

Agenda

Planning and Strategy Committee

Notice is hereby given that a Planning and Strategy Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 11 April 2005

Commencing at 7:30 pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website: www.manly.nsw.gov.au



Seating Arrangements for Meetings

	Staff	Staff	General Manager	Chairperson	Minute Taker
Mayor Macdo	Dr Peter nald				Clr Jean Hay AM
Clr Ma	rk Norek				Clr Adele Heasman
Clr Joa	nna Evans				Clr Judy Lambert
Clr Barl	oara Aird				Clr Simon Cant
CIr Brad Peders					Clr David Murphy
Deputy Clr Rich Morriso					Clr Pat Daley
	Press				Press
			l l	blic esses	

Public Gallery

Chairperson: Clr Barbara Aird Deputy Chairperson: Clr Adele Heasman

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TO: Planning and Strategy Committee - 11 April 2005

REPORT: General Manager's Office Report No. 8

SUBJECT: Draft Section 94 Contributions Plan

FILE NO:

SUMMARY

At the Ordinary Meeting held on the 21 February, 2005, Council considered a report on the Revised Section 94 Plan - Draft for Exhibition.

This report seeks the formalisation of the Section 94 Contributions Plan.

REPORT

At its meeting on the 21st of February 2005, Council resolved:

"That the Revised Section 94 Plan, as tabled, be placed on public exhibition as prescribed under the Environmental Planning & Assessment Act."

The plan was subsequently placed on public display at the Council Chambers, in the Manly Library, and on Council's web site. A copy of the Plan was also forwarded to all operating Precincts for comment.

Public notice was given in the Manly Daily on the 26 February 2005, that the plan was on public exhibition and submissions were invited until the 1st April 2005.

In response to that invitation some 10 submissions were received (**Circulated** under separate cover for the information of Councillors marked "Confidential").

Clause 31(1) of the Environmental Planning & Assessment Regulations provides that following exhibition of the draft Plan and after considering any submissions the Council may:

- (a) Approve the plan in the form in which was publicly exhibited, or
- (b) Approve the plan with such alterations as the Council thinks fit, or
- (c) Decide not to proceed with the plan.

Council must give public notice of the decision in a local newspaper within 28 days after the decision is made. A Contribution Plan takes effect on the date that public notice of its approval is given or on such a date as is specified in the notice.

Submissions:

Attached is the Schedule which extracts from the submission the issues. The Schedule also provides a response to each of the issues raised.

Consideration of submissions:

The submissions can be considered under four (4) headings:-

- (a) Validity
- (b) Methodology (including lack of Nexus)
- (c) Data/Supporting documentation
- (d) Consultation

General Manager's Office Report No. 8 (Cont'd)

- (e) Works Schedule
- (f) Contribution Rates
- (g) Parking
- (h) Recoupment

The following provides responses to these issues:

(a) Validity:

The plan contains the essential components required by the legislation. That is it contains growth projections, schedules of works, costings of those works. Formulas are devised to apportionment the cost of the works to various forms of new development.

(b) Methodology:

The methodology is clearly set out in the Plan. It follows the format outlined in the DIPNR manual of predicting development growth needs assessment costing infrastructure calculating contributions and apportionment. The methodology also takes into account the recoupment of past expenditure on services and facilities as provided in the legislation.

The legislation enables council to proceed in the above manner and there is nothing to suggest that Council has not explained the reasons for the contribution rates or the manner by which the rates were derived.

(c) Data/Supporting Documentation:

Submissions have questioned the reliability of the data cited in the plan. It is considered that the plan itself provides costing and growth data sufficient to validate the estimates of growth and costs in the Plan. These statistics all consistent with industry standards which are available from a range of accepted sources e.g. ABS and Rawlinsons construction cost estimates

(d) Consultation:

The exhibition period was in accordance with that required by the legislation. The fact that submissions were received illustrates that there was adequate time in which to make a submission. There is no requirement for consultation to occur before the plan is placed on display. In addition the most effective and efficient way to facilitate consultation on any topic is to publish a written statement in the first instance. It is also likely that the submissions lodged will cover the range of matters which cause concern.

