects section 9(1) of the Act.

3.5 For the purposes of clause 3.4, notice of a meeting of the council and of a committee of the council is to be published before the meeting takes place. The notice must be published on the council's website, and in such other manner that the council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.

3.6 For the purposes of clause 3.4, notice of more than one (1) meeting may be given in the same notice.



Notice to councillors of ordinary council meetings

- 3.7 The general manager must send to each councillor, at least three (3) days before each meeting of the council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

Note: Clause 3.7 reflects section 367(1) of the Act.

- 3.8 The notice and the agenda for, and the business papers relating to, the meeting may be given to councillors in electronic form, but only if all councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.8 reflects section 367(3) of the Act.

Notice to councillors of extraordinary meetings

- 3.9 Notice of less than three (3) days may be given to councillors of an extraordinary meeting of the council in cases of emergency.

Note: Clause 3.9 reflects section 367(2) of the Act.

Giving notice of business to be considered at council meetings

- 3.10 A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted **prior to the close of business at 4.30pm, seven (7) business days** before the meeting is to be held.

- 3.11 A councillor may, in writing to the general manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

- 3.12 **If the general manager considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the general manager may prepare a report response in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the council.**

- 3.13 **A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion, be referred to Council's Finance Committee (committee of the council) for consideration. If the notice of motion does not identify a funding source, the general manager must either:**

- (a) ~~prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or~~
- (b) ~~by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.~~

Questions with notice

- 3.14 A councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the general manager about the performance or operations of the council.
- 3.15 A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.
- 3.16 The general manager or their nominee may respond to a question with notice submitted under clause 3.14 by way of a report included in the business papers for the relevant meeting of the council or orally at the meeting.

Agenda and business papers for ordinary meetings

- 3.17 The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.
- 3.18 The general manager must ensure that the agenda for an ordinary meeting of the council states:
- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the council, and
 - (b) if the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - (d) any business of which due notice has been given under clause 3.10.
- 3.19 Nothing in clause 3.18 limits the powers of the mayor to put a mayoral minute to a meeting under clause 10.6.
- 3.20 The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is, or the implementation of the business would be, unlawful. The general manager must report, without giving details of the item of business, any such exclusion to the next meeting of the council.
- 3.21 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public, the general manager must ensure that the agenda of the meeting:
- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
 - (b) states the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.21 reflects section 9(2A)(a) of the Act.

- 3.22 The general manager must ensure that the details of any item of business which, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the



meeting concerned. Such details must not be included in the business papers made available to the public, and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information.

Availability of the agenda and business papers to the public

3.23 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the council and committees of council, are to be published on the council’s website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the council, at the relevant meeting and at such other venues determined by the council.

Note: Clause 3.23 reflects section 9(2) and (4) of the Act.

3.24 Clause 3.23 does not apply to the business papers for items of business that the general manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.

Note: Clause 3.24 reflects section 9(2A)(b) of the Act.

3.25 For the purposes of clause 3.23, copies of agendas and business papers must be published on the council’s website and made available to the public at a time that is as close as possible to the time they are available to councillors.

Note: Clause 3.25 reflects section 9(3) of the Act.

3.26 A copy of an agenda, or of an associated business paper made available under clause 3.23, may in addition be given or made available in electronic form.

Note: Clause 3.26 reflects section 9(5) of the Act.

Agenda and business papers for extraordinary meetings

3.27 The general manager must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.

3.28 Despite clause 3.27, business may be considered at an extraordinary meeting of the council, even though due notice of the business has not been given, if:

- (a) a motion is passed to have the business considered at the meeting, and
- (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

3.29 A motion moved under clause 3.28(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.

3.30 Despite clauses 11.20–11.30, only the mover of a motion moved under clause 3.28(a) can speak to the motion before it is put.

3.31 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.28(b) on whether a matter is of great urgency.



Pre-meeting briefing sessions

- 3.32 Prior to each ordinary meeting of the council, the general manager may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.
- 3.33 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.34 The general manager or a member of staff nominated by the general manager is to preside at pre-meeting briefing sessions.
- 3.36 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal council or committee meeting at which the item of business is to be considered.
- 3.37 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the councillor who made the declaration.

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4 PUBLIC FORUMS

- 4.1 The council may hold a public forum ~~prior to~~ at each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. ~~Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.~~
- ~~4.2 Public forums are to be chaired by the mayor or their nominee.~~
- 4.2 To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by **close of business (4.30pm) two (2) business days** before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.3 A person may apply to speak on no more than one (1) items of business on the agenda of the council meeting.
- 4.4 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.5 The general manager or their delegate may refuse an application to speak at a public forum. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 4.6 No more than one (1) speaker 'for' and one (1) speaker 'against' are permitted for each item of business on the agenda for the council meeting. **Noting the total number of speakers for a public forum is limited to four (4).**
- 4.7 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may request the speakers to nominate from among themselves the person who is to address the council on the item of business. If the speakers are not able to agree on whom to nominate to address the council, the general manager or their delegate is to determine who will address the council at the public forum.
- 4.8 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may, in consultation with the mayor or the mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the council to hear a fuller range of views on the relevant item of business.
- 4.9 Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no less than 2 business days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.
- 4.10 The general manager or their delegate is to determine the order of speakers at the public forum.



- 4.11 Each speaker will be allowed five (5) minutes to address the council. This time is to be strictly enforced by the chairperson. No extensions of time will be approved.
- 4.12 Speakers at public forums must not digress from the item on the agenda of the council meeting they have applied to address the council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.13 Speakers at public forums cannot ask questions of the council, councillors or council staff.
- 4.14 The general manager or their nominee may, with the concurrence of the chairperson, address the council for up to two (2) minutes in response to an address to the council at a public forum after the address.
- 4.15 Where an address made at a public forum raises matters that require further consideration by council staff, the general manager may recommend that the council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.16 When addressing the council, speakers at public forums must comply with this code and all other relevant council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the council's code of conduct or making other potentially defamatory statements.
- 4.17 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.16, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.18 Clause 4.17 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 16 of this code.
- 4.19 Where a speaker engages in conduct of the type referred to in clause 4.16, the general manager or their delegate may refuse further applications from that person to speak at public forums or visitor items for such a period as the general manager or their delegate considers appropriate.



5. VISITOR ITEMS

- 5.1 The council may hold visitor items at each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on development matters to be considered at the meeting
- 5.2 The General Manager will determine items considered to be a Visitor Item
- 5.3 The declaration of a matter as a Visitor Item shall allow a maximum of two (2) speakers (one in favour, one opposed) to nominate to address Council on the item prior to entering debate. The determination as to who shall speak will be at the discretion of the General Manager in preparation of the meeting agenda
- 5.4 In the case where an objector wishes to address Council, they shall speak first, with the person in favour having the right of reply.
- 5.5 Speakers are to be limited to three (3) minutes duration. No extensions of time will be granted.
- 5.6 Following each speaker, each councillor is permitted to ask each speaker a maximum of one (1) question each. Answers to questions shall not exceed one (1) minute. There shall be no debate or follow-up questions permitted.
- 5.7 Speakers at visitor items must not digress from the item on the agenda of the council meeting they have applied to address the council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard. Speakers at visitor items cannot ask questions of the council, councillors or council staff.
- 5.8 When addressing the council, speakers at visitor items must comply with this code and all other relevant council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the council's code of conduct or making other potentially defamatory statements.
- 5.9 If the chairperson considers that a speaker at a visitor item has engaged in conduct of the type referred to in clause 5.8, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 5.10 Clause 5.9 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at Visitor Items in accordance with the provisions of Part 16 of this code.
- 5.11 Where a speaker engages in conduct of the type referred to in clause 5.8, the general manager or their delegate may refuse further applications from that person to speak at Visitor Items or Public Forums for such a period as the general manager or their delegate considers appropriate.



6 COMING TOGETHER

Attendance by councillors at meetings

- 6.1 All councillors must make reasonable efforts to attend meetings of the council and of committees of the council of which they are members.

Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

- 6.2 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting.
- 6.3 Where a councillor is unable to attend one or more ordinary meetings of the council, the councillor should request that the council grant them a leave of absence from those meetings. This clause does not prevent a councillor from making an apology if they are unable to attend a meeting. However the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.
- 6.4 A councillor's request for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 6.5 The council must act reasonably when considering whether to grant a councillor's request for a leave of absence.
- 6.6 A councillor's civic office will become vacant if the councillor is absent from three (3) consecutive ordinary meetings of the council without prior leave of the council, or leave granted by the council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.
- Note: Clause 6.6 reflects section 234(1)(d) of the Act.**
- 6.7 A councillor who intends to attend a meeting of the council despite having been granted a leave of absence should, if practicable, give the general manager at least two (2) days' notice of their intention to attend.

The quorum for a meeting

- 6.8 The quorum for a meeting of the council is a majority of the councillors of the council who hold office at that time and are not suspended from office.
- Note: Clause 6.8 reflects section 368(1) of the Act.**
- 6.9 Clause 6.8 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

Note: Clause 6.9 reflects section 368(2) of the Act.



- 6.10 A meeting of the council must be adjourned if a quorum is not present:
 - (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
 - (b) within half an hour after the time designated for the holding of the meeting, or
 - (c) at any time during the meeting.
- 6.11 In either case, the meeting must be adjourned to a time, date and place fixed:
 - (a) by the chairperson, or
 - (b) in the chairperson's absence, by the majority of the councillors present, or
 - (c) failing that, by the general manager.
- 6.12 The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.
- 6.13 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire) or other threat to safety the mayor may, in consultation with the general manager and, as far as is practicable, with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council's website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.
- 6.14 Where a meeting is cancelled under clause 6.13, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called under clauses 3.2 or 3.3.

Entitlement of the public to attend council meetings

- 6.15 Everyone is entitled to attend a meeting of the council and committees of the council (i.e. those established by Council in accordance with clause 21.2 of this Code). The council must ensure that all meetings of the council and committees of the council are open to the public.

Note: Clause 6.15 reflects section 10(1) of the Act.
- 6.16 Clause 6.15 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.
- 6.17 A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or a committee of the council if expelled from the meeting:
 - (a) by a resolution of the meeting, or
 - (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 6.17 reflects section 10(2) of the Act.



Webcasting of meetings

6.18 All meetings of the council and committees of the council are to be webcast on the council's website:

(a) Audio visual recordings of the open Council Meeting and committees of the council will be live streamed through Council's website.

6.19 Clause 6.18 does not apply to parts of a meeting that have been closed to the public under section 10A of the Act.

6.20 At the start of each meeting the chairperson is to make a statement informing those in attendance that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements.

6.21 A recording of each meeting of the council and committee of the council is to be retained on the council's website for 12 months. Recordings of meetings may be disposed of in accordance with the *State Records Act 1998*.

Attendance of the general manager and other staff at meetings

6.22 The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all of the members are councillors.

Note: Clause 6.22 reflects section 376(1) of the Act.

6.23 The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

Note: Clause 6.23 reflects section 376(2) of the Act.

6.24 The general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

Note: Clause 6.24 reflects section 376(3) of the Act.

6.25 The attendance of other council staff at a meeting, (other than as members of the public) shall be with the approval of the general manager.



7 THE CHAIRPERSON

The chairperson at meetings

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

Note: Clause 7.1 reflects section 369(1) of the Act.

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

Note: Clause 7.2 reflects section 369(2) of the Act.

Election of the chairperson in the absence of the mayor and deputy mayor

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

7.4 The election of a chairperson must be conducted:

- (a) by the general manager or, in their absence, an employee of the council designated by the general manager to conduct the election, or
- (b) by the person who called the meeting or a person acting on their behalf if neither the general manager nor a designated employee is present at the meeting, or if there is no general manager or designated employee.

7.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.

7.6 For the purposes of clause 7.5, the person conducting the election must:

- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
- (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.

7.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

7.8 Any election conducted under clause 7.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

7.9 When the chairperson rises or speaks during a meeting of the council:

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



8 MODES OF ADDRESS

- 8.1 If the chairperson is the mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.
- 8.2 Where the chairperson is not the mayor, they are to be addressed as either 'Mr Chair' or 'Madam Chair'.
- 8.3 A councillor is to be addressed as 'Councillor [surname]'.
- 8.4 A council officer is to be addressed by their official designation or as Mr/Ms [surname].

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9 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

9.1 The general order of business for an ordinary meeting of the council shall be:

1. Opening meeting
2. Acknowledgement of country
3. Prayer
4. Apologies and applications for a leave of absence by councillors
5. Confirmation of minutes
6. Disclosures of interests
7. Mayoral minute(s)
8. Public Forum
9. Visitor Items
10. Reports to council
11. Petitions
12. Reports of committees
13. Notices of motions
14. Questions with notice
15. Confidential matters
16. Conclusion of the meeting

9.2 The order of business as fixed under clause (9.1) may be altered for a particular meeting of the council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

Note: If adopted, Part 13 allows council to deal with items of business by exception.

9.3 Despite clauses 11.20–11.30, only the mover of a motion referred to in clause 9.2 may speak to the motion before it is put.



10 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS

Business that can be dealt with at a council meeting

- 10.1 The council must not consider business at a meeting of the council:
 - (a) unless a councillor has given notice of the business, as required by clause 3.10, and
 - (b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.

- 10.2 Clause 10.1 does not apply to the consideration of business at a meeting, if the business:
 - (a) is already before, or directly relates to, a matter that is already before the council, or
 - (b) is the election of a chairperson to preside at the meeting, or
 - (c) subject to clause 10.9, is a matter or topic put to the meeting by way of a mayoral minute, or
 - (d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the council.

- 10.3 Despite clause 10.1, business may be considered at a meeting of the council even though due notice of the business has not been given to the councillors if:
 - (a) a motion is passed to have the business considered at the meeting, and
 - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

- 10.4 A motion moved under clause 10.3(a) can be moved without notice. Despite clauses 11.20–11.30, only the mover of a motion referred to in clause 10.3(a) can speak to the motion before it is put.

- 10.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 10.3(b).

Mayoral minutes

- 10.6 Subject to clause 10.9, if the mayor is the chairperson at a meeting of the council, the mayor may, by minute signed by the mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the council, or of which the council has official knowledge.

- 10.7 A mayoral minute, when put to a meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of a mayoral minute without the motion being seconded.

- 10.8 A recommendation made in a mayoral minute put by the mayor is, so far as it is adopted by the council, a resolution of the council.

- 10.9 A mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their



complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the council before the next scheduled ordinary meeting of the council.

- 10.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation be referred to Council's Finance Committee (committee of the council) for consideration. ~~If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the recommendation if adopted.~~

Staff reports

- 10.11 A recommendation made in a staff report is, so far as it is adopted by the council, a resolution of the council.

Reports of committees of council

- 10.12 The recommendations of a committee of the council are, so far as they are adopted by the council, resolutions of the council.
- 10.13 If in a report of a committee of the council distinct recommendations are made, the council may make separate decisions on each recommendation.

Questions

- 10.14 A question must not be asked at a meeting of the council by a councillor unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.14.
- 10.15 A councillor may, through the chairperson, put a question to another councillor about a matter on the agenda.
- 10.16 A councillor may, through the general manager, put a question to a council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the general manager at the direction of the general manager.
- 10.17 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents. Where a councillor or council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.
- 10.18 Councillors must put questions directly, succinctly, respectfully and without argument.
- 10.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.



11 RULES OF DEBATE

Motions to be seconded

- 11.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 11.2 A councillor who has submitted a notice of motion under clause 3.10 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 11.3 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council.
- 11.4 In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of the council:
- (a) any other councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - (b) the chairperson may defer consideration of the motion until the next meeting of the council.

Chairperson's duties with respect to motions

- 11.5 It is the duty of the chairperson at a meeting of the council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 11.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 11.7 Before ruling out of order a motion or an amendment to a motion under clause 11.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 11.8 Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been lost.

Motions requiring the expenditure of funds

- 11.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion be referred to Council's Finance Committee (committee of the council) for consideration. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the motion if adopted.

Amendments to motions

- 11.10 An amendment to a motion must be moved and seconded before it can be debated.



- 11.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 11.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.
- 11.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before council at any one time.
- 11.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 11.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 11.16 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

Foreshadowed motions

- 11.17 A councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 11.18 Where an amendment has been moved and seconded, a councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.
- 11.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

- 11.20 A councillor who, during a debate at a meeting of the council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 11.21 A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.



- 11.22 A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than **three (3)** minutes at any one time.
- 11.23 Despite clause 11.22, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than **three (3)** minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 11.24 Despite clause 11.22, the council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.
- 11.25 Despite clauses 11.20 and 11.21, a councillor may move that a motion or an amendment be now put:
- (a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or
 - (b) if at least two (2) councillors have spoken in favour of the motion or amendment and at least two (2) councillors have spoken against it.
- 11.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 11.25. A seconder is not required for such a motion.
- 11.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 11.20.
- 11.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 11.29 All councillors must be heard without interruption and all other councillors must, unless otherwise permitted under this code, remain silent while another councillor is speaking.
- 11.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.



12 VOTING

Voting entitlements of councillors

12.1 Each councillor is entitled to one (1) vote.

Note: Clause 12.1 reflects section 370(1) of the Act.

12.2 The person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

Note: Clause 12.2 reflects section 370(2) of the Act.

12.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at council meetings

12.4 A councillor who is present at a meeting of the council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.

12.5 If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.

12.6 The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than two (2) councillors rise and call for a division.

12.7 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the council's minutes for the meeting.

12.8 When a division on a motion is called, any councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 12.5 of this code.