(e) Works Schedule:

The submissions raised the question of whether the items in the Works Schedule were maintenance items rather than capital expenditure and whether the costs of works were valid.

Cleary given the level of expenditure the Works are of a capital nature, even if the works are embellishment of an existing facility. Secondly the costs although only estimates are consistent with industry and construction standards for each facility proposed.

(f) Contribution Rates:

The question of the level of contribution was raised by several submissions particularly in the context of what was seen as a significant increase from the 1999 Plan.

General Manager's Office Report No. 8 (Cont'd)

The Plan contains formulas and explanations as to how the rates were derived. On this basis they are considered reasonable. What is being overlooked is the low base of the 1999 Plan. Had that Plan taken into account the equity principle the apparent increase may well have been less.

(g) Parking:

It is noted that submissions have acknowledged that the use of the carparking in Manly CBD is used to capacity and that Council is unlikely to be able to construct car parking at the cost of the contribution rate. As a result there is a need to ensure Council has the means to provide adequate access to parking by introducing a contribution rate and that the rate proposed in the plan is reasonable given that it is below current construction costs. It is also a contribution towards recouping the cost of construction of public parking built in recent years.

(h) Recoupment:

Submissions question the Councils ability to recover the cost of providing the existing services and facilities. It is suggested that the value of those existing services and facilities is inflated.

Having said that the submissions acknowledge that legislation provides for recoupment Council is using the cost of existing infrastructure to demonstrate that the proposed contributions are reasonable rather than seeking to recoup past expenditure

Next Steps:

As indicated above, Council has to decide the way forward.

The submissions do not raise issues which necessitate fundamental changes to the underlying approach taken by the Plan. As a result it is considered that the contribution rates are reasonable, particularly given the access that incoming population will have to existing infrastructure.

The recommendation will be that Council proceed in accordance with Clause 31(1)a of the Environmental Planning & Assessment Regulations as cited above.

RECOMMENDATION

- 1. That pursuant to Section 94(B) of the Environmental Planning and Assessment Act, 1979, Council approves the 2004 Section 94 Contribution Plan as exhibited.
- 2. That Public Notice be given of the approval in (1) above and that the Plan come into effect from the date of that notice.

ATTACHMENTS

AT-1 Schedule of Issues Raised by Submissions 12 page(s)

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***** End of General Manager's Office Report No. 8 *****

	Section 94 Plan 2004 - Schedule of Issues raised by Submissions	of Issues raised by Submissions
Item Number	Issue	Comment
-	Operation of Plan: Does the Draff Plan intend to be applied to DA's already submitted	If adopted the Plan will apply to any undetermined Development Application and the amount will be that current at date of payment.
8	Methodology: Number of significant problems with the methodology. These matters are so significant that, in addition to the challenges laid open.	Methods follows accepted practice of predicting growth, identifying needs, estimating costs, developing formulae, determining contributing rates.
ო	Methodology: Deficiencies in the process of consideration of the Draft Plan	Process follows legal requirements.
4	Validity of the Plan would be open to challenge in Section 94 Plans are always open to challenge the Land & Environment Court.	Section 94 Plans are always open to challenge
വ	Data: The Draft Plan asserts that commonly applied standards are not appropriate. There is however a lack of analysis of these needs for which the major argument is a reference to the community's "expectations". There is no reference to appropriate supporting information such as open space strategies and surveys which are the necessary basis for the preparation of a Section 94 Plan.	If local standards / needs are ignored, the level and standard of the infrastructure of the area can only be diminished. Council has sufficient supporting information to arrive at needs.
ဖ	Consultation: Inevitability of dispute for not allowing for adequate public consultation, information, consultation and input.	Exhibition was in accordance with Statutory obligations.