12.9 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

~~12.10 All voting at council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.~~

Voting on planning decisions

12.10 The general manager must keep a register containing, for each planning decision made at a meeting of the council or a council committee (including, but not limited to a committee of the council), the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.



- 12.11 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- 12.12 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 12.13 Clauses 12.10–12.12 apply also to meetings that are closed to the public.

Note: Clauses 12.10–12.13 reflect section 375A of the Act.

Note: The requirements of clause 12.10 may be satisfied by maintaining a register of the minutes of each planning decision.

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13 COMMITTEE OF THE WHOLE

- 13.1 The council may resolve itself into a committee to consider any matter before the council.

Note: Clause 13.1 reflects section 373 of the Act.

- 13.2 All the provisions of this code relating to meetings of the council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provisions limiting the number and duration of speeches.

Note: Clauses 11.20–11.30 limit the number and duration of speeches.

- 13.3 The general manager or, in the absence of the general manager, an employee of the council designated by the general manager, is responsible for reporting to the council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.

- 13.4 The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.



14 DEALING WITH ITEMS BY EXCEPTION

- 14.1 The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 14.2 Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 14.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 14.3 The council or committee must not resolve to adopt any item of business under clause 14.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 14.4 Where the consideration of multiple items of business together under clause 14.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 9.2.
- 14.5 A motion to adopt multiple items of business together under clause 14.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 14.6 Items of business adopted under clause 14.1 are to be taken to have been adopted unanimously.
- 14.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 14.1 in accordance with the requirements of the council's code of conduct.



15 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

Grounds on which meetings can be closed to the public

15.1 The council or a committee of the council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:

- (a) personnel matters concerning particular individuals (other than councillors),
- (b) the personal hardship of any resident or ratepayer,
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law,
- (f) matters affecting the security of the council, councillors, council staff or council property,
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- (i) alleged contraventions of the council's code of conduct.

Note: Clause 15.1 reflects section 10A(1) and (2) of the Act.

15.2 The council or a committee of the council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Note: Clause 15.2 reflects section 10A(3) of the Act.

Matters to be considered when closing meetings to the public

15.3 A meeting is not to remain closed during the discussion of anything referred to in clause 15.1:

- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
- (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Note: Clause 15.3 reflects section 10B(1) of the Act.

15.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 15.1(g) unless the advice concerns legal matters that:

- (a) are substantial issues relating to a matter in which the council or committee is involved, and
- (b) are clearly identified in the advice, and
- (c) are fully discussed in that advice.



Note: Clause 15.4 reflects section 10B(2) of the Act.

- 15.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 15.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 15.1.

Note: Clause 15.5 reflects section 10B(3) of the Act.

- 15.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council or committee.

Note: Clause 15.6 reflects section 10B(4) of the Act.

- 15.7 In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must consider any relevant guidelines issued by the Chief Executive of the Office of Local Government.

Note: Clause 15.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

- 15.8 Part of a meeting of the council, or of a committee of the council, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed, but only if:
- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 15.1, and
 - (b) the council or committee, after considering any representations made under clause 15.9, resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

Note: Clause 15.8 reflects section 10C of the Act.

Representations by members of the public

- 15.9 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 15.9 reflects section 10A(4) of the Act.

- 15.10 A representation under clause 15.9 is to be made after the motion to close the part of the meeting is moved and seconded.

- 15.11 Where the matter has been identified in the agenda of the meeting under clause 3.21



as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 15.9, members of the public must first make an application to the council in the approved form. Applications must be received by **close of business (4.30pm) two (2) business days prior to the meeting** at which the matter is to be considered.

- 15.12 The general manager (or their delegate) may refuse an application made under clause 15.11. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 15.13 No more than **two (2)** speakers are to be permitted to make representations under clause 15.9.
- 15.14 If more than the permitted number of speakers apply to make representations under clause 15.9, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make representations under clause 15.9, the general manager or their delegate is to determine who will make representations to the council.
- 15.15 The general manager (or their delegate) is to determine the order of speakers.
- 15.16 Where the council or a committee of the council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 15.9 after the motion to close the part of the meeting is moved and seconded. In accordance with clause 15.13 the chairperson is to permit no more than **two (2)** speakers to make representations in such order as determined by the chairperson.
- 15.17 Each speaker will be allowed **one (1)** minute to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-councillors from meetings closed to the public

- 15.18 If a meeting or part of a meeting of the council or a committee of the council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 15.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.



Information to be disclosed in resolutions closing meetings to the public

15.20 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

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

Note: Clause 15.20 reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

15.21 If the council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.

15.22 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 15.21 during a part of the meeting that is webcast.



16 KEEPING ORDER AT MEETINGS

Points of order

- 16.1 A councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 16.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 16.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

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

Motions of dissent

- 16.8 A councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 16.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 16.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

- 16.11 A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:
 - (a) contravenes the Act or any regulation in force under the Act or this code, or
 - (b) assaults or threatens to assault another councillor or person present at the meeting, or
 - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council



- or the committee, or addresses or attempts to address the council or the committee on such a motion, amendment or matter, or
- (d) insults or makes personal reflections on or imputes improper motives to any other council official, or alleges a breach of the council's code of conduct, or
- (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or the committee into disrepute.

16.12 The chairperson may require a councillor:

- (a) to apologise without reservation for an act of disorder referred to in clauses 16.11(a) or (b), or
- (b) to withdraw a motion or an amendment referred to in clause 16.11(c) and, where appropriate, to apologise without reservation, or
- (c) to retract and apologise without reservation for an act of disorder referred to in clauses 16.11(d) and (e).

How disorder at a meeting may be dealt with

16.13 If disorder occurs at a meeting of the council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.

Expulsion from meetings

16.14 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person, including any councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act.

~~16.15 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person other than a councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the council or the committee of the council.~~

Note: Councils may use either clause 16.14 or clause 16.15.

16.15 Clause 16.14 does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2)(a) of the Act.

16.16 A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 16.12. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

16.17 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for engaging in or having engaged in disorderly conduct at the meeting.

16.18 Where a councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.



- 16.19 If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member of the public from that place and, if necessary, restrain the councillor or member of the public from re-entering that place for the remainder of the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 16.20 Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.
- 16.21 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council or the committee.
- 16.22 Any person who contravenes or attempts to contravene clause 16.21, may be expelled from the meeting as provided for under section 10(2) of the Act.
- 16.23 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.



17 CONFLICTS OF INTEREST

- 17.1 All councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the council, committees of the council and pre-meeting briefings (as described in clause 3.37) in accordance with the council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.

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18 DECISIONS OF THE COUNCIL

Council decisions

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

Note: Clause 18.1 reflects section 371 of the Act in the case of councils and section 400T(8) in the case of joint organisations.

- 18.2 Decisions made by the council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering council decisions

- 18.3 A resolution passed by the council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.

Note: Clause 18.3 reflects section 372(1) of the Act.

- 18.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Note: Clause 18.4 reflects section 372(2) of the Act.

- 18.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.10.

Note: Clause 18.5 reflects section 372(3) of the Act.

- 18.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 18.6 reflects section 372(4) of the Act.

- 18.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 18.7 reflects section 372(5) of the Act.

- 18.8 The provisions of clauses 18.5–18.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 18.8 reflects section 372(7) of the Act.

- 18.9 A notice of motion submitted in accordance with clause 18.6 may only be withdrawn under clause 3.11 with the consent of all signatories to the notice of motion.

- 18.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the general manager no later than 4.30 pm the following



business day after the meeting at which the resolution was adopted.

- 18.11 A motion to alter or rescind a resolution of the council may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

Note: Clause 18.11 reflects section 372(6) of the Act.

- 18.12 Subject to clause 18.7, in cases of urgency, a motion to alter or rescind a resolution of the council may be moved at the same meeting at which the resolution was adopted, where:

- (a) a notice of motion signed by three councillors is submitted to the chairperson, and
- (b) a motion to have the motion considered at the meeting is passed, and
- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

- 18.13 A motion moved under clause 18.12(b) can be moved without notice. Despite clauses 11.20–11.30, only the mover of a motion referred to in clause 18.12(b) can speak to the motion before it is put.

- 18.14 A motion of dissent cannot be moved against a ruling by the chairperson under clause 18.12(c).

Recommitting resolutions to correct an error

- 18.15 Despite the provisions of this Part, a councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

- (a) to correct any error, ambiguity or imprecision in the council's resolution, or
- (b) to confirm the voting on the resolution.

- 18.16 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 18.15(a), the councillor is to propose alternative wording for the resolution.

- 18.17 The chairperson must not grant leave to recommit a resolution for the purposes of clause 18.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.

- 18.18 A motion moved under clause 18.15 can be moved without notice. Despite clauses 11.20–11.30, only the mover of a motion referred to in clause 18.15 can speak to the motion before it is put.

- 18.19 A motion of dissent cannot be moved against a ruling by the chairperson under clause 18.15.

- 18.20 A motion moved under clause 18.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.



19 TIME LIMITS ON COUNCIL MEETINGS

- 19.1 Meetings of the council ~~and committees of the council~~ are to conclude no later than **7.30pm**.
- 19.2 If the business of the meeting is unfinished at **7.30pm**, the council ~~or the committee~~ may, by resolution, extend the time of the meeting. ~~Where an extension of time is approved the meeting must conclude no later than 8.00pm.~~
- 19.3 If the business of the meeting is unfinished at **7.30pm**, and the council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the council, or
 - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 19.4 Clause 19.3 does not limit the ability of the council ~~or a committee of the council~~ to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 19.5 Where a meeting is adjourned under clause 19.3 or 19.4, the general manager must:
- (a) notify all councillors of the time, date and place at which the meeting will reconvene, and
 - (b) publish the time, date and place at which the meeting will reconvene on the council's website and in such other manner that the general manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.



20 AFTER THE MEETING

Minutes of meetings

20.1 The council is to keep full and accurate minutes of the proceedings of meetings of the council.

Note: Clause 20.1 reflects section 375(1) of the Act.

20.2 At a minimum, the general manager must ensure that the following matters are recorded in the council's minutes:

- (a) details of each motion moved at a council meeting and of any amendments moved to it,
- (b) the names of the mover and seconder of the motion or amendment,
- (c) whether the motion or amendment was passed or lost, and
- (d) such other matters specifically required under this code.

20.3 The minutes of a council meeting must be confirmed at a subsequent meeting of the council.

Note: Clause 20.3 reflects section 375(2) of the Act.

20.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

20.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 20.5 reflects section 375(2) of the Act.

20.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

20.7 The confirmed minutes of a council meeting must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

20.8 The council and committees of the council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

Note: Clause 20.8 reflects section 11(1) of the Act.

20.9 Clause 20.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 20.9 reflects section 11(2) of the Act.



- 20.10 Clause 20.8 does not apply if the council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 20.10 reflects section 11(3) of the Act.

- 20.11 Correspondence or reports to which clauses 20.9 and 20.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the council

- 20.12 The general manager is to implement, without undue delay, lawful decisions of the council.

Note: Clause 20.12 reflects section 335(b) of the Act.

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21 COUNCIL COMMITTEES

Application of this Part

21.1 This Part only applies to committees of the council whose members are all councillors.

Council committees whose members are all councillors

21.2 The council may, by resolution, establish such committees as it considers necessary.

21.3 A committee of the council is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.

21.4 The quorum for a meeting of a committee of the council is to be:

- (a) such number of members as the council decides, or
- (b) if the council has not decided a number – a majority of the members of the committee.

Functions of committees

21.5 The council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Notice of committee meetings

21.6 The general manager must send to each councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:

- (a) the time, date and place of the meeting, and
- (b) the business proposed to be considered at the meeting.

21.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

21.8 A committee member (other than the mayor) ceases to be a member of a committee if the committee member:

- (a) has been absent from three (3) consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
- (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.

21.9 Clause 21.8 does not apply if all of the members of the council are members of the committee.

Non-members entitled to attend committee meetings

21.10 A councillor who is not a member of a committee of the council is entitled to attend,



and to speak at a meeting of the committee. However, the councillor is not entitled:

- (a) to give notice of business for inclusion in the agenda for the meeting, or
- (b) to move or second a motion at the meeting, or
- (c) to vote at the meeting.

Chairperson and deputy chairperson of council committees

21.11 The chairperson of each committee of the council must be:

- (a) the mayor, or
- (b) if the mayor does not wish to be the chairperson of a committee, a member of the committee elected by the council, or
- (c) if the council does not elect such a member, a member of the committee elected by the committee.

21.12 The council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.

21.13 If neither the chairperson nor the deputy chairperson of a committee of the council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.

21.14 The chairperson is to preside at a meeting of a committee of the council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

21.15 Subject to any specific requirements of this code, each committee of the council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the council unless the council or the committee determines otherwise in accordance with this clause.

21.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the council or the committee determines otherwise in accordance with clause 21.15.

21.17 Voting at a council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Closure of committee meetings to the public

21.18 The provisions of the Act and Part 15 of this code apply to the closure of meetings of committees of the council to the public in the same way they apply to the closure of meetings of the council to the public.

21.19 If a committee of the council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the council. The resolution or



recommendation must also be recorded in the publicly available minutes of the meeting.

- 21.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 21.19 during a part of the meeting that is webcast.

Disorder in committee meetings

- 21.21 The provisions of the Act and this code relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

Minutes of council committee meetings

- 21.22 Each committee of the council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:

- (a) details of each motion moved at a meeting and of any amendments moved to it,
- (b) the names of the mover and seconder of the motion or amendment,
- (c) whether the motion or amendment was passed or lost, and
- (d) such other matters specifically required under this code.

~~20.24 All voting at meetings of committees of the council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.~~

- 21.23 The minutes of meetings of each committee of the council must be confirmed at a subsequent meeting of the committee.

- 21.24 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

- 21.25 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.

- 21.26 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

- 21.27 The confirmed minutes of a meeting of a committee of the council must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of meetings of committees of the council on its website prior to their confirmation.



22 IRREGULARITIES

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

- (a) a vacancy in a civic office, or
- (b) a failure to give notice of the meeting to any councillor or committee member, or
- (c) any defect in the election or appointment of a councillor or committee member, or
- (d) a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or
- (e) a failure to comply with this code.

Note: Clause 22.1 reflects section 374 of the Act.

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23 DEFINITIONS

the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 16.11 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion
audio recorder	any device capable of recording speech
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 7.1 and 7.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 21.11 of this code
this code	means the council's adopted code of meeting practice
committee of the council	means a committee established by the council in accordance with clause 21.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 13.1
council official	has the same meaning it has in the Model Code of Conduct for Local Councils in NSW
day	means calendar day
division	means a request by two councillors under clause 12.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion
foreshadowed amendment	means a proposed amendment foreshadowed by a councillor under clause 11.18 of this code during debate on the first amendment
foreshadowed motion	means a motion foreshadowed by a councillor under clause 11.17 of this code during debate on an original motion
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
planning decision	means a decision made in the exercise of a function of a council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act
quorum	means the minimum number of councillors or committee members necessary to conduct a meeting
the Regulation	means the <i>Local Government (General) Regulation 2005</i>



webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
year	means the period beginning 1 July and ending the following 30 June

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MODEL CODE OF MEETING PRACTICE

for Local Councils
in NSW

2018





MODEL CODE OF MEETING PRACTICE FOR LOCAL COUNCILS IN NSW

2018

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Model Code of Meeting Practice for Local Councils in NSW

1 Introduction



This Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) is made under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2005* (the Regulation).

This code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

The provisions of the Model Meeting Code that are not mandatory are indicated in **red font**.

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.

The Model Meeting Code also applies to meetings of the boards of joint organisations and county councils. The provisions that are specific to meetings of boards of joint organisations are indicated in **blue font**.

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

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



Model Code of Meeting Practice for Local Councils in NSW

2 Meeting Principles



2.1 Council and committee meetings should be:

Transparent:	Decisions are made in a way that is open and accountable.
Informed:	Decisions are made based on relevant, quality information.
Inclusive:	Decisions respect the diverse needs and interests of the local community.
Principled:	Decisions are informed by the principles prescribed under Chapter 3 of the Act.
Trusted:	The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.
Respectful:	Councillors, staff and meeting attendees treat each other with respect.
Effective:	Meetings are well organised, effectively run and skilfully chaired.
Orderly:	Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.



Model Code of Meeting Practice for Local Councils in NSW

3 Before the Meeting



Timing of ordinary council meetings

- 3.1 Ordinary meetings of the council will be held on the following occasions: **[council to specify the frequency, time, date and place of its ordinary meetings].**
- 3.2 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.

Note: Councils must use either clause 3.1 or 3.2

Note: Under section 365 of the Act, councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.

Note: Under section 396 of the Act, county councils are required to meet at least four (4) times each year.

Note: Under section 400T of the Act, boards of joint organisations are required to meet at least four (4) times each year, each in a different quarter of the year.

Extraordinary meetings

- 3.3 If the mayor receives a request in writing, signed by at least two (2) councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The mayor can be one of the two councillors requesting the meeting.

Note: Clause 3.3 reflects section 366 of the Act.

Notice to the public of council meetings

- 3.4 The council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the council.

Note: Clause 3.4 reflects section 9(1) of the Act.

- 3.5 For the purposes of clause 3.4, notice of a meeting of the council and of a committee of council is to be published before the meeting takes place. The notice must be published on the council's website, and in such other manner that the council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.
- 3.6 For the purposes of clause 3.4, notice of more than one (1) meeting may be given in the same notice.

Notice to councillors of ordinary council meetings

- 3.7 The general manager must send to each councillor, at least three (3) days before each meeting of the council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

Note: Clause 3.7 reflects section 367(1) of the Act.

- 3.8 The notice and the agenda for, and the business papers relating to, the meeting may be given to councillors in electronic form, but only if all councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.8 reflects section 367(3) of the Act.



Notice to councillors of extraordinary meetings

- 3.9 Notice of less than three (3) days may be given to councillors of an extraordinary meeting of the council in cases of emergency.

Note: Clause 3.9 reflects section 367(2) of the Act.

Giving notice of business to be considered at council meetings

- 3.10 A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted **[council to specify notice period required]** business days before the meeting is to be held.
- 3.11 A councillor may, in writing to the general manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.
- 3.12 If the general manager considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the general manager may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the council.

- 3.13 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the general manager must either:

- (a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or
- (b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.

Questions with notice

- 3.14 A councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the general manager about the performance or operations of the council.
- 3.15 A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.
- 3.16 The general manager or their nominee may respond to a question with notice submitted under clause 3.14 by way of a report included in the business papers for the relevant meeting of the council or orally at the meeting.



Agenda and business papers for ordinary meetings

- 3.17 The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.
- 3.18 The general manager must ensure that the agenda for an ordinary meeting of the council states:
- all matters to be dealt with arising out of the proceedings of previous meetings of the council, and
 - if the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - any business of which due notice has been given under clause 3.10.
- 3.19 Nothing in clause 3.18 limits the powers of the mayor to put a mayoral minute to a meeting under clause 9.6.
- 3.20 The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is, or the implementation of the business would be, unlawful. The general manager must report, without giving details of the item of business, any such exclusion to the next meeting of the council.
- 3.21 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when

the meeting is closed to the public, the general manager must ensure that the agenda of the meeting:

- identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
- states the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.21 reflects section 9(2A) (a) of the Act.

- 3.22 The general manager must ensure that the details of any item of business which, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information.

Availability of the agenda and business papers to the public

- 3.23 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the council and committees of council, are to be published on the council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the council, at the relevant meeting and at such other venues determined by the council.

Note: Clause 3.23 reflects section 9(2) and (4) of the Act.



3.24 Clause 3.23 does not apply to the business papers for items of business that the general manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.

Note: Clause 3.24 reflects section 9(2A) (b) of the Act.

3.25 For the purposes of clause 3.23, copies of agendas and business papers must be published on the council’s website and made available to the public at a time that is as close as possible to the time they are available to councillors.

Note: Clause 3.25 reflects section 9(3) of the Act.

3.26 A copy of an agenda, or of an associated business paper made available under clause 3.23, may in addition be given or made available in electronic form.

Note: Clause 3.26 reflects section 9(5) of the Act.

Agenda and business papers for extraordinary meetings

3.27 The general manager must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.

3.28 Despite clause 3.27, business may be considered at an extraordinary meeting of the council, even though due notice of the business has not been given, if:

(a) a motion is passed to have the business considered at the meeting, and

(b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

3.29 A motion moved under clause 3.28(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.

3.30 Despite clauses 10.20-10.30, only the mover of a motion moved under clause 3.28(a) can speak to the motion before it is put.

3.31 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.28(b) on whether a matter is of great urgency.



Pre-meeting briefing sessions

- 3.32 Prior to each ordinary meeting of the council, the general manager may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.
- 3.33 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.34 The general manager or a member of staff nominated by the general manager is to preside at pre-meeting briefing sessions.
- 3.35 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal council or committee meeting at which the item of business is to be considered.
- 3.36 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the councillor who made the declaration.



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4 Public Forums



- 4.1 The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.
- 4.2 Public forums are to be chaired by the mayor or their nominee.
- 4.3 To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by **[date and time to be specified by the council]** before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.4 A person may apply to speak on no more than **[number to be specified by the council]** items of business on the agenda of the council meeting.
- 4.5 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.6 The general manager or their delegate may refuse an application to speak at a public forum. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 4.7 No more than **[number to be specified by the council]** speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the council meeting.
- 4.8 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to address the council on the item of business. If the speakers are not able to agree on whom to nominate to address the council, the general manager or their delegate is to determine who will address the council at the public forum.
- 4.9 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may, in consultation with the mayor or the mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the council to hear a fuller range of views on the relevant item of business.
- 4.10 Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than **[number to be specified by the council]** days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.
- 4.11 The general manager or their delegate is to determine the order of speakers at the public forum.
- 4.12 Each speaker will be allowed **[number to be specified by the council]** minutes to address the council. This time is to be strictly enforced by the chairperson.



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- 4.13 Speakers at public forums must not digress from the item on the agenda of the council meeting they have applied to address the council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
 - 4.14 A councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
 - 4.15 Speakers are under no obligation to answer a question put under clause 4.14. Answers by the speaker, to each question are to be limited to **[number to be specified by the council]** minutes.
 - 4.16 Speakers at public forums cannot ask questions of the council, councillors or council staff.
 - 4.17 The general manager or their nominee may, with the concurrence of the chairperson, address the council for up to **[number to be specified by the council]** minutes in response to an address to the council at a public forum after the address and any subsequent questions and answers have been finalised.
 - 4.18 Where an address made at a public forum raises matters that require further consideration by council staff, the general manager may recommend that the council defer consideration of the matter pending the preparation of a further report on the matters.
 - 4.19 When addressing the council, speakers at public forums must comply with this code and all other relevant council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the council's code of conduct or making other potentially defamatory statements.
 - 4.20 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.19, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
 - 4.21 Clause 4.20 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.
 - 4.22 Where a speaker engages in conduct of the type referred to in clause 4.19, the general manager or their delegate may refuse further applications from that person to speak at public forums for such a period as the general manager or their delegate considers appropriate.
 - 4.23 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the councillor who made the declaration.
- Note: Public forums should not be held as part of a council or committee meeting. Council or committee meetings should be reserved for decision-making by the council or committee of council. Where a public forum is held as part of a council or committee meeting, it must be conducted in accordance with the other requirements of this code relating to the conduct of council and committee meetings.**





Model Code of Meeting Practice for Local Councils in NSW

5 Coming Together



Attendance by councillors at meetings

- 5.1 All councillors must make reasonable efforts to attend meetings of the council and of committees of the council of which they are members.

Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

- 5.2 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting.
- 5.3 The board of the joint organisation may, if it thinks fit, transact any of its business at a meeting at which representatives (or some representatives) participate by telephone or other electronic means, but only if any representative who speaks on a matter before the meeting can be heard by the other representatives. For the purposes of a meeting held in accordance with this clause, the chairperson and each other voting representative on the board have the same voting rights as they have at an ordinary meeting of the board.

Note: Clause 5.3 reflects clause 397G of the Regulation. Joint organisations may adopt clause 5.3 and omit clause 5.2. Councils must not adopt clause 5.3.

- 5.4 Where a councillor is unable to attend one or more ordinary meetings of the council, the councillor should request that the council grant them a leave of absence from those meetings. This clause does not prevent a councillor from making an apology if they are unable to attend a meeting. However the acceptance of

such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.

- 5.5 A councillor's request for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 5.6 The council must act reasonably when considering whether to grant a councillor's request for a leave of absence.
- 5.7 A councillor's civic office will become vacant if the councillor is absent from three (3) consecutive ordinary meetings of the council without prior leave of the council, or leave granted by the council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

Note: Clause 5.7 reflects section 234(1)(d) of the Act.

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

The quorum for a meeting

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

Note: Clause 5.9 reflects section 368(1) of the Act.



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5.10 Clause 5.9 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

Note: Clause 5.10 reflects section 368(2) of the Act.

5.11 A meeting of the council must be adjourned if a quorum is not present:

(a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or

(b) within half an hour after the time designated for the holding of the meeting, or

(c) at any time during the meeting.

5.12 In either case, the meeting must be adjourned to a time, date and place fixed:

(a) by the chairperson, or

(b) in the chairperson's absence, by the majority of the councillors present, or

(c) failing that, by the general manager.

5.13 The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

5.14 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire), the mayor may, in consultation with the general manager and, as far as is practicable, with each councillor,

cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council's website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

5.15 Where a meeting is cancelled under clause 5.14, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called under clause 3.3.

Entitlement of the public to attend council meetings

5.16 Everyone is entitled to attend a meeting of the council and committees of the council. The council must ensure that all meetings of the council and committees of the council are open to the public.

Note: Clause 5.16 reflects section 10(1) of the Act.

5.17 Clause 5.16 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

5.18 A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or a committee of the council if expelled from the meeting:

(a) by a resolution of the meeting, or

(b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 5.18 reflects section 10(2) of the Act.

Note: If adopted, clauses 15.14 and 15.15 confer a standing authorisation on all chairpersons of meetings of the council



and committees of the council to expel persons from meetings. If adopted, clause 15.14 authorises chairpersons to expel any person, including a councillor, from a council or committee meeting. Alternatively, if adopted, clause 15.15 authorises chairpersons to expel persons other than councillors from a council or committee meeting.

5.22 A recording of each meeting of the council and committee of the council is to be retained on the council's website for [council to specify the period of time the recording is to be retained on the website]. Recordings of meetings may be disposed of in accordance with the *State Records Act 1998*.

Webcasting of meetings

5.19 All meetings of the council and committees of the council are to be webcast on the council's website.

Note: Councils will be required to webcast meetings from 14 December 2019. Councils that do not currently webcast meetings should take steps to ensure that meetings are webcast by 14 December 2019.

Note: Councils must include supplementary provisions in their adopted codes of meeting practice that specify whether meetings are to be livestreamed or recordings of meetings uploaded on the council's website at a later time. The supplementary provisions must also specify whether the webcast is to comprise of an audio visual recording of the meeting or an audio recording of the meeting.

Note: Joint organisations are not required to webcast meetings but may choose to do so by adopting clauses 5.19–5.22. Joint organisations that choose not to webcast meetings may omit clauses 5.19–5.22.

5.20 Clause 5.19 does not apply to parts of a meeting that have been closed to the public under section 10A of the Act.

5.21 At the start of each meeting the chairperson is to make a statement informing those in attendance that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements.

Attendance of the general manager and other staff at meetings

5.23 The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all of the members are councillors.

Note: Clause 5.23 reflects section 376(1) of the Act.

5.24 The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

Note: Clause 5.24 reflects section 376(2) of the Act.

5.25 The general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

Note: Clause 5.25 reflects section 376(3) of the Act.

5.26 The attendance of other council staff at a meeting, (other than as members of the public) shall be with the approval of the general manager.



Model Code of Meeting Practice for Local Councils in NSW

6 The Chairperson



The chairperson at meetings

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

Note: Clause 6.1 reflects section 369(1) of the Act.

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

Note: Clause 6.2 reflects section 369(2) of the Act.

Election of the chairperson in the absence of the mayor and deputy mayor

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

- 6.4 The election of a chairperson must be conducted:

- (a) by the general manager or, in their absence, an employee of the council designated by the general manager to conduct the election, or
- (b) by the person who called the meeting or a person acting on their behalf if neither the general manager nor a designated employee is present at the meeting, or if there is no general manager or designated employee.

- 6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.

- 6.6 For the purposes of clause 6.5, the person conducting the election must:

- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and

- (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.

- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the council:

- (a) any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and

- (b) every councillor present must be silent to enable the chairperson to be heard without interruption.



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7 Modes of Address



- 7.1 If the chairperson is the mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.
- 7.2 Where the chairperson is not the mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.
- 7.3 A councillor is to be addressed as 'Councillor [surname]'.
- 7.4 A council officer is to be addressed by their official designation or as Mr/Ms [surname].



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8 Order of Business for Ordinary Council Meetings



8.1 At a meeting of the council, the general order of business is as fixed by resolution of the council.

8.2 The general order of business for an ordinary meeting of the council shall be:
[councils may adapt the following order of business to meet their needs]

- 01 Opening meeting
- 02 Acknowledgement of country
- 03 Apologies and applications for a leave of absence by councillors
- 04 Confirmation of minutes
- 05 Disclosures of interests
- 06 Mayoral minute(s)
- 07 Reports of committees
- 08 Reports to council
- 09 Notices of motions/Questions with notice
- 10 Confidential matters
- 11 Conclusion of the meeting

Note: Councils must use either clause 8.1 or 8.2.

8.3 The order of business as fixed under [8.1/8.2] **[delete whichever is not applicable]** may be altered for a particular meeting of the council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

Note: If adopted, Part 13 allows council to deal with items of business by exception.

8.4 Despite clauses 10.20-10.30, only the mover of a motion referred to in clause 8.3 may speak to the motion before it is put.



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9 Consideration of Business at Council Meetings



Business that can be dealt with at a council meeting

- 9.1 The council must not consider business at a meeting of the council:
- (a) unless a councillor has given notice of the business, as required by clause 3.10, and
 - (b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) is already before, or directly relates to, a matter that is already before the council, or
 - (b) is the election of a chairperson to preside at the meeting, or
 - (c) subject to clause 9.9, is a matter or topic put to the meeting by way of a mayoral minute, or
 - (d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the council even though due notice of the business has not been given to the councillors if:
- (a) a motion is passed to have the business considered at the meeting, and
 - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that

it requires a decision by the council before the next scheduled ordinary meeting of the council.

- 9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20-10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.
- 9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

Mayoral minutes

- 9.6 Subject to clause 9.9, if the mayor is the chairperson at a meeting of the council, the mayor may, by minute signed by the mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the council, or of which the council has official knowledge.
- 9.7 A mayoral minute, when put to a meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of a mayoral minute without the motion being seconded.
- 9.8 A recommendation made in a mayoral minute put by the mayor is, so far as it is adopted by the council, a resolution of the council.
- 9.9 A mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the council before the next scheduled ordinary meeting of the council.



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9.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the recommendation if adopted.

answer a question put to them through the general manager at the direction of the general manager.

9.17 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents. Where a councillor or council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.

9.18 Councillors must put questions directly, succinctly, respectfully and without argument.

9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.

Staff reports

9.11 A recommendation made in a staff report is, so far as it is adopted by the council, a resolution of the council.

Reports of committees of council

9.12 The recommendations of a committee of the council are, so far as they are adopted by the council, resolutions of the council.

9.13 If in a report of a committee of the council distinct recommendations are made, the council may make separate decisions on each recommendation.

Questions

9.14 A question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.14.

9.15 A councillor may, through the chairperson, put a question to another councillor about a matter on the agenda.

9.16 A councillor may, through the general manager, put a question to a council employee about a matter on the agenda. Council employees are only obliged to





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10 Rules of Debate



Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A councillor who has submitted a notice of motion under clause 3.10 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council.
- 10.4 In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of the council:
- (a) any other councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - (b) the chairperson may defer consideration of the motion until the next meeting of the council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.

- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 10.8 Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been lost.

Motions requiring the expenditure of funds

- 10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the motion if adopted.

Amendments to motions

- 10.10 An amendment to a motion must be moved and seconded before it can be debated.
- 10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.



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- 10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before council at any one time.
- 10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.16 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

- 10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

- 10.20 A councillor who, during a debate at a meeting of the council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.21 A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.22 A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than five (5) minutes at any one time.
- 10.23 Despite clause 10.22, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five (5) minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.24 Despite clause 10.22, the council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.

Foreshadowed motions

- 10.17 A councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.18 Where an amendment has been moved and seconded, a councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.



- 10.25 Despite clauses 10.20 and 10.21, a councillor may move that a motion or an amendment be now put:
 - (a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or
 - (b) if at least two (2) councillors have spoken in favour of the motion or amendment and at least two (2) councillors have spoken against it.
- 10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.
- 10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.
- 10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.29 All councillors must be heard without interruption and all other councillors must, unless otherwise permitted under this code, remain silent while another councillor is speaking.
- 10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

Participation by non-voting representatives in joint organisation board meetings

- 10.31 Non-voting representatives of joint organisation boards may speak on but must not move, second or vote on any motion or an amendment to a motion.

Note: Under section 400T(1)(c) of the Act, non-voting representatives of joint organisation boards may attend but are not entitled to vote at a meeting of the board.

Note: Joint organisations must adopt clause 10.31. Councils must not adopt clause 10.31.



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11 Voting



Voting entitlements of councillors

11.1 Each councillor is entitled to one (1) vote.

Note: Clause 11.1 reflects section 370(1) of the Act.

Note: Under section 400T(1) of the Act, voting representatives of joint organisation boards are entitled to one (1) vote each at meetings of the board.

11.2 The person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

Note: Clause 11.2 reflects section 370(2) of the Act.

11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

11.4 A motion at a meeting of the board of a joint organisation is taken to be lost in the event of an equality of votes.

Note: Clause 11.4 reflects clause 397E of the Regulation. Joint organisations must adopt clause 11.4 and omit clauses 11.2 and 11.3. Councils must not adopt clause 11.4.

Note: Under section 400U(4) of the Act, joint organisations may specify more stringent voting requirements for decisions by the board such as a 75% majority or consensus decision making. Where a joint organisation's charter specifies more stringent voting requirements, clause 11.4 must be adapted to reflect those requirements.

Voting at council meetings

11.5 A councillor who is present at a meeting of the council but who fails to vote on a motion put to the meeting is taken to have voted against the motion

11.6 If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.

11.7 The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than two (2) councillors rise and call for a division.

11.8 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the council's minutes for the meeting.

11.9 When a division on a motion is called, any councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.5 of this code.

11.10 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

11.11 All voting at council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

Note: If clause 11.11 is adopted, clauses 11.6 – 11.9 and clause 11.13 may be omitted.