7	Consultation	
-	Seek extension to exhibition period, including the	Exhibition was in accordance with Statutory obligations
	necessary detailed backup information provided.	
8	Contribution Rates:	
	Plan is unreasonable and will dramatically impact	Contribution rates are reflective of current land values,
	on the value of owners land	which are the result of provision of public infrastructure and
		services.
თ	Contribution Rates:	
	S94 stipulates that developer contributions may	Agreed
	be required to be paid only in the following	
	circumstances:	(i) Contributions are required because the development
		will require the provision of public amenities and
	 the development will, or is likely to, 	public services.
	require the provision of, or increase the	
	demand for, public amenities and public	(ii) Council considers the contributions to be reasonable
	A condition may be imposed only to	existing infrastructure.
	require a reasonable contribution for the	•
	provision, extension or augmentation of	
	the public amenities and public services.	
9	Nexus:	
	In accordance with section 94, developer	Manly is geographically small. Residents from across the
	contributions must relate to the cost of providing	Municipality use facilities provided. As a consequence the
	local public infrastructure and facilities required	demand arising from new development is Municipal wide
	as a consequence of development. (Report by	thus creating Nexus.
	the S94 Contributions and Development Levies	
	Taskforce 2004)	
	The report states that the power to levy a	Total Control of the
	contribution relies on there being a clear nexus	
	between the development being levied and the	
	need for the public infrastructure or facility.	

	Contributions can only made forwards:	
	Capital costs, including land acquisition	
	costs;	
	 Public facilities that a council has 	
	responsibility to provide;	
	 Public facilities that are needed as a 	
	consequence of, or to facilitate new	
	development.	The above provisions born book colinged
	Accordingly the Council may not lawfully require	THE GEORGE PROPERTY OF THE PROPERTY.
	payment of a contribution unless the above	
	provisions are satisfied in addition to the specific	
	terms of section 94.	
11	Validity:	
	Council has failed to understand the limitations	The Plan is in accordance with the requirements of Section
	imposed by section 94 and the legal requirement	94 as set out in Clause 27 of the Regulations and has had
	that contributions may only be imposed in	regard to the Departments S94 Manual.
	accordance with the terms of section 94.	
		The legislation does not limit Council from considering the
	Documents demonstrate that Council has	equity issue, particularly as the issue of apportionment is
	stepped outside of the bounds of section 94 and	inherently one of equity.
	is endeavouring to base developer contributions	
	upon broader principles of equity between	
	ratepayers.	
	While it may be possible to structure a	
	Contributions Plan with regard to "the principle of	
	fairness and equity in the way infrastructure is	
	provided and how infrastructure is subsequently	
	distributed and allocated", this may only be done	
	If the Draft Plan reflect compliance with the	
	provision of dat.	

	To suggest that moral issues can somehow be factored into the assessment of the developer contributions as a separate and independent test to the provided in Section 94 is fundamentally flawed.	
	The appropriate test under section 94, is to identify demand generated by new development and to establish a relevant nexus with a requirement for public facilities.	Nexus is not the only test as recoupment for existing facilities and services is also a factor. It is unlikely that these would be provided by a Council unless there was a need generated by the community.
12	Methodology: Contribution may only be required if a development will generate an increased demand for a public facility and the contribution relates to the provision, extension or augmentation of the public amenities and public services.	The road network drainage system and open space areas are examples of the provision of services to facilitate the carrying out of development. Without these facilities being in place development could not proceed.
	In terms of recoupment of past expenditure this is permitted only in circumstances where:	The development will benefit as a result of these facilities already being available. This is evidenced by the difference in site value with or without the benefit of those facilities.
	 The public amenities or public services were provided in preparation for, or to facilitate the carrying out of development in the area. The development will benefit from the provision of those public amenities or public services. 	Section 94 allows Council to impose a condition requiring a contribution if it has provided public facilities at any time. It does not prevent Council from considering "equity" in determining what the contributions should be.
	It is not lawful for the Council to seek to introduce a new "equitable approach" which is not within the parameters of section 94(3) in terms of infrastructure.	Council has not proceeded with different methodology. It is