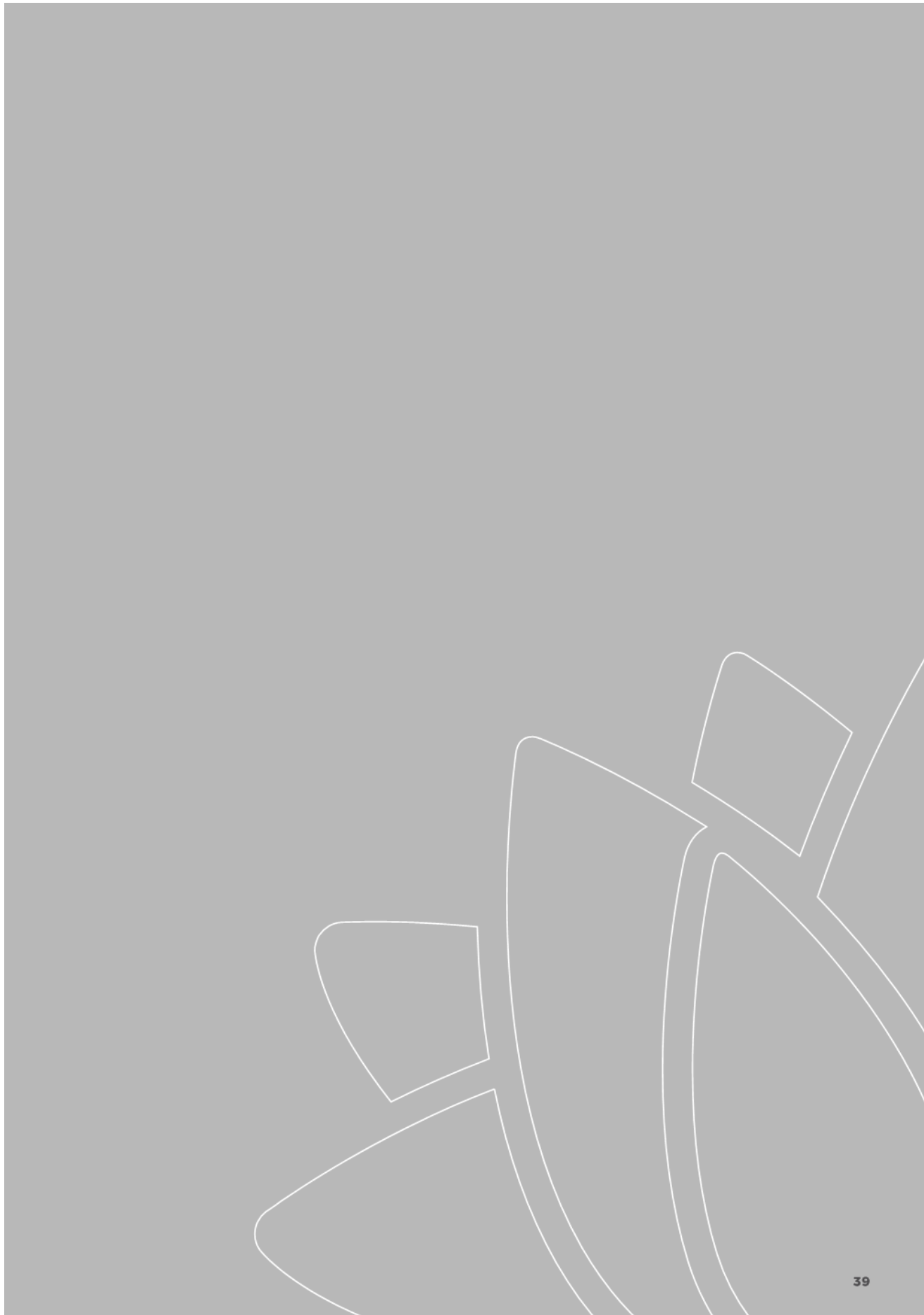


Voting on planning decisions

- 11.12 The general manager must keep a register containing, for each planning decision made at a meeting of the council or a council committee (including, but not limited to a committee of the council), the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- 11.13 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- 11.14 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11.15 Clauses 11.12-11.14 apply also to meetings that are closed to the public.

Note: Clauses 11.12-11.15 reflect section 375A of the Act.

Note: The requirements of clause 11.12 may be satisfied by maintaining a register of the minutes of each planning decision.





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12 Committee of the Whole



- 12.1 The council may resolve itself into a committee to consider any matter before the council.

Note: Clause 12.1 reflects section 373 of the Act.

- 12.2 All the provisions of this code relating to meetings of the council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provisions limiting the number and duration of speeches.

Note: Clauses 10.20–10.30 limit the number and duration of speeches.

- 12.3 The general manager or, in the absence of the general manager, an employee of the council designated by the general manager, is responsible for reporting to the council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.
- 12.4 The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.



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13 Dealing with Items by Exception



- 13.1 The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 13.2 Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.3.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the council's code of conduct.



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14 Closure of Council Meetings to the Public



Grounds on which meetings can be closed to the public

14.1 The council or a committee of the council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:

- (a) personnel matters concerning particular individuals (other than councillors),
- (b) the personal hardship of any resident or ratepayer,
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law,
- (f) matters affecting the security of the council, councillors, council staff or council property,
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

(h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,

(i) alleged contraventions of the council's code of conduct.

Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.

14.2 The council or a committee of the council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Note: Clause 14.2 reflects section 10A(3) of the Act.

Matters to be considered when closing meetings to the public

14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:

- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
- (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret - unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Note: Clause 14.3 reflects section 10B(1) of the Act.



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- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:
- (a) are substantial issues relating to a matter in which the council or committee is involved, and
 - (b) are clearly identified in the advice, and
 - (c) are fully discussed in that advice.

Note: Clause 14.4 reflects section 10B(2) of the Act.

- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

Note: Clause 14.5 reflects section 10B(3) of the Act.

- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council or committee.

Note: Clause 14.6 reflects section 10B(4) of the Act.

- 14.7 In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must consider any relevant guidelines issued by the Chief Executive of the Office of Local Government.

Note: Clause 14.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the council, or of a committee of the council, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed, but only if:

- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
- (b) the council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

Note: Clause 14.8 reflects section 10C of the Act.



Representations by members of the public

14.9 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 14.9 reflects section 10A(4) of the Act.

14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.

14.11 Where the matter has been identified in the agenda of the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the council in the approved form. Applications must be received by **[date and time to be specified by the council]** before the meeting at which the matter is to be considered.

14.12 The general manager (or their delegate) may refuse an application made under clause 14.11. The general manager or their delegate must give reasons in writing for a decision to refuse an application.

14.13 No more than **[number to be specified by the council]** speakers are to be permitted to make representations under clause 14.9.

14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the general manager or their delegate may request the speakers to nominate from among themselves the

persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the general manager or their delegate is to determine who will make representations to the council.

14.15 The general manager (or their delegate) is to determine the order of speakers.

14.16 Where the council or a committee of the council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than **[number to be specified by the council]** speakers to make representations in such order as determined by the chairperson.

14.17 Each speaker will be allowed **[number to be specified by the council]** minutes to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.



Expulsion of non-councillors from meetings closed to the public

14.18 If a meeting or part of a meeting of the council or a committee of the council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.

14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Information to be disclosed in resolutions closing meetings to the public

14.20 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

- (a) the relevant provision of section 10A(2) of the Act,

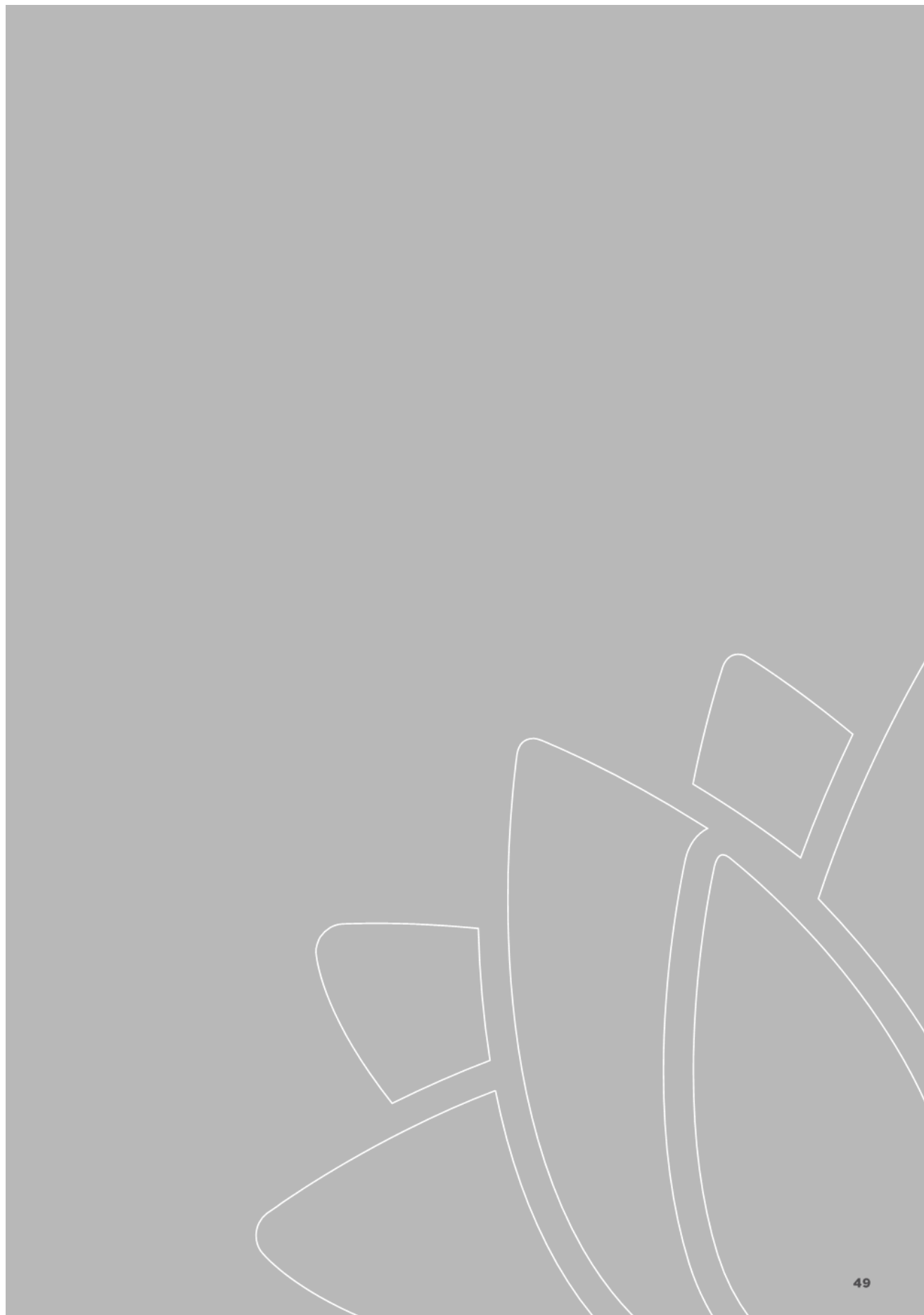
- (b) the matter that is to be discussed during the closed part of the meeting,
- (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Note: Clause 14.20 reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

14.21 If the council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.

14.22 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.21 during a part of the meeting that is webcast.





Model Code of Meeting Practice for Local Councils in NSW

15 Keeping Order at Meetings



Points of order

- 15.1 A councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

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

Motions of dissent

- 15.8 A councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

- 15.11 A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:
 - (a) contravenes the Act or any regulation in force under the Act or this code, or
 - (b) assaults or threatens to assault another councillor or person present at the meeting, or
 - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or the committee, or addresses or attempts to address the council or the committee on such a motion, amendment or matter, or



- (d) insults or makes personal reflections on or imputes improper motives to any other council official, or alleges a breach of the council's code of conduct, or
- (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or the committee into disrepute.

15.12 The chairperson may require a councillor:

- (a) to apologise without reservation for an act of disorder referred to in clauses 15.11(a) or (b), or
- (b) to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
- (c) to retract and apologise without reservation for an act of disorder referred to in clauses 15.11(d) and (e).

How disorder at a meeting may be dealt with

15.13 If disorder occurs at a meeting of the council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.

Expulsion from meetings

15.14 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person, including any councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act.

15.15 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person other than a councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the council or the committee of the council.

Note: Councils may use either clause 15.14 or clause 15.15.

15.16 Clause [15.14/15.15] **[delete whichever is not applicable]**, does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2) (a) of the Act.

15.17 A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 15.12. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

15.18 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for engaging in or having engaged in disorderly conduct at the meeting.



- 15.19 Where a councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.20 If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member of the public from that place and, if necessary, restrain the councillor or member of the public from re-entering that place for the remainder of the meeting.
- 15.24 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 15.21 Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.
- 15.22 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council or the committee.
- 15.23 Any person who contravenes or attempts to contravene clause 15.22, may be expelled from the meeting as provided for under section 10(2) of the Act.



16 Conflicts of Interest



- 16.1 All councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the council and committees of the council in accordance with the council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.



Model Code of Meeting Practice for Local Councils in NSW

17 Decisions of the Council



Council decisions

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

Note: Clause 17.1 reflects section 371 of the Act in the case of councils and section 400T(8) in the case of joint organisations.

Note: Under section 400U(4) of the Act, joint organisations may specify more stringent voting requirements for decisions by the board such as a 75% majority or consensus decision making. Where a joint organisation's charter specifies more stringent voting requirements, clause 17.1 must be adapted to reflect those requirements.

- 17.2 Decisions made by the council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering council decisions

- 17.3 A resolution passed by the council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.

Note: Clause 17.3 reflects section 372(1) of the Act.

- 17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Note: Clause 17.4 reflects section 372(2) of the Act.

- 17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.10.

Note: Clause 17.5 reflects section 372(3) of the Act.

- 17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 17.6 reflects section 372(4) of the Act.

- 17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 17.7 reflects section 372(5) of the Act.

- 17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 17.8 reflects section 372(7) of the Act.

- 17.9 A notice of motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.11 with the consent of all signatories to the notice of motion.

- 17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the general manager no later than [council to specify the period of time] after the meeting at which the resolution was adopted.

- 17.11 A motion to alter or rescind a resolution of the council may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

Note: Clause 17.11 reflects section 372(6) of the Act.



17.12 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the council may be moved at the same meeting at which the resolution was adopted, where:

- (a) a notice of motion signed by three councillors is submitted to the chairperson, and
- (b) a motion to have the motion considered at the meeting is passed, and
- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

17.13 A motion moved under clause 17.12(b) can be moved without notice. Despite clauses 10.20-10.30, only the mover of a motion referred to in clause 17.12(b) can speak to the motion before it is put.

17.14 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.12(c).

Recommitting resolutions to correct an error

17.15 Despite the provisions of this Part, a councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

- (a) to correct any error, ambiguity or imprecision in the council's resolution, or
- (b) to confirm the voting on the resolution.

17.16 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.15(a), the councillor is to propose alternative wording for the resolution.

17.17 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.

17.18 A motion moved under clause 17.15 can be moved without notice. Despite clauses 10.20-10.30, only the mover of a motion referred to in clause 17.15 can speak to the motion before it is put.

17.19 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.

17.20 A motion moved under clause 17.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.





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18 Time Limits on Council Meetings



- 18.1 Meetings of the council and committees of the council are to conclude no later than **[council to specify the time]**.
- 18.2 If the business of the meeting is unfinished at **[council to specify the time]**, the council or the committee may, by resolution, extend the time of the meeting.
- 18.3 If the business of the meeting is unfinished at **[council to specify the time]**, and the council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the council, or
 - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the council or a committee of the council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the general manager must:
- (a) individually notify each councillor of the time, date and place at which the meeting will reconvene, and
 - (b) publish the time, date and place at which the meeting will reconvene on the council's website and in such other manner that the general manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.



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19 After the Meeting



Minutes of meetings

- 19.1 The council is to keep full and accurate minutes of the proceedings of meetings of the council.

Note: Clause 19.1 reflects section 375(1) of the Act.

- 19.2 At a minimum, the general manager must ensure that the following matters are recorded in the council's minutes:

- (a) details of each motion moved at a council meeting and of any amendments moved to it,
- (b) the names of the mover and seconder of the motion or amendment,
- (c) whether the motion or amendment was passed or lost, and
- (d) such other matters specifically required under this code.

- 19.3 The minutes of a council meeting must be confirmed at a subsequent meeting of the council.

Note: Clause 19.3 reflects section 375(2) of the Act.

- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 19.5 reflects section 375(2) of the Act.

- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

- 19.7 The confirmed minutes of a council meeting must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The council and committees of the council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

Note: Clause 19.8 reflects section 11(1) of the Act.

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 19.9 reflects section 11(2) of the Act.

- 19.10 Clause 19.8 does not apply if the council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 19.10 reflects section 11(3) of the Act.



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- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the council

- 19.12 The general manager is to implement, without undue delay, lawful decisions of the council.

Note: Clause 19.12 reflects section 335(b) of the Act.





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20 Council Committees



Application of this Part

20.1 This Part only applies to committees of the council whose members are all councillors.

(b) the business proposed to be considered at the meeting.

20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

Council committees whose members are all councillors

20.2 The council may, by resolution, establish such committees as it considers necessary.

20.3 A committee of the council is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.

20.4 The quorum for a meeting of a committee of the council is to be:

(a) such number of members as the council decides, or

(b) if the council has not decided a number - a majority of the members of the committee.

Attendance at committee meetings

20.8 A committee member (other than the mayor) ceases to be a member of a committee if the committee member:

(a) has been absent from three (3) consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or

(b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.