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fundamentally the same.	Conversely the legislation does not prevent Council from considering a different apportionment to that followed by many S94 Plans,				The Schedule of Works relates only to new capital infrastructure or embellishment of existing infrastructure.	Capital expenditure is required to embellish existing infrastructure to cater for increased usage.
Section 94 provides the sole lawful means of imposing developer contributions. It is not open to Council to proceed with a different methodology.	The various formulae for calculating developer contributions which are set out in the Draft Plan implement these principles by assessing the amount of contributions by reference to the value of existing public facilities and not to the demand generated by the new development.	There is no statutory source of power to allow the Council to lawfully adopt this approach.	Methodology: S94 stipulates the circumstances in which a Council may seek recoupment of costs.	Council's premised upon equity based approach to cost recovery.	By reference to the contribution formulas and the Schedule of Works, the Council is seeking not only to recover capital costs in circumstances where the requirements of section 94(3) have not been established, but also to force the new development to fund maintenance of existing infrastructure, which is beyond the scope of Council's powers.	Further it is clear that the schedule of works provides for significant expenditure in respect of embellishment of existing infrastructure which is
			5			

	already at capacity and in respect of which no nexus can be established with new development.	
4	Car Parking in the Manly Town Centre: The only means by which the car parking contribution identified in the Draft Amendment (DCP Business Zone Draft Amendment No. 4) may be imposed is pursuant to section 94 of the EPA Act.	S94 Plan specifies the basis for determining the level of parking contribution and the Amendment to the Business Zones DCO sets out the planning purpose for the contribution. Therefore a valid condition can be imposed.
	This power is constrained by section 94(11) which provides that a condition requiring the payment of a contribution under section 94 may only be imposed if it is in accordance with a contributions plan approved under s94B of the EPA Act. Accordingly, the draft plan exceeds the power conferred by section 94, the proposed developer contributions could not be lawfully levied.	
ਨ	Nexus: Section 94 contributions may only be levied in circumstances where a nexus is established between the demand generated by a development and the need for a particular public facility.	The Plan outlines the anticipated growth of commercial, tourist and residential development in the Town Centre creating the demand for future parking.
	The nexus required could not be established between the demand generated by the development and the public amenities which are to be provided.	
16	Works Schedule: In P&S Report No. 4 to CPS 14.02.05, the report notes that the Whistler Street and Wentworth Street car parks are sufficient to accommodate	

	the current parking needs. It is not suggested in the report that additional parking spaces will be provided by Council. Rather it is stated that the intention of the proposed s 94 levy is to:	
	 Recoup the burden on the existing infrastructure; Recoup some of the costs of providing the existing public car parking; Generate section 94 funding to replace the existing public infrastructure. 	The plan explains where Council has provided public carparking and associated costs. This has provided for parking which is not provided in private development due to rate of parking being below RTA standards. Council can legitimately recoup these costs. In addition capital upgrading of Whistler Street Carpark is proposed.
	The Schedule of Works makes no provision for the construction of additional parking spaces within the Manly Town Centre. It nominates only the "refurbishment" of the existing Whistler Carpark.	
	If development is to be levied for generating an increased demand in public parking spaces, this must be reflected in the provision of additional spaces.	
	As the existing carpark is already at capacity, the Council may not levy contributions in respect of the existing car parking spaces as there is no nexus with new development.	
	S94 contributions do not extend to recurring maintenance costs.	
17	Apportionment: No supporting data is provided in terms of apportionment of costs to the worker population.	The formulae provides the apportionment of contribution between Residents, Tourist and Commercial property

	Likewise, it would appear that the Council seeks to hold the incoming population responsible for the costs of embellishment of existing facilities which will benefit the existing population and in	owners. The incoming population will be contributing to existing facilities. This result in a contribution level is significantly less than the benefit gained through the facility being
	respect of which the necessary demand and nexus may not be able to be established.	available.
	The same observation may be made in respect of environmental works outlined in the Schedule of Works.	
	Chapters 8 to 11 very broad need more work	
18	Contribution Rates:	William at a continue to the c
	recognise that the new development will result in	willie uie raung base might be increased the actual rates are capped by State Government, leading to a "run down" of
	a corresponding increase in the Council's rating revenue base.	facilities and services.
19	Data:	
	Using historic costs, or insurance costs to value old infrastructure is a trap that a number of	The use of current values (historical costs) is only used as a mean of demonstrating that the level of contribution per
	Council fell into when the amendments to S94 were made in 93.	person is most reasonable.
	The problems were quickly recognised and to our knowledge no Councils have attempted to use	
	the historic costing approach that Manly Council is now proposing.	
	A primary problem with this approach is the temptation for Councils to use collected finds for	The Works Schedule identifies capital costs of new
	maintenance and recurrent costs and not capital works.	

The so called "principle of planned spare capacity" is irrelevant to valuing community assets.	Will not be fully achieved but will go someway to addressing the imbalance. The imbalance. The imbalance.	It is one measure which can be quantified.	Disagree and Pisagree	Noted	ith Disagree
Methodology: Pg 37 includes table showing total value of community assets. The conclusion drawn is extraordinary, because it is contrary to the principle of planned spare capacity.	The reasonableness arguments seems to be based entirely on the logic that "as long as the contribution rate is below the value of the infrastructure assess provided by the community" intergenerational equity for existing residents will be achieved.	The assumption that insurance replacement value per capita is a measure of inter generational equity is wrong.	Rectification will only be possible through a complete re-structure of the plan. The tables and discussion relating to historic per person infrastructure costs need to be dropped entirely as it has no relevance to Section 94 of the Act.	In order to be able to satisfy Section 94, the Council must be able to establish the construction costs of undertaking these works (bus shelters & seawalls) and to identify the proportion of costs that were expended.	The plan needs to be completely re-written with explicit identification of capital works which have spare capacity and the proportion of indexed monies which can be related to these costs.
50					

21	The concept of the \$51 thousand per capita cost	Disagree
	based on the total value of community assets has nothing to do with Section 94. it should certainly	
	not be used for justifying the \$12K per person	
22	Apportionment:	
77	Apportionment. No lenst basis for not apportioning full cost of	Discount of the state of the st
	new works between existing development and	of services and infrastructure and is therefore on balance
	regional demands.	reasonable.
	Plan is unreasonable and unfair and therefore	
	any contribution is unreasonable.	
23	Recovery:	
	Recovery of value of existing services and	Disagree
	facilities from new development outside \$94 Act	
	and having regard to decided cases has no basis	
	in law.	
24	Contribution Levels:	
	Difference between 1999 contributions and those	It is the 1999 contribution rates which were incorrectly
	proposed demonstrate Plan manifestly	derived.
	unreasonable.	
25	(methodology):	
	Legally incorrect to contend that new	Legislation provides for recoupment.
	development should fund share of existing	
	infrastructure.	
26	Nexus:	
	Nexus between expected development and	Self evident that facilities proposed will be utilised by
	demand for services and facilities not	existing and future populations.
	demonstrated.	-
27	Apportionment:	
	No apportionment between new development /	
	existing and regional demand.	

28	Recovery Principle:	
ì	Unreasonable to recover full cost of new	Legislation provides for recovery and contribution proposed
	facilities.	is less than that if recovery of value of existing infrastructure is proposed.
29	Contribution Rates:	ì
	basis for calculating rates not reasonable of rational.	Disagree
30	Validity:	
	If Council makes plan as proposed it will not in	Disagree
	accordance with Section 94B(1).	
31	Consultation:	
	Lack of consultation.	Requirements of legislation provided for.
32	Cost Recovery (Parking):	Disagree
	Existing car parking paid for by levies and sale of	•
	development rights.	
33	Parking:	
	Plan does not indicate where parking is to be	Without contribution there will be no funds to construct
	provided but there is no surplus in CBD.	further parking,
34	Works Schedule:	
	Plan make no commitment to where or when	Identifying where and when money will be spend in
	money will be spent.	management is a more effective method of linking provision
		of services and facilities to the corporate operations of
		Council than leaving these requirements in a S94 Plan
35	Data:	William De Leviewed Very 3 years.
	Population and commercial space increases will	While it is agreed projections can be problematic.
	prove to be over estimated.	Contributions will only be received as growth occurs which
		in turn results in a demand for services and facilities.
36	Contribution Rate:	
	Both value of community assets and costs of	Estimates are considered reasonable and in accordance
	works are inflated.	with current costing for proposed works.
37	Works Schedule:	
	Incudes work not required and omits works for	Disagree

38 Car Parking: Will developme 39 Consultation: Supports submi	Car Parking: Will development receive credit for existing GFA Yes	
	tent receive credit for existing GFA	
		Yes
Supports subn		
	mission by Chamber of Commerce.	Supports submission by Chamber of Commerce. Council has followed legislative procedures
40 Carparking:		
Will Council re	Will Council recognise a credit and can credit be Issue for Business Zone DCP.	Issue for Business Zone DCP.
transferred to other site.	other site.	
41 Consultation:	1.	
Requests Cou	uncil to defer matter and engage in	Requests Council to defer matter and engage in Council has followed legislative procedures.
further consultation.	tation.	•