20.9 Clause 20.8 does not apply if all of the members of the council are members of the committee.

Functions of committees

20.5 The council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Non-members entitled to attend committee meetings

20.10 A councillor who is not a member of a committee of the council is entitled to attend, and to speak at a meeting of the committee. However, the councillor is not entitled:

(a) to give notice of business for inclusion in the agenda for the meeting, or

(b) to move or second a motion at the meeting, or

(c) to vote at the meeting.

Notice of committee meetings

20.6 The general manager must send to each councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:

(a) the time, date and place of the meeting, and



Chairperson and deputy chairperson of council committees

- 20.11 The chairperson of each committee of the council must be:
- (a) the mayor, or
 - (b) if the mayor does not wish to be the chairperson of a committee, a member of the committee elected by the council, or
 - (c) if the council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.14 The chairperson is to preside at a meeting of a committee of the council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the council unless the council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the council or the committee determines otherwise in accordance with clause 20.15.
- 20.17 A motion at a committee of a joint organisation is taken to be lost in the event of an equality of votes.
- Note: Clause 20.17 reflects clause 397E of the Regulation. Joint organisations must adopt clause 20.17 and omit clause 20.16. Councils must not adopt clause 20.17.**
- 20.18 Voting at a council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).



Closure of committee meetings to the public

20.19 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the council to the public in the same way they apply to the closure of meetings of the council to the public.

20.20 If a committee of the council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.

20.21 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.20 during a part of the meeting that is webcast.

- (a) details of each motion moved at a meeting and of any amendments moved to it,
- (b) the names of the mover and seconder of the motion or amendment,
- (c) whether the motion or amendment was passed or lost, and
- (d) such other matters specifically required under this code.

20.24 All voting at meetings of committees of the council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

20.25 The minutes of meetings of each committee of the council must be confirmed at a subsequent meeting of the committee.

20.26 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

20.27 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.

20.28 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

20.29 The confirmed minutes of a meeting of a committee of the council must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of meetings of committees of the council on its website prior to their confirmation.

Disorder in committee meetings

20.22 The provisions of the Act and this code relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

Minutes of council committee meetings

20.23 Each committee of the council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:



21 Irregularities



- 21.1 Proceedings at a meeting of a council or a council committee are not invalidated because of:
- (a) a vacancy in a civic office, or
 - (b) a failure to give notice of the meeting to any councillor or committee member, or
 - (c) any defect in the election or appointment of a councillor or committee member, or
 - (d) a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or
 - (e) a failure to comply with this code.

Note: Clause 21.1 reflects section 374 of the Act.



22 Definitions



the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 15.11 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion
audio recorder	any device capable of recording speech
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.11 of this code
this code	means the council's adopted code of meeting practice
committee of the council	means a committee established by the council in accordance with clause 20.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 12.1
council official	has the same meaning it has in the <i>Model Code of Conduct for Local Councils in NSW</i>
day	means calendar day
division	means a request by two councillors under clause 11.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion
foreshadowed amendment	means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment
foreshadowed motion	means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
planning decision	means a decision made in the exercise of a function of a council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act



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quorum	means the minimum number of councillors or committee members necessary to conduct a meeting
the Regulation	means the <i>Local Government (General) Regulation 2005</i>
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
year	means the period beginning 1 July and ending the following 30 June





13.6 Community Engagement Policy

Reference:	5704/9
Report Author:	Coordinator Community Engagement
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	Improve opportunities for people to 'have their say' and take an active role in decision making processes that affect our Shire through diverse engagement opportunities

PURPOSE

At its meeting on 28 November 2018 Council resolved to place on public exhibition the draft Community Engagement Policy. The purpose of this report is to outline submissions received during the public exhibition period and recommend adoption of the Community Engagement Policy.

RECOMMENDATION

THAT the draft Community Engagement policy as detailed within the report be adopted.

REPORT

BACKGROUND

Council's first Community Engagement Policy was adopted on 26 August 2009 and a subsequent review endorsed on 26 November 2014. The policy outlines Council's principles, roles, responsibilities and commitment with regard to community engagement activities.

A scheduled review of Council's Community Engagement Policy was undertaken in late 2018. No substantive changes were recommended for the policy however some minor changes were made to the text for clarity and legislation purposes.

The draft policy was subsequently presented to Council on 28 November 2018 where Councillors resolved:

- 1. THAT Council endorse the revised Community Engagement Policy 2018 to be placed on public exhibition for twenty eight (28) days commencing in early 2019.***
- 2. THAT following the public exhibition period, and consideration of related submissions, a revised Community Engagement Policy be presented to Council for adoption.***

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



REPORT

The draft Community Engagement Policy was placed on public exhibition for a total of 32 days from 7 February to 11 March 2019.

The opportunity to review and comment on the draft policy was:

- advertised in the Southern Highland News throughout the exhibition period,
- promoted in e-newsletters emailed to over 1,650 residents on 13 February and 6 March 2019,
- the focus of a notification to over 2290 registered users of Council's online consultation hub on 8 February 2019, and
- publicised via a media release issued to all local and regional media on 18 February 2019 and subsequently posted on Council's Media Centre website.

The online consultation hub www.yoursaywingecarribee.com.au hosted a project page with 144 unique visitors, 72 of whom downloaded associated documents.

One written submission was received about the draft Community Engagement Policy during the public exhibition period. Responses to the content of the submission are provided in the table below. No changes are proposed to the draft Community Engagement Policy based on the submission received.

Submission topics and themes	Officer Response
Scope Item 5 refers to an IAP2 document that is outdated	Reference to the IAP2 Core Values date has been removed.
Support for identification of level of engagement in Council Business Papers. Expressed an understanding of community engagement work tailored to the related project but would like to observe more undertaken at the 'Empower' level.	Council's report template includes this requirement. Engagement is tailored to the topic/project.
Support for training employees and advising contractors, noting <i>"...this is extremely important considering dedicated engagement staff is limited to one person. It is my hope that Council ensures key staff are professionally trained within each major business area to oversee other staff (also trained) develop and implement professional engagement practices."</i>	Training and support is provided subject to resourcing.
Underlined importance of compliance with the Community Engagement Policy and Council report templates.	Noted.
Questioned the process followed for lease of Council properties to organisations suggesting that decisions appeared to have been made before public exhibition was conducted. Examples cited from Council Meeting Agenda of 13 March 2019. Also encouraged consideration of all options for a	Comments shared with Asset and Property teams. Processes being reviewed. Generally however the issues raised are out of scope of the Community Engagement Policy.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Submission topics and themes	Officer Response
<p>property before public exhibition of a lease, stating <i>“Exhibition was only designed for comment on the decision already taken to grant further lengthy periods of time to incumbent lease holders. This would endow tenancy in some instances to beyond 40 years; not allowing for consideration of changes taking place in the social, cultural and economic life of our community. In my opinion a better approach would be to take a step back and engage broadly on the best use for Council property, and prepare a Report for Exhibition. The informed outcome may or may not result in a continuation of the lease for the existing tenant. In fact, a better result could be found for the existing tenant who may simply be hanging on to the lease so as not to miss out altogether”</i></p>	
<p>Comment on the materials used by Council to facilitate engagement, identifying that the website www.wsc.nsw.gov.au needs a visual aesthetic, navigation design and content upgrade.</p>	<p>Noted. Website functionality and content will be updated in 2019.</p>
<p>Concern expressed that placing a limit on the number of speakers allowed at Council meetings reduces opportunity for Council to hear a community voice.</p>	<p>The number of speakers at Council meetings is determined in accordance with Council’s adopted Code of Meeting Practice (COMP). Council is currently reviewing its COMP which will be placed on exhibition in April 2019.</p>

IMPACT ON COUNCIL’S FIT FOR THE FUTURE IMPROVEMENT PLAN

There is no impact on Council’s Fit for the Future Improvement Plan.

COMMUNICATION AND CONSULTATION

Community Engagement

The policy was placed on public exhibition and submissions sought over a 32 day period.

Internal Communication and Consultation

The Executive and Council staff provided feedback during the review of the existing Community Engagement Policy prior to public exhibition. Operational staff were provided with further opportunities to comment on the draft policy.

External Communication and Consultation

The opportunity to comment was widely publicised as outlined earlier in this report.

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SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

The objectives of this policy are to:

- express Council's commitment to engaging with the community and stakeholders on matters that affect them;
- improve understanding of community and stakeholder engagement; and
- outline how community engagement is integrated into Council activities in order to support decision making and strengthen relationships.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

The policy seeks to provide equality of access for all residents and stakeholders regardless of cultural background.

- **Governance**

The proposed Community Engagement Policy seeks to supersede the existing Policy which was endorsed on 26 November 2014.

COUNCIL BUDGET IMPLICATIONS

Nil

RELATED COUNCIL POLICY

N/A

OPTIONS

The options available to Council are:

Option 1

THAT Council adopt the draft Community Engagement policy as detailed within the report.

This option would have the effect of formalising Council's Community Engagement Policy, thereby providing a uniform framework for public participation in decision making.

Option 2

Redraft or defer the policy for consideration by Council at a later date.

Option 1 is the recommended option to this report.

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CONCLUSION

This report and its attachment seek to ensure Council consultation is conducted uniformly, consistently, accurately and appropriately.

ATTACHMENTS

1. Community Engagement Policy



Community Engagement Policy

LEADERSHIP

1.2 COUNCIL COMMUNICATES AND ENGAGES WITH THE COMMUNITY IN A DIVERSE, OPEN AND INCLUSIVE WAY

Adoption Date:	(Governance to insert)
Council Reference:	(Governance to insert)
Policy Owner:	Group Manager Corporate and Community
Next review date:	(Governance to insert – 4 years recommended)
File Reference:	5704/9
Related Policies/Legislation:	Local Government Act 1993 Local Government Amendment (Governance and Planning) Act 2016 Environmental Planning and Assessment Act 1979 Government Information (Public Access) Act 2009 Privacy and Personal Information Protection Act 1998 Code of Conduct Code of Meeting Practice
Related Documents:	Notification of Development Proposals Policy Community Engagement Strategy Communications Strategy Community Engagement Toolkit (internal doc) Privacy Management Plan Disability Inclusion Action Plan 2017 – 2021 Positive Ageing Strategy 2016 – 2026 Youth Strategy & Action Plan 2016-2026
Superseded Policy/GM Practice Note:	Community Engagement Policy 26/11/2014

OBJECTIVES

The objectives of this policy are to:

- express Council's commitment to engaging with the community and stakeholders on matters that affect them;
- improve understanding of community and stakeholder engagement; and
- outline how community engagement is integrated into Council activities in order to support decision making and strengthen relationships.





Community Engagement Policy

POLICY STATEMENT

Council views community engagement as important to its effective, transparent and accountable governance. Council recognises that a clear standard of engagement should be established appropriate to the nature, complexity and forecast level of impact associated with each decision made regarding major projects, policies, strategies and operational changes.

Council is committed to:

- offering opportunities for the community to contribute to the decisions made by Council;
- effective two-way flow of information between Council and the community;
- decision-making that is transparent and works in the interest of the community, considering its many and diverse stakeholders; and
- ensuring that effective internal processes and controls exist within Council to ensure good governance and effective community representation.

SCOPE

This Policy outlines the principles and commitments that will guide the planning, design, implementation and evaluation of community engagement practices at Council.

Community engagement is the responsibility of all Council service areas, teams and employees. It also applies to contractors and consultants undertaking work on behalf of Council.

Principles for Community Engagement

As part of this commitment, Council has adopted the following principles which provide the framework through which all community engagement will be considered and delivered:

1. Council's community engagement activities are based on the belief that those who are potentially affected, negatively or positively, by a decision have a right to have their thoughts heard and understood in the decision-making process.
2. Council recognises that in a system of representative democracy, it is neither practical nor possible to undertake extensive community engagement on every issue; however when a decision has the potential to impact the local community significantly, Council will seek out and facilitate the involvement of those potentially affected by or with an interest in a decision.
3. When undertaking community engagement, Council staff will present their views and professional recommendations in an open and respectful manner in order to inform the community and assist in the achievement of a knowledgeable outcome from each engagement opportunity.





Community Engagement Policy

- 4. All materials and methods developed by Council to support community engagement will be genuine, unbiased, understandable and appropriate to ensure that the community can participate in a meaningful way.
- 5. When undertaking community engagement (consultation and higher on the IAP2 Spectrum described below), Council's commitment is that the community's contribution will be considered when making a decision. Council will also communicate to participants, where practicable, how their input was taken into account.

These principles are adapted from the International Association for Public Participation's *Core Values for Public Participation* (© IAP2 www.iap2.org) and are reflective of the philosophy of the *NSW Local Government Act and Amendments*.

Level of engagement

Council will call for different levels of engagement depending on the issue, statutory requirements, forecast impact on the community and at different stages of a project.

The five levels of engagement outlined in the *International Association for Public Participation* (IAP2) spectrum shown below will be utilised:

Inform: To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.

Consult: To obtain public feedback on analysis, alternatives and/or decisions.

Involve: To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

Collaborate: To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.

Empower: To place final decision-making in the hands of the public.

The identified level of engagement and its financial implication for each project will be noted in Council Committee Papers and Council Business Papers. The level will be determined in consultation with the appropriate Manager and Deputy General Manager.

Statutory requirements

Some elements of community engagement are directed by statutory requirements of the *NSW Environmental Planning and Assessment Act* (Part 2, Division 2.6) and the *Local Government Act 1993*.





Community Engagement Policy

DEFINITIONS

Community Engagement	<p>Council's definition of community engagement is based on the <i>United Nations Declaration on Community Engagement (2005)</i>.</p> <p>Council defines community engagement as a two-way process of dialogue by which the aspirations, concerns, needs and values of our local community and other relevant stakeholders are incorporated into policy development, planning, decision-making, service delivery and assessment.</p>
Communication	The exchange and promotion of information between the Council, community and internal or external stakeholders.
Community	<p>Community refers to the people who have a stake and interest in the Wingecarribee Local Government Area (LGA) and includes, people who:</p> <ul style="list-style-type: none"> • Live, work, study or conduct business or are involved in local community groups or organisations in the LGA. • Visit, use or enjoy the services, facilities and public places located within the LGA.
Stakeholder	Property owners and residents, business representatives, associations, other levels of government and agencies who have an interest or are directly impacted by the decisions of Council.
IAP2	International Association for Public Participation

RESPONSIBILITIES

Responsibilities for implementing this policy are shared as follows:

Councillors	<p>Councillors should ensure that all new proposals that are brought to their attention have the appropriate community engagement completed (or specified as part of the project report). Councillors should encourage a positive attitude to involving the community at the appropriate level.</p> <p>A Councillor's role is to listen to the community and consider various views when making decisions at Council. Community engagement processes provide valuable opportunities for Councillors to hear and understand the voice of the community and ensure that this voice is properly represented when Council meets and makes resolutions which impact the future of our community.</p>
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Community Engagement Policy

Executive	Executive should support the community engagement process and encourage the appropriate level of engagement by all staff.
Staff (Contractors and consultants undertaking engagement on behalf of Council are deemed employees for the purposes of this policy)	<p>Council employees need to be aware of the importance of community engagement and people directly involved in major projects should be trained to the appropriate level of the community engagement techniques and practices (or have access to trained advisers).</p> <p>A Council staff member's role in community engagement is to organise and facilitate the discussion, record, provide feedback, evaluate the engagement and consider the community's views when making unbiased recommendations to Council or committees.</p>
All	Both Councillors and Council staff are encouraged not to dominate or direct community discussions, nor to dismiss the community's input. Instead, Councillors and staff should allow discussions to move forward in an open, respectful and inclusive way.

PERFORMANCE MEASURES

While community engagement plans are generally tailored to the unique aspects of each key project, at a minimum officers are required to use the *IAP2 Public Participation Spectrum* to define stakeholder roles and plan the process. They must also meet legislative requirements.

BREACHES OF THE POLICY

Breaches of this policy should be reported to Group Manager Corporate and Community who will investigate allegations and determine an appropriate course of action to resolve the matter.

APPROVED BY:

WINGECARRIBEE SHIRE COUNCIL

(Insert Date)



www.wsc.nsw.gov.au

Wingecarribee Shire Council – *Community Engagement Policy v1*
 Adoption Date: *(Governance to insert)*
 Policy Owner: Community Engagement Coordinator

13.7 Request for Financial Assistance from Mackenzie Long to Attend Royal Ballet School Spring Intensive Course

Reference:	2155/1
Report Author:	Coordinator Community Development
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	Support and promote the creative and cultural sector

PURPOSE

The purpose of this report is to seek Council's position on a request from the family of Mackenzie Long to contribute financially towards the Royal Ballet School tuition fee.

RECOMMENDATION

THAT Council determine its position with regard to the request for a financial contribution to the Long family for their daughter to attend the Royal Ballet School Spring intensive course.

REPORT

BACKGROUND

Mackenzie Long is a 13 year old who lives in the Wingecarribee Shire. Mackenzie attended Berrima Public School from Kindergarten to Year 6 and was School Captain in her final year.

Mackenzie began training in Classical Ballet locally age 10. She is now studying dance full time in Bowral, completing both the Diploma in Elite Dance and Year 8 studies via distance education.

REPORT

Mackenzie recently received an invitation to attend the Royal Ballet School Spring Intensive course at White Lodge in London, an offer extended to only a few dozen exceptional young dancers each year.

The tuition fee for the course is approximately 550 pounds or AUD\$1,000. The Long family is seeking a contribution of \$750 from Council towards the cost of tuition. The Long family will be covering all other additional costs.

Under the Contingency Fund Guidelines adopted 1 July 2018, this application is being viewed as a 'one-off' submission.

IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There is no impact on Council's Fit for Future Improvement Plan.

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COMMUNICATION AND CONSULTATION

Community Engagement

Nil

Internal Communication and Consultation

Nil

External Communication and Consultation

Nil

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

COUNCIL BUDGET IMPLICATIONS

The current balance in the Council Contingency Fund is \$

RELATED COUNCIL POLICY

Council Contingency Fund Guidelines adopted 1 July 2018.

OPTIONS

The options available to Council are:

Option 1

Council support the request from the Long family for a contribution for their daughter to attend the Spring intensive at the Royal Ballet School in London in the amount of \$XX and that this contribution be funded from Council's Contingency Fund.

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Option 2

Council not support the request.

Submitted for determination.

ATTACHMENTS

1. Letter of Request

Mackenzie Long – Royal Ballet School, London

Application for financial assistance via the Wingecarribee Shire Council Contingency Fund.

Mackenzie Long is a 13 yr old dancer who has lived in the Wingecarribee Shire for years. She went to Berrima Public School from Kindergarten to Year 6 and had the honour of leading her peers as School Captain. She has also been heavily involved in the Mittagong Netball Club, where she played for a number of years and continues to support the club through umpiring.

However, Mackenzie's number one love is dance, particularly ballet. She began training in Classical Ballet, age 10, at Angus and Lucinda's Academie de Danse in Bowral.

She is now studying dance full-time at A&L, completing both the Diploma in Elite Dance and high school Yr 8 study via distance education. She is truly focused on striving to improve her craft.

She has recently received an invitation to attend the Royal Ballet School Spring Intensive course, 6th to 11th April, at White Lodge in London. This is an incredible honour, as only a few dozen dancers her age are invited to attend each year. She will participate in Classical Ballet, Contemporary and Character ballet classes taught by Royal Ballet staff and company dancers.

We are hoping the Wingecarribee Shire Council would be interested in supporting Mackenzie by contributing to the Royal Ballet School tuition fees. The fees for the course are £550, approx. AUD\$1000, however we would be happy with any contribution you are able to provide.

Mackenzie would be happy to participate in any media coverage you may wish to generate and would thank the council via social media, including photos of her outside White Lodge in London.

Thank you for taking the time to considering Mackenzie's application.

Regards

Kath Long



13.8 Council Representatives on the Heritage Advisory Committee and the Terms of Reference for the Committee

Reference:	107/16
Report Author:	Strategic Land Use Planner - Heritage
Authoriser:	Coordinator Strategic Land Use Planning
Link to Community Strategic Plan:	Empower our community to advance agreed priorities, address emerging issues and collaboratively explore new ideas to improve the Shire

PURPOSE

The purpose of this report is to appoint Councillor Representatives to the Heritage Advisory Committee and adopt revised Terms of Reference for the Committee.

RECOMMENDATION

1. **THAT Council re-establish the Heritage Advisory Committee.**
2. **THAT Council appoint two Councillor representatives to the Heritage Advisory Committee for the period ending August 2020 being the remainder of the Council Term, AND THAT those representatives be:**
 - Councillor XX Chair
 - Councillor XX Alternate Chair
3. **THAT Council adopt the draft terms of reference for the Heritage Advisory Committee, as set out in Attachment 2, and amend part 6 of the Wingecarribee Shire Council Committee Manual 2016-2020 to change the committee's meeting frequency.**
4. **THAT the Heritage Advisory Committee nominate its members to the Joadja Conservation Management Community Reference Group, at its next meeting.**
5. **THAT the Heritage Advisory Committee meet by May 2019.**

REPORT

BACKGROUND

At its meeting on 10 October 2018, Council considered a report on Councillor Representatives on Committees, and resolved (in part) as follows (MN 422/18):

THAT Council review the Terms of Reference for the Heritage Advisory Committee prior to the re-establishment of the Committee.

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A Notice of Motion was subsequently considered at the Council meeting on 28 November 2018, and Council resolved as follows (MN 520/18):

THAT in order to provide for better consideration of heritage matters and sound practical advice, the Council instruct the General Manager to arrange forthwith for the Heritage Committee to be re-established as it was prior to 2016 AND THAT a briefing session be held in early 2019 to confirm the terms of reference for the Committee including the following:

- ***Regularity of meetings;***
- ***The matters to be dealt with by the Committee.***

REPORT

Following the election of the Mayor and Deputy Mayor at the Council meeting on 26 September 2018, it was necessary for Councillor Representatives to be elected to advisory committees for a two (2) year period aligned to the 2018-2020 Mayoral term. Councillor Representatives on Committees were considered at the Council meeting of 10 October 2018. However, Councillors refrained from forming the Heritage Committee and in doing so resolved to further consider the Terms of Reference of the Heritage Advisory Committee prior to re-establishing the Committee.

A Councillor Briefing Session was held on 27 February 2019 to allow Councillors to further discuss the Terms of Reference for the Heritage Advisory Committee, as outlined in the two (2) Council resolutions in the Background of this report above. In that briefing, Councillors were of a view to generally return to the former terms of reference for the Heritage Advisory Committee used during the 2012- 2016 Council term and which are attached to the Report as **Attachment 1**. Of particular interest for Councillors was the referral of development applications to members of the Heritage Committee for comment. To this end it was agreed that development applications involving heritage listed properties and significant developments within heritage conservation areas will be notified to members of the Heritage Committee at the same time as applications are neighbour notified.

On that basis, the Draft Terms of Reference for the Heritage Advisory Committee for the remainder of the 2016-2020 Council term have been prepared based on Councillors discussion on this basis and are included as **Attachment 2**.

In conjunction with re-establishing the Heritage Advisory Committee, the Joadja Conservation Management Community Reference Group will reconvene. The Heritage Committee should nominate its members to the Joadja Conservation Management Community Reference Group in line with the Committee's Manual 2016-2020. It is proposed that the Terms of Reference for the Joadja Conservation Management Community Reference Group be reviewed to ensure it operates to support the 'Joadja Heritage Site Deed' that was a condition of Development Consent LUA06/0994 (5 July 2007).

IMPACT ON COUNCIL'S FIT FOR THE FUTURE IMPROVEMENT PLAN

There is no impact on Council's *Fit for the Future* Improvement Plan.

COMMUNICATION AND CONSULTATION

Community Engagement

Not applicable.

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Internal Communication and Consultation

- The Group Manager Planning, Development and Regulatory Services provided advice on the proposed amendments to the Heritage Advisory Committee terms of reference.
- A Councillor Briefing Session was held with Councillors

External Communication and Consultation

Not applicable.

SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The advisory role of the Heritage Advisory Committee can assist Council's informed decision-making to advance agreed community priorities, as outline in the community strategic plan.

COUNCIL BUDGET IMPLICATIONS

Minor impact on the resourcing capability of the Planning, Development and Regulatory Services group.

RELATED COUNCIL POLICY

N/A

OPTIONS

CONCLUSION

The Heritage Advisory Committee is a mechanism by which Council can gain advice and assistance on its approach to Council policy, directions and practices for heritage conservation and management on behalf of the community. The committee is an important link in Council's communication and engagement strategies and is supported via other community engagement methods.

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ATTACHMENTS

1. Former Terms of Reference for the Heritage Advisory Committee - at 25 February 2015
2. Draft Terms of Reference for the Heritage Advisory Committee

Mark Pepping

Deputy General Manager Corporate, Strategy and Development Services

Friday 5 April 2019

13.8 Council Representatives on the Heritage Advisory Committee and the Terms of Reference for the Committee

ATTACHMENT 1 Former Terms of Reference for the Heritage Advisory Committee - at 25 February 2015



COUNCIL'S COMMITTEE STRUCTURE & TERMS OF REFERENCE
ADOPTED BY COUNCIL ON 25 FEBRUARY 2015.

HERITAGE COMMITTEE

Name of Committee:	Heritage Committee
Status of Committee: <i>(Choose one only)</i>	Peak Committee of the Whole <input type="checkbox"/> Committee <input checked="" type="checkbox"/> Event-Specific Sunset Working Group <input type="checkbox"/>
Created by resolution:	Ordinary Council Meeting held 8 May, 2013 MN148/13
Date of creation:	8 May, 2013
Structure of Committee: <i>Note – each member shall have one (1) vote unless otherwise stated</i>	The committee will consist of the following members: <ul style="list-style-type: none"> • Councillor Chairperson (Chair) Clr J R Clark • Councillor (Alternate Chair) Clr G McLaughlin • Councillor member (1) No Councillor elected • Representative of the Berrima District Historical and Family History Society • Representative of the Southern Highlands Branch of the National Trust of Australia (NSW) • Representative of the Southern Highlands Branch of the Australian Garden History Society • Community representatives (3) who will ideally have the following skills and/or relevant experience: <ul style="list-style-type: none"> ○ Qualifications in architecture, building, engineering, heritage conservation, town planning or related field/s. ○ Proven interest and preferably experience in the conservation of buildings, areas and other places of cultural significance. ○ Experience in practical procedures and techniques of heritage conservation. ○ Working knowledge of the NSW Heritage Act 1977, the Australia ICOMOS Burra Charter (1999) and the Environmental Planning and Assessment Act 1979. ○ Knowledge of the historical development of the Wingecarribee Shire. ○ Resident of and/or property owner within the Wingecarribee Shire <p>Dennis McManus Ian Stapleton Charlotte Webb</p>

13.8 Council Representatives on the Heritage Advisory Committee and the Terms of Reference for the Committee

ATTACHMENT 1 Former Terms of Reference for the Heritage Advisory Committee - at 25 February 2015



**COUNCIL'S COMMITTEE STRUCTURE & TERMS OF REFERENCE
ADOPTED BY COUNCIL ON 25 FEBRUARY 2015.**

In Attendance:	<ul style="list-style-type: none"> Councillors and members of the public, other than Committee members, may attend with approval or invitation of the Chair. 	
Staff representation: <i>Note - Staff shall not have voting rights in the committee</i>	<ol style="list-style-type: none"> Heritage Land Use Planner Group Manager Development Services Administrative support officer (if available) Other Officers will be required to attend to provide relevant technical and professional advice when agenda items relate to their responsibilities and/or expertise 	
Objective(s) of Committee:	<ol style="list-style-type: none"> To promote and raise the community's awareness of heritage. To provide advice to Council as required on the management of heritage within the Shire. To support the development, promotion and implementation of heritage activities and events. 	
Role(s) of Committee:	<ol style="list-style-type: none"> To provide advice to peak committees and relevant sections of Council on heritage matters, including the development and implementation of heritage policy, plans, strategies and programs and provide heritage input into council policies, plans of management, development applications, strategic plans, delivery plans and master plans where relevant. To provide advice and feedback to staff about heritage issues affecting the Wingecarribee Shire. To assist in the planning for the annual National Trust Heritage Festival. To assist in the judging of the biennial Wingecarribee Heritage Awards. To contribute to the review of heritage listings as required. To oversee the Joadja Conservation Management Working Group. To refer any recommendation with possible budgetary implications to Council's Finance Committee for a decision. 	
Delegation:	Committee of the Whole – Delegated to make decisions of Council in accordance with stated objective(s) and role(s)	<input type="checkbox"/>
	No delegation – minutes to be directed to Ordinary Meeting of Council for ratification	<input type="checkbox"/>
	<ol style="list-style-type: none"> Delegation to make comments on heritage matters related individual development applications. Minutes to be directed to the Ordinary Meeting of Council for ratification. 	<input checked="" type="checkbox"/>

13.8 Council Representatives on the Heritage Advisory Committee and the Terms of Reference for the Committee

ATTACHMENT 1 Former Terms of Reference for the Heritage Advisory Committee - at 25 February 2015



**COUNCIL'S COMMITTEE STRUCTURE & TERMS OF REFERENCE
ADOPTED BY COUNCIL ON 25 FEBRUARY 2015.**

Tenure of Committee: <i>(How often shall the membership be put to the vote?)</i>	Chairperson: Council <input type="checkbox"/>	Annual <input checked="" type="checkbox"/>	Tenure	of
	Councillor membership: Council <input type="checkbox"/>	Annual <input checked="" type="checkbox"/>	Tenure	of
	Community membership: Council <input checked="" type="checkbox"/>	Annual <input type="checkbox"/>	Tenure	of
Proposed meeting frequency:	Weekly <input type="checkbox"/>	Fortnightly <input type="checkbox"/>	Monthly <input type="checkbox"/>	
	Every other month <input checked="" type="checkbox"/>	Quarterly <input type="checkbox"/>	Bi-annually <input type="checkbox"/>	

**13.8 Council Representatives on the Heritage Advisory Committee
and the Terms of Reference for the Committee****ATTACHMENT 2 Draft Terms of Reference for the Heritage
Advisory Committee**

9.9 Heritage Advisory Committee

PURPOSE

The purpose of the Heritage Advisory Committee is to provide advice to Council on initiatives to promote and raise awareness of heritage matters, provide advice to on the management of heritage within the Shire and support the development, promotion and implementation of the heritage activities and events throughout the Shire.

MEMBERSHIP

The Heritage Advisory Committee will consist of the following members:

- **Councillor Chairperson**
- **Alternate Councillor Chairperson**
- **Agency Representatives (3):**
 - Berrima District Historical and Family History Society
 - Southern Highlands Branch of the National Trust of Australia (NSW)
 - Representative of the Southern Highlands Branch of the Australian Garden History Society
- **Community Representatives (3):** who have skills and relevant experience including:
 - Qualifications in architecture, building, engineering, heritage conservation, town planning or related fields.
 - Proven interest and experience in the conservation of the built environment, natural environment, areas and other places of cultural significance.
 - Experience in practical procedures and techniques of heritage conservation.
 - Working knowledge of the NSW Heritage Act 1977, the Australia ICOMOS Burra Charter (1999) and the Environmental Planning and Assessment Act 1979.
 - Knowledge of the history and development of the Wingecarribee Shire.
 - Resident and/or property owner within the Wingecarribee Shire.

Responsible Manager: Group Manager Planning, Development and Regulatory Services.

Staff Contact: Strategic Land Use Planner – Heritage

ROLES AND RESPONSIBILITIES

The role of the Heritage Advisory Committee is to provide advice and recommendations to the Council on the following matters:

- Development and implementation of heritage policy, plans, strategies and programs.

13.8 Council Representatives on the Heritage Advisory Committee
and the Terms of Reference for the Committee

ATTACHMENT 2 Draft Terms of Reference for the Heritage
Advisory Committee



-
- Heritage issues affecting the Wingecarribee Shire.
 - The review of heritage listings, as required.
 - Be notified of development applications relating to heritage properties or significant developments within heritage conservation areas listed under the Wingecarribee Local Environmental Plan.
 - Planning and delivery of events for participation in the annual National Trust Heritage Festival, as required.
 - Judging of the biennial Wingecarribee Heritage Awards.
 - Oversight of the Joadja Conservation Management Group.

Amendment to the Committees Manual 2016-2020

Amend Part 6 Meeting Frequency to indicate that the Heritage Advisory Committee shall meet bi-monthly, instead of quarterly as it does now in the Committees Manual. ***[Amend the first paragraph].***

COUNCIL MATTERS

18 COMMITTEE REPORTS

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

Reference:	2102/3
Report Author:	Internal Audit and Legal Support Officer
Authoriser:	Senior Governance Officer
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

This report provides the Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019.

SUMMARY OF RECOMMENDATIONS AND ACTIONS FOR COUNCILLORS' ATTENTION AND ADOPTION

Item 1 Welcome and Apologies

Nil.

Item 3 Adoption of Minutes of Previous Meeting

AR 44/19

THAT the minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday 16 November 2018 AR35/18 to AR43/18 inclusive, copies of which were forwarded to Committee members, be adopted as a correct record of the proceedings of the meeting.

Item 6.1 Update on Plans for Improved Communication in Relation to Service Delivery

The Committee was updated on Council's plans for improved communication in relation to service delivery, such as the review of Council's Community Engagement Strategy and Communications Strategy and the ongoing development of Social Media Procedures.

AR 45/19

THAT the Plans for Improved Communication in Relation to Service Delivery update report be noted.

Item 7 Committee Actions Update

The Committee was apprised of the progress of action items previously requested by the Committee.

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COMMITTEE REPORTS



AR 46/19

THAT the report in relation to the Committee Actions Update be noted.

Item 8.1 Corporate Risk Program Update

The Committee was presented with an update on Council's Risk Management Program, including recent developments with respect to the Corporate Risk Register, Risk Management Action Plan, Business Continuity Plan and the review of Council's insurance.

AR 47/19

THAT the report in relation to the Corporate Risk Program update be noted.

Item 9.1 Draft 2019/20 Internal Audit Plan

The Committee was presented with a draft 2019/20 Internal Audit Plan for endorsement.

AR 48/19

- 1. THAT the Internal Audit Plan Report be noted AND THAT the Audit, Risk and Improvement Advisory Committee endorses the Procurement and Development Assessment audits to occur in Q1 and Q2 and will decide on the audits for Q3 and Q4 at a future Committee meeting.*
- 2. THAT Council removes the Fit for the Future audit from the Internal Audit Plan, recognising that the Fit for the Future program traverses the entire operation of the Council and that the functional audits and a greater focus on risk management will provide the focus required.*

Item 9.2 Draft Assurance Map

The Committee was presented with the draft Assurance Map prepared for Council's management by InConsult. This was developed to provide a high level assessment of the risk and control environment for key Council functions and activities as well as an indication of the current level of internal and external assurance. It is intended that the Assurance Map will guide the development of future strategic internal audit plans for Council.

AR 49/19

THAT the Audit, Risk and Improvement Advisory Committee notes the report AND THAT management and internal audit review the assurance map and agree the internal audit and internal self-assessment program to be brought back to the next meeting of the Committee, at which time the internal audit program for 2019/2020 will be revisited.

Item 9.3 Internal Audit Report

The Committee was presented with the Business Continuity Internal Audit Report. The audit reviewed Council's protocols, systems, processes and practices relating to business continuity management, and assessed the adequacy and effectiveness of the business continuity management processes. The audit also assessed the level of compliance with Council's protocols and procedures on business continuity management, and reviewed internal controls to assess their effectiveness in the event the business continuity plan is initiated.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

COMMITTEE REPORTS



The internal audit report found that Council has a generally well-documented business continuity management plan and manual in place for the management of business disruption events. The audit also found that further enhancements could be made by implementing nine recommendations for improvement.

The Committee was also informed that the next internal audit scheduled was for Developer Contributions.

AR 50/19

THAT the Internal Audit Report be noted.

Item 9.4 Progress Report on Outstanding Internal Audit Recommendations

The Committee was provided with an overview of progress on the implementation of outstanding recommendations from previous internal audits. A total of 25 recommendations remained on track to be completed by the due date, while 12 recommendations were completed since the previous Committee meeting. Extensions to the due date were requested for a total of 6 recommendations.

AR 51/19

THAT the report be noted AND THAT the requested extensions to the due dates for specified recommendations be granted.

Item 10.1 External Audit – Management Letter on the Final Phase of the Audit for the Year Ended 30 June 2018

The Committee was provided with a copy of the Management Letter issued by the NSW Audit Office for the final phase of the external Audit for the year ending 30 June 2018.

AR 52/19

THAT the Committee notes the contents of the Management Letter for the final phase of the Audit for the year ending 30 June 2018 and the comments provided by Management.

Item 10.2 NSW Audit Office Annual Engagement Plan – Audit for the Year Ending 30 June 2019

The Committee was provided with a copy of the NSW Audit Office Annual Engagement Plan for the year ending 30 June 2019.

AR 53/19

THAT the Audit, Risk and Improvement Advisory Committee endorse the NSW Audit Office Annual Engagement Plan for the year ending 30 June 2019 AND THAT an extraordinary meeting be held on 18 October 2019 that will include the planned agenda items for the September 2019 meeting which will not need to be held separately.

Item 10.3 External Audit – Management Letter Recommendations Update

The Committee was provided with an update on the status of issues which have been raised in previous Management Letters by Council's external Auditors.

AR 54/19

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

COMMITTEE REPORTS



THAT the Committee note the update provided on the outstanding issues and recommendations made by Council's External Auditors.

Item 10.4 Auditor-General's report to Parliament of NSW on Local Government 2018

The Committee was presented with the NSW Auditor General's report to Parliament on the audit of Local Government 2018.

AR 55/19

THAT the Auditor-General's report to Parliament of NSW on Local Government 2018 report be noted.

RECOMMENDATION

THAT recommendations AR 44/18 to AR 55/18 as detailed in the Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday 15 March 2019 be adopted, save for any items which have budgetary implications AND THAT any item with budgetary implications and which is unfunded, be referred to the Finance Committee for consideration.

ATTACHMENTS

1. Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES

of the
Audit, Risk and Improvement Advisory
Committee Meeting

held in

Nattai Room

Civic Centre, Elizabeth Street, Moss Vale

on

Friday 15 March 2019

The meeting commenced at 8.58 am

File No. 2102/3

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



1. WELCOME AND APOLOGIES	
2. ACKNOWLEDGEMENT OF COUNTRY	
3. ADOPTION OF MINUTES OF PREVIOUS MEETING	
4. BUSINESS ARISING FROM THE MINUTES	
Audit, Risk and Improvement Advisory Committee Meeting held on 16 November 2018	
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10. EXTERNAL AUDIT	10
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18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

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MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD IN NATTAI ROOM, CIVIC CENTRE, ELIZABETH STREET, MOSS VALE ON FRIDAY 15 MARCH 2019 COMMENCING AT 8.58 AM.

Present:

Councillors: Clr P W Nelson
Clr G Markwart

Community Representatives: Ms Jan Edwards *Chair*
Mr Paul Jeffares
Dr Jason Young

In Attendance: Ms Ann Prendergast *General Manager*
Mr Mark Pepping *DGM Corporate, Strategy and Development Services*
Mr Barry Paull *DGM Operations, Finance and Risk (in part)*
Ms Danielle Lidgard *Group Manager Corporate and Community*
Mr Richard Mooney *Chief Financial Officer*
Ms Samantha Woods *Coordinator Corporate Strategy and Governance*
Mr John Crawford *Chief Information Officer*
Mr Malcolm Lindsay *Coordinator Workplace Systems*
Ms Ivana Vidovich *Internal Audit and Legal Support Officer*

Also In Attendance: Mr Steve Hrdina *Audit Office of NSW*
Mr Mitchell Morley *InConsult*

1. WELCOME AND APOLOGIES

Nil

2. ACKNOWLEDGEMENT OF COUNTRY

The Chair Ms Jan Edwards acknowledged country:

I would like to acknowledge the Traditional Custodians of this land and pay my respect to Elders both past and present. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.

3. ADOPTION OF MINUTES OF PREVIOUS MEETING

MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING HELD ON FRIDAY 16 NOVEMBER 2018.

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



AR 44/19

MOTION moved by Clr G Markwart and seconded by Ms J Edwards

THAT the minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday 16 November 2018 AR35/18 to AR43/18 inclusive, copies of which were forwarded to Committee members, be adopted as a correct record of the proceedings of the meeting.

PASSED

4. BUSINESS ARISING

Agenda Item 6 – that the Committee look to combine the September and October 2019 meetings.

Agenda Item 9 – the Chair noted that it is important that the higher risk areas are addressed first in the Audit Plan.

5. DECLARATIONS OF INTEREST

Nil.

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



6. AGENDA REPORTS

6.1 Update on Plans for Improved Communication in Relation to Service Delivery

Reference:	2102/3
Report Author:	Coordinator Corporate Strategy and Governance
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to update the committee on Council's plans for improved communication in relation to service delivery.

The Group Manager Corporate and Community and General Manager addressed the meeting.

The General Manager confirmed that Wingecarribee Shire Council will be looking at live streaming Council meetings as soon as possible. The Chair suggested targeting the general population with passive communications, possibly via radio communication.

AR 45/19

MOTION moved by Cllr P W Nelson and seconded by Ms J Edwards

THAT the Plans for Improved Communication in Relation to Service Delivery update report be noted.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



7. COMMITTEE ACTION LIST

7.1 Committee Actions Update

Reference:	2102/3
Report Author:	Internal Audit and Legal Support Officer
Authoriser:	Senior Governance Officer
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to provide an update on the progress of action items previously requested by the Committee.

AR 46/19

MOTION moved by Clr P W Nelson and seconded by Ms J Edwards

THAT the report in relation to the Committee Actions Update be noted.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



8. RISK MANAGEMENT

8.1 Corporate Risk Program Update

Reference: 2102/3
Report Author: Workplace Systems Coordinator

PURPOSE

The purpose of this report is to provide the Committee with an update on Council's Risk Management Program.

The Workplace Systems Coordinator, Group Manager Corporate and Community, Chief Financial Officer, Deputy General Manager Corporate, Strategy and Development Services and General Manager addressed the meeting.

The Chair noted that the restructured report was a good start and that future reports should be featured in the agenda and include a progressive review of the key Council risks and how they relate to the functional audits being completed on a quarterly basis. The Chair requested that a report be presented to the next meeting to provide the Committee with more visibility and an overview of all 18 identified risks.

AR 47/19

MOTION moved by Mr P Jeffares and seconded by Cllr P W Nelson

THAT the report in relation to the Corporate Risk Program be noted.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



9. INTERNAL AUDIT

9.1 Draft 2019/20 Internal Audit Plan

Reference:	2102/3
Report Author:	Senior Governance Officer
Authoriser:	Coordinator Corporate Strategy and Governance
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to seek the Audit, Risk and Improvement Advisory Committee's endorsement of the draft 2019/20 Internal Audit Plan.

The Group Manager Corporate and Community, Mr Mitchell Morley and the General Manager addressed the meeting.

AR 48/19

MOTION moved by Ms J Edwards and seconded by Dr J Young

1. **THAT** the Internal Audit Plan Report be noted **AND THAT** the Audit, Risk and Improvement Advisory Committee endorses the Procurement and Development Assessment audits to occur in Q1 and Q2 and will decide on the audits for Q3 and Q4 at a future Committee meeting.
2. **THAT** Council removes the Fit for the Future audit from the Internal Audit Plan, recognising that the Fit for the Future program traverses the entire operation of the Council and that the functional audits and a greater focus on risk management will provide the focus required.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



9.2 Draft Assurance Map

Reference:	2102, 2102/3
Report Author:	Senior Governance Officer
Authoriser:	Coordinator Corporate Strategy and Governance
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of the report is to brief the Committee on the draft Assurance Map prepared for Council's management by InConsult.

Mr Mitchell Morley, the General Manager and Chief Financial Officer addressed the meeting.

The Chair requested that yearly self-assessments be considered as part of the draft assurance map for the audit units with lower risk.

AR 49/19

MOTION moved by Dr J Young and seconded by Ms J Edwards

THAT the Audit, Risk and Improvement Advisory Committee notes the report **AND THAT** management and internal audit review the assurance map and agree the internal audit and internal self-assessment program to be brought back to the next meeting of the Committee, at which time the internal audit program for 2019/2020 will be revisited.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



9.3 Internal Audit Report

Reference:	2102/3, 2102/19.1
Report Author:	Internal Audit and Legal Support Officer
Authoriser:	Senior Governance Officer
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to present the Committee with the Business Continuity Internal Audit Report and provide a brief overview of the scope of the Developer Contributions (s94, VPAs) internal audit scheduled for the next quarter.

Mr Mitchell Morley, the Chief Information Officer and Chief Financial Officer addressed the meeting.

AR 50/19

MOTION moved by Cllr P W Nelson and seconded by Mr P Jeffares

THAT the Internal Audit Report be noted.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



9.4 Progress Report on Outstanding Internal Audit Recommendations

Reference: 2102/3
 Report Author: Senior Governance Officer
 Authoriser: Coordinator Corporate Strategy and Governance
 Link to Community
 Strategic Plan: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to update the Audit, Risk and Improvement Advisory Committee on the implementation of outstanding recommendations from previous internal audits.

The Group Manager Corporate and Community, Chief Information Officer and General Manager addressed the meeting.

AR 51/19

MOTION moved by Ms J Edwards and seconded by Dr J Young

THAT the report be noted **AND THAT** the requested extensions to the due dates for specified recommendations be granted.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



10. EXTERNAL AUDIT

10.1 External Audit - Management Letter on the Final Phase of the Audit for the Year Ended 30 June 2018

Reference:	2102
Report Author:	Chief Financial Officer
Authoriser:	Deputy General Manager Operations, Finance and Risk
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

PURPOSE

This report provides the Audit, Risk and Improvement Advisory Committee with a copy of the Management Letter issued by the NSW Audit Office for the final phase of the external Audit for the year ending 30 June 2018.

Mr Steve Hrdina and the Chief Financial Officer addressed the meeting.

AR 52/19

MOTION moved by Clr G Markwart and seconded by Ms J Edwards

THAT the Committee notes the contents of the Management Letter for the final phase of the Audit for the year ending 30 June 2018 and the comments provided by Management.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



10.2 NSW Audit Office Annual Engagement Plan - Audit for the Year Ending 30 June 2019

Reference: 2102
Report Author: Chief Financial Officer
Authoriser: Deputy General Manager Operations, Finance and Risk
Link to Delivery Program: An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

The purpose of this report is to present the NSW Audit Office Annual Engagement Plan for the year ending 30 June 2019 to the Audit, Risk and Improvement Advisory Committee.

Mr Steve Hrdina and the Chief Financial Officer addressed the meeting.

The Chair confirmed that the proposed date for the extraordinary meeting is 18 October 2019, and that this meeting will include the planned agenda items for the September 2019 meeting which will otherwise not be held.

AR 53/19

MOTION moved by Dr J Young and seconded by Mr P Jeffares

THAT the Audit, Risk and Improvement Advisory Committee endorse the NSW Audit Office Annual Engagement Plan for the year ending 30 June 2019 AND THAT an extraordinary meeting be held on 18 October 2019 that will include the planned agenda items for the September 2019 meeting which will not need to be held separately.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



10.3 External Audit - Management Letter Recommendations Update

Reference: 2102
Report Author: Internal Audit and Legal Support Officer
Authoriser: Senior Governance Officer
Link to Community
Strategic Plan: Effective financial and asset management ensure Council's long term sustainability

PURPOSE

This report provides the Audit, Risk and Improvement Advisory Committee with an update on the status of issues which have been raised in previous Management Letters by Council's external auditors.

The Chief Financial Officer addressed the meeting.

AR 54/19

MOTION moved by Ms J Edwards and seconded by Cllr P W Nelson

THAT the Committee note the update provided on the outstanding issues and recommendations made by Council's External Auditors.

PASSED

18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019

ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting held on Friday, 15 March 2019



MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY COMMITTEE MEETING

Friday 15 March 2019



10.4 Auditor-General's report to Parliament of NSW on Local Government 2018

Reference: 2102, 2102/3
Report Author: Chief Financial Officer
Authoriser: Deputy General Manager Operations, Finance and Risk
Link to Community
Strategic Plan: Effective financial and asset management ensure Council's long term sustainability

PURPOSE

To present to the Committee the NSW Auditor General's report to Parliament on the audit of Local Government 2018.

Mr Steve Hrdina and the Chief Financial Officer addressed the meeting.

The Chair noted that the Audit Office provided positive feedback in relation to Council's asset management valuation approaches and systems.

AR 55/19

MOTION moved by Clr G Markwart and seconded by Ms J Edwards

THAT the Auditor-General's report to Parliament of NSW on Local Government 2018 report be noted.

PASSED

**18.1 Minutes of the Audit, Risk and Improvement Advisory Committee Meeting
held on Friday, 15 March 2019**

**ATTACHMENT 1 Minutes of the Audit, Risk and Improvement Advisory
Committee Meeting held on Friday, 15 March 2019**



**MINUTES OF THE AUDIT, RISK AND IMPROVEMENT ADVISORY
COMMITTEE MEETING**

Friday 15 March 2019



11. DATE OF NEXT MEETING

The next meeting will be held on Friday 21 June 2019 in Nattai Room, Civic Centre, Elizabeth Street, Moss Vale commencing at 9.00 am.

12. MEETING CLOSURE

THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 10.37 AM.

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019

Reference:	107/25
Report Author:	Administration Officer
Authoriser:	Manager Environment and Sustainability
Link to Community	
Strategic Plan:	Sustainably manage natural resources for broader community benefit

PURPOSE

This report provides Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019.

SUMMARY OF RECOMMENDATIONS AND ACTIONS FOR COUNCILLORS' ATTENTION AND ADOPTION

Item 1 Welcome and Apologies

ES 1/19

THAT the apologies of Ms Patricia Hall, Mr Simon Robinson, Mr Malcolm Hughes and Mr Ian Perkins be accepted and leave of absence granted.

Item 3 Adoption of Minutes of Previous Meeting

ES 2/19

THAT the minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 21 November 2018, MN ES 24/18 to MN ES 28/18 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

COMMITTEE REPORTS



Item 6.1 Roadside Management Plan Project – Final Draft

ES 3/19

1. *THAT Council be advised of the Environment and Sustainability Advisory Committee's endorsement of the Final Draft Roadside Management Plan.*
2. *THAT a briefing session be held for Councillors on the Final Draft of the Roadside Management Plan.*
3. *THAT the Final Draft of the Roadside Management Plan be adopted for Council's operational use.*
4. *THAT external public authorities that undertake work in Council managed road reserves across the Shire, be invited to attend the next Environment and Sustainability Advisory Committee Meeting for a presentation on the Roadside Management Plan.*
5. *THAT staff be thanked for the high quality of the Roadside Management Plan as presented.*

Item 6.2 Update on key projects

ES 4/19

1. *THAT the report on the current key projects be noted.*
2. *THAT a briefing session be held to inform Councillors on Stage 2 of the Southern Highlands Koala Conservation Project.*
3. *THAT Council staff be thanked for their continuing efforts with the Southern Highlands Koala Conservation Project and related projects.*

Item 6.3 Environment Strategy Revision - Update

ES 5/19

1. *THAT the update on the Environment Strategy review be noted.*
2. *THAT a promotional campaign be considered to inform the community of the success and benefits of the Environment Levy, and this topic be discussed further at a future Environment and Sustainability Advisory Committee Meeting.*

RECOMMENDATION

THAT recommendation Nos. ES 1/19 to ES 5/19 – as detailed in the Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019 be adopted, save for any items which have budgetary implications AND THAT any item with budgetary implications and which is unfunded, be referred to the Finance Committee for consideration.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

COMMITTEE REPORTS



ATTACHMENTS

1. Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 March 2019



MINUTES

of the Environment and Sustainability Advisory Committee Meeting

held in

Council Chambers

Civic Centre, Elizabeth Street, Moss Vale

on

Wednesday 20 March 2019

The meeting commenced at 9.30am

File No. 107/25

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019

ATTACHMENT 1 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING

Wednesday 20 March 2019



1. WELCOME AND APOLOGIES
 2. ACKNOWLEDGEMENT OF COUNTRY
 3. ADOPTION OF MINUTES OF PREVIOUS MEETING
 4. BUSINESS ARISING FROM THE MINUTES
Environment and Sustainability Advisory Committee Meeting held on 21 November 2018
 5. DECLARATIONS OF INTEREST
-
- | | | |
|----|--|----------|
| 6. | AGENDA REPORTS | 3 |
| | 6.1 Roadside Management Plan Project - Final Draft | 3 |
| | 6.2 Update on key projects | 4 |
| | 6.3 Environment Strategy Revision - Update | 5 |
| 7. | DATE OF NEXT MEETING | 6 |
| 8. | MEETING CLOSURE | 6 |

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019

ATTACHMENT 1 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING

Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD IN COUNCIL CHAMBERS, CIVIC CENTRE, ELIZABETH STREET, MOSS VALE ON WEDNESDAY 20 MARCH 2019 COMMENCING AT 9.30AM.

Present:

Councillors: Clr L A C Whipper *Chair*
Clr G Markwart *Alternate Chair*

Community Representatives: Ms Lyndall McGrath
Mr Paul Shanahan
Mr Clive West

Agency Representative: Mr Geoff O'Connor *Local Land Services*

In Attendance: Mr Barry Arthur *Manager Environment & Sustainability*
Mr Joe Stammers *Environmental Projects Officer*
Ms Margot Law *Environment Officer – Private Land Conservation*
Ms Therese Smart *Coordinator Environment & Health Systems*
Mr Russell Moule *Environmental Officer*
Ms Helen Stokes *Administration Officer*

1. WELCOME AND APOLOGIES

It was noted that apologies were received from Ms Patricia Hall, Mr Simon Robinson, Mr Malcolm Hughes and Mr Ian Perkins.

ES 1/19

MOTION moved by Mr C West and seconded by Ms L McGrath

THAT the apologies of Ms Patricia Hall, Mr Simon Robinson, Mr Malcolm Hughes and Mr Ian Perkins be accepted and leave of absence granted.

MOTION PASSED

2. ACKNOWLEDGEMENT OF COUNTRY

Councillor Larry Whipper acknowledged country:

I would like to acknowledge the Traditional Custodians of this land and pay my respect to Elders both past and present. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019

ATTACHMENT 1 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING

Wednesday 20 March 2019



3. ADOPTION OF MINUTES OF PREVIOUS MEETING

MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING HELD ON WEDNESDAY 21 NOVEMBER 2018

ES 2/19

MOTION moved by Cllr L A C Whipper and seconded by Ms L McGrath

THAT the minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 21 November 2018, MN ES 24/18 to MN ES 28/18 inclusive, copies of which were forwarded to Councillors, be adopted as a correct record of the proceedings of the meeting.

MOTION PASSED

4. BUSINESS ARISING

There were no Business Arising items at this meeting.

5. DECLARATIONS OF INTEREST

There were no Declarations of Interest declared at this meeting.



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING

Wednesday 20 March 2019



6. AGENDA REPORTS

6.1 Roadside Management Plan Project - Final Draft

Reference:	6800/6 2151 5453.3.1 7810/2 6340/18.10
Report Author:	Manager Environment and Sustainability
Authoriser:	Manager Environment and Sustainability
Link to Community	
Strategic Plan:	Conserve the key natural resources of the Shire and minimise the impact from development

PURPOSE

Mr Russel Moule , Environmental Officer, presented the Final Draft Roadside Management Plan (RMP) to the Committee for endorsement.

This project has built Council's capacity in understanding roadside values and provided tools for a central point of reference for roadside environmental management.

The RMP replaces the former Wingecarribee Roadside Management Plan (1998) and Tree Management Plan and Procedure Manual (2005) and complements the current Street Tree Master Plan. There was about 51 internal stakeholders involved in the development of the key components of the project. With about 600hours of in-kind contribution. This project results in the production of a RMP containing 3 key components: (1) position statements; (2) environmental guidelines; and (3) a roadside categorisation mapping product.

The Roadside Management Plan will support Council in managing our impacts, reducing risk, maintaining corporate knowledge and saving time.

ES 3/19

MOTION moved by Ms L McGrath and seconded by Mr P Shanahan

1. **THAT Council be advised of the Environment and Sustainability Advisory Committee's endorsement of the Final Draft Roadside Management Plan.**
2. **THAT a briefing session be held for Councillors on the Final Draft of the Roadside Management Plan.**
3. **THAT the Final Draft of the Roadside Management Plan be adopted for Council's operational use.**
4. **THAT external public authorities that undertake work in Council managed road reserves across the Shire, be invited to attend the next Environment and Sustainability Advisory Committee Meeting for a presentation on the Roadside Management Plan.**
5. **THAT staff be thanked for the high quality of the Roadside Management Plan as presented.**

MOTION PASSED

Ms Therese Smart and Mr Russell Moule left the meeting at 10am.

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019

ATTACHMENT 1 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING

Wednesday 20 March 2019



6.2 Update on key projects

Reference: 5450/25.2
 Report Author: Manager Environment and Sustainability
 Authoriser: Manager Environment and Sustainability
 Link to Community
 Strategic Plan: Protect and improve biodiversity

PURPOSE

Mr Joe Stammers and Ms Margot Law provided updates on a number of key flagship projects.

Stage 2 of the Southern Highlands Koala Conservation Project has been a catalyst for a number of these advancements. These include updates to Council's Private Land Conservation Program, Community Engagement Activities (with over 1000 key property owners), koala habitat mapping and ecological considerations within the Shire's Bushfire Management framework.

ES 4/19

MOTION moved by Mr C West and seconded by Mr P Shanahan

1. **THAT the report on key projects be noted.**
2. **THAT a briefing session be held to inform Councillors on Stage 2 of the Southern Highlands Koala Conservation Project.**
3. **THAT Council staff be thanked for their continuing efforts with the Southern Highlands Koala Conservation Project and related projects.**

MOTION PASSED

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday, 20 March 2019

ATTACHMENT 1 Minutes of the Environment and Sustainability Advisory Committee Meeting held on Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY COMMITTEE MEETING

Wednesday 20 March 2019



6.3 Environment Strategy Revision - Update

Reference: 5450/25.2
Report Author: Manager Environment and Sustainability
Authoriser: Manager Environment and Sustainability
Link to Community
Strategic Plan: Protect and improve biodiversity

PURPOSE

Time is allocated in the meeting to provide an update on the Environment Strategy review.

ES 5/19

MOTION moved by Clr L A C Whipper and seconded by Ms L McGrath

1. ***THAT the update on the Environment Strategy review be noted.***
2. ***THAT a promotional campaign be considered to inform the community of the success and benefits of the Environment Levy, and this topic be discussed further at a future Environment and Sustainability Advisory Committee Meeting.***

MOTION PASSED

18.2 Minutes of the Environment and Sustainability Advisory Committee Meeting
held on Wednesday, 20 March 2019

ATTACHMENT 1 Minutes of the Environment and Sustainability Advisory
Committee Meeting held on Wednesday 20 March 2019



MINUTES OF THE ENVIRONMENT AND SUSTAINABILITY ADVISORY
COMMITTEE MEETING

Wednesday 20 March 2019



7. DATE OF NEXT MEETING

The next meeting will be held on Wednesday 15 May 2019 in Nattai Room, Civic Centre, Elizabeth Street, Moss Vale commencing at 10.30am.

8. MEETING CLOSURE

THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 11.30 A M

18.3 Management and Advisory Committee Reports

Reference: 107/1
Report Author: Administration Officer (Meetings)

PURPOSE

This report provides the Minutes of the Hill Top Community Centre Committee Meeting on 21 February 2019 be tabled for information.

RECOMMENDATION

THAT the report be noted.

ATTACHMENTS

1. Minutes of the Hill Top Community Centre Committee Meeting 21 February 2019

18.3 Management and Advisory Committee Reports

ATTACHMENT 1 Minutes of the Hill Top Community Centre Committee Meeting 21 February 2019



A Committee of Wingecarribee Shire Council

Hill Top Community Centre Committee

PO Box 46, Hill Top NSW 2575
Phone : 4879 3801
Email : christine.wilson@wsc.nsw.gov.au
ABN 49 546 344 354



File No: 7212

Minutes of the Hill Top Community Centre Committee Meeting: Thursday 21st February 2019

- 1. Meeting Opens: 7.01pm
2. Present: Sid Jeffery, Merie Jeffery, Peter Costigan, Stephen Chalker
3. In Attendance: Christine Wilson
4. Apologies:
5. Confirmation of Previous Minutes:

Moved: Peter Second: Sid

6. Business Arising from minutes of previous meeting:

LIFT - On Hold
Storing Goals- Assets are considering option with the engineer, Committee to help Christine move equipment that belongs to the Centre, SH Indoor sport to move their equipment to old office store room. Need to set a date.
Mail out- Pamphlet - Christine needs to finalise print order and arrange mail out.
Nets for stadium- Haverford Nets are arranging a time to view centre again with new contractors so they can send a quote. Christine to followed up.
Add Anzac room to intercom doorbell so they know when the door bell is ringing
Moved: Sid Seconded: Stephen

7. Correspondence:

7.1 Correspondence Incoming

Invoices & Statements
St George Statement
Email: Signatories on Management Committee Bank Account
Invitation - Anzac Service Hill Top Memorial Hall

7.2 Correspondence Outgoing

Invoices

7.3 Shared Information

7.4 User Agreement:

Highlands Youth Services (Highlands Community Centre) -22 January 2019
Southern Highlands Christadelphians - 6 April 2019
Moved: Peter Seconded: Merie

8. Business Arising from Correspondence

The Treasurer presented the notion to change Hill Top Community Centre Committee bank account to Berrima District Credit Union, Mittagong Branch.

9. Reports:

9.1 Treasurer's Report

Account Balances - St George Bank
Society Cheque Account: \$18561.57
Term Deposit Account: \$6530.05
Petty Cash: \$178.00

18.3 Management and Advisory Committee Reports

ATTACHMENT 1 Minutes of the Hill Top Community Centre Committee Meeting 21 February 2019



Accounts:

WSC Inv 140567 waste \$63.35
 WSC Inv 140832 cleaning \$140.00
 WSC Inv 140348 cleaning \$140.00
 WSC Inv 140291 GST \$91.18
 WSC Inv 140296 cleaning \$140.00
 WSC Inv 140073 rubbish \$63.35
 WSC Inv 139878 cleaning \$140.00
 Origin Inv 130001479154 \$135.44

Money to pass to Treasurer / Sid

Moved By: Sid

Seconded By: Peter

9.2 Coordinators Report: Covered in General Business

9.2 WHS Issues & Hazard Reporting

9.3 Incident Report

Maintenance Requests: Outstanding Maintenance Requests:

Car Park line marking and signs for accessible parking – email received 29.8.2018 from WSC customer service, 'The carpark line marking and signage has been placed into the minor work programme and will be completed asap
 Broken Window Anzac Room

9.4 Any Other Reports:

Motion that all reports be accepted and recommendations endorsed:

Moved By: Merie

Second By: Peter

10. Hirers Requests

11. General Business

The Treasurer presented the notion to change Hill Top Community Centre Committee bank account to Berrima District Credit Union, Mittagong Branch.

Move that the Hill Top Community Centre Committee open an account with Berrima District Credit Union with Signatories being the following:

President - Sidney Jeffery

Vice President - Stephen Chalker

Committee Member - Peter Costigan

Wingecarribee Shire Council Chief Financial Officer Richard Mooney –

And a cheque book and online account banking be set up. Cheques to be signed by any two signatories

Moved: Peter

Second: Sid

Corporate Induction Training – All volunteers are invited to attend 28 February 2019 at Hill Top Community Centre

School Holiday Activities –

Tuesday 16th April Games 2 U 2 x sessions \$660.00, council youth officer will pay for session 2, Highlands Youth Service will pay for lunch

Friday 26th April – pending

18.3 Management and Advisory Committee Reports

ATTACHMENT 1 Minutes of the Hill Top Community Centre Committee
Meeting 21 February 2019



Funding Grants

Wingecarribee Community Assistance Scheme - \$600.00 Donation towards community Activities

Wingecarribee Community Assistance Scheme – Scope -Environments and Sustainability – Possibly some funding (\$2000.00) towards lights for stadium, total cost of replacing lights is \$8500.00

Veolia – Possible additional grant for lights in stadium \$4000.00, this grant will match dollar for dollar.

Club Grants – NETS or Indoor equipment such as new score board

IMB Community Grants – A grant of \$3000.00 to help pay for school holiday events and host more Youth specific activities.

Highlands Youth Service is supporting this application.

Coordinator is looking into possible funding grants to upgrade outside the facility and carpark area, possible new play area or open recreation space.

The committee suggested to leave the car park and place a gate near school and replace fence for safety.

Committee agree to purchase a wreath for the Anzac Service in Hill Top \$80.00

Committee discussed purchasing trolleys so chairs can be moved between Anzac Room and stadium.

Moved: Sid

Second: Merie

12. Next Meeting details: Thursday 18th April 2019

13. Close of meeting: 8.20pm

20 NOTICES OF MOTION

20.1 Notice of Motion 9/2019 - Assessment of Trees Located on the Corner of Bong Bong Street and Mary Street Mittagong

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 10 April 2019:

1. **THAT** Council engage an external arborist to assess Council trees from the corner of Bong Bong Street and Mary Street Mittagong from property lot 105 to lot 101.
2. **THAT** if the trees are assessed as unsafe to the public and the properties **THAT** Council remove these trees forthwith.

RECOMMENDATION

Submitted for determination.

20.2 Notice of Motion 10/2019 - Legal Committee

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillor G M Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 10 April 2019:

THAT Council formulate a Legal Committee as it has done in the past.

RECOMMENDATION

Submitted for determination.

COMMENT FROM STAFF

The Legal Committee was a Committee consisting of Councillors only meeting on a monthly basis and the minutes were reported to full Council. The Committee was also attended by Council staff and Council's legal representative at the time who was Mr Bohdan Bilinsky who provided update reports to the Committee pertaining to legal proceedings on foot.

The Committee was by resolution of Council disbanded on 22 July 2009 as follows:

THAT Council's Legal Committee be disbanded immediately and that all legal matters be reported to Council to avoid further breaches of Sections 9 and 10 of the Local Government Act 1993.

Under the Local Government Act, Committees of which all members are Councillors, Council must give public notice of meetings and such meetings must be open to the public in accordance with Sections 9 and 10 of the Local Government Act.

Given the sensitive nature of legal proceedings, many need to be dealt with in Closed Council and Council must resolve to procedurally consider such matters in Closed Council and go into Closed Council in accordance with the procedures of the Local Government Act.

20.3 Notice of Motion 11/2019 - Referendum for Popularly Elected Mayor

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

PURPOSE

Councillors I M Scandrett and K J Halstead have given notice that it is their intention to move the following motion at the Ordinary Meeting of Council on 10 April 2019:

THAT a report on holding a referendum for popularly elected Mayor at the next Council election be provided to Council.

RECOMMENDATION

Submitted for determination.

22. CLOSED COUNCIL

MOVING INTO CLOSED SESSION

Section 10A of the *Local Government Act 1993*, empowers Council and Committees of which all the members are Councillors to close a part of a meeting in certain circumstances in accordance with the requirements of the Act, and relevant Regulations and Guidelines.

Subject to the provisions of Section 10 of the Act, so much of a meeting may be closed as comprises certain information as outlined in Section 10A(2).

However, the Act also contains the following provisions qualifying the use of Section 10A(2).

Section 10B

1. *[Time spent closed to be minimised] A meeting is not to remain closed during the discussion of anything referred to in section 10A(2):*
 - a. *Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and*
 - b. *If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret-unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.*
2. *[Qualification of 10A(2)(g)] A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A(2)(g) unless the advice concerns legal matters that:*
 - a. *are substantial issues relating to a matter in which the council or committee is involved, and*
 - b. *are clearly identified in the advice, and*
 - d. *are fully discussed in that advice.*
3. *[Qualification of 10A(3)] If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A(3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A(2)).*
4. *[Irrelevant matters] For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:*
 - a. *a person may misinterpret or misunderstand the discussion, or*
 - b. *the discussion of the matter may:*
 - (i) *cause embarrassment to the council or committee concerned, or to Councillors or to employees of the council, or*
 - (ii) *cause a loss of confidence in the council or committee.*

Attention is also drawn to provisions contained in Part 7 of Council's Code of Meeting Practice.

Director General's Guidelines

The Director General of the Department of Local Government has issued guidelines concerning the use of Section 10 of the Act. A copy of the Director General's guidelines has been sent to all Councillors. Section 10B(5) of the Act requires that council have regard to these guidelines when considering resolving into Closed Session.



RECOMMENDATION

1. **THAT Council moves into Closed Council in accordance with the requirements of Section 10A(2) of the *Local Government Act 1993* as addressed below to consider the following reports that are confidential for the reasons specified below:**

22.1 Tender for Trade Services and Minor Works

Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)d(i) as it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to present the evaluation of the Request for Tender for the following Trade Services and Minor Works Panel Tenders:

- RFT 6330/19.2 Bulk Materials;
- RFT 6330/19.3 Building & Joinery Services;
- RFT 6330/19.4 Facility Cleaning Services;
- RFT 6330/19.5 Kerb and Gutter & Concreting Services;
- RFT 6330/19.6 Pavement Linemarking Services.

22.2 Proposed Sale - 10 Frankland Street Mittagong

Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(c) as it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

Brief description

The purpose of this report is to provide Council with an update on the proposed sale of 10 Frankland Street, Mittagong. The Deputy General Manager Operations Finance & Risk will provide a verbal update in Closed Council.

2. **THAT the minutes of the Closed Council part of the meeting (being the Council's resolution) be made public.**
-

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 10 April 2019

CLOSED COUNCIL



Ann Prendergast
General Manager

Friday 5 April 2019