TO: Planning and Strategy Committee - 11 April 2005

REPORT: General Manager's Office Report No. 9

SUBJECT: Department of Local Government - Provision of Code of Conduct

FILE NO:

SUMMARY

The Department of Local Government has issued a revised Model Code of Conduct which resulted in the need for Council to make appropriate amendments to reflect the changes in legislation and associated performance standards.

This report seeks to amend the existing Manly Council Code of Conduct to reflect the changes and recommends that the Draft Code which resulted be adopted as the Manly Code of Conduct.

REPORT

Council's current Code of Conduct (the Code) was last comprehensively reviewed in 1999. Since then, minor amendments to the Code have taken place to reflect legislative amendments, which were last consolidated into the Code in June 2004 (attached - **Attachment 1**).

In December 2004, the Department of Local Government issued a new Model Code of Conduct (Model Code) (attached - **Attachment 2**), that takes into account new legislative provisions and changes to the Local Government Act as they relate to conduct issues.

The Model Code establishes minimum legislatively required conduct of behaviour expected of council officials, and Councils may, as was in Manly's case, impose additional standards or requirements in their own Codes which are not inconsistent with the Model Code.

The Model Code was prepared to assist council officials to:

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

The key principles used in the Model Code are; Integrity, Leadership; Selflessness; Objectivity; Accountability; Openness; Honesty; Respect.

The Model Code of Conduct prescribes and applies legislative provisions for:

- General Conduct obligations The general conduct obligation regulates that as a Council official or delegate, you must avoid behaviour that could constitute an act of disorder or misbehaviour
- Conflict of Interests both Pecuniary and non pecuniary interests
- Personal Benefit
- Relationship between Council officials
- Access to information and council resources
- Reporting breaches, complaint handling procedures and sanctions
- Councillor misbehaviour
- Internal Reporting System

General Manager's Office Report No. 9 (Cont'd)

Code Revision

The Draft Code of Conduct (Draft Code) was prepared from fully adopting the clauses and provisions of the Model Code into the Manly's Code, and where not inconsistent with legislative requirements, all other clauses of the then current Code had been preserved (The Draft Code is attached - **Attachment 3**).

Consequential Matters

Council's attention is again drawn to the following principles, obligations and administrative and legal processes that are entrenched in legislation as well as in Council's Draft Code:

- General Conduct obligations The general conduct obligation regulates that as a Council official or delegate, you must avoid behaviour that could constitute an act of disorder or misbehaviour
- Conflict of Interests both Pecuniary and non pecuniary interests
- Personal Benefit
- Relationship between Council officials
- > Access to information and council resources
- > Reporting breaches, complaint handling procedures and sanctions
- > Councillor misbehaviour
- Internal Reporting System

Council attention is further directed to the Conduct Committee process described in the Draft Code, in particular its relationship with other established organs and processes within Council, namely Council's internal reporting and handling process and the provisions of the Protected Disclosures Act 1994.

RECOMMENDATION:

That Council:

- 1. considers the revisions to the Manly Council Code of Conduct as set out in the Draft Code of Conduct:
- 2. adopt the Draft Code of Conduct in full;
- 3. give Public Notice of the adoption of the revised Code of Conduct, and
- 4. notify the public through the Precinct System.

ATTACHMENTS

AT-1 Code of Conduct - Attachment 1 34 page(s)
AT-2 Model Code of Conduct - Attachment 2 32 page(s)
AT-3 Draft Code of Conduct - Attachment 3 28 page(s)

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***** End of General Manager's Office Report No. 9 *****

Council Manly

Code of Conduct

Revised: June 2004

ATTACHMENT 1

General Manager's Office Report No. 9 Department of Local Government - Provision of Code of Conduct Code of Conduct - Attachment 1

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ATTACHMENT 1

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Code of Conduct

(PART 1)

GENERAL

1. INTRODUCTION

Under the provisions of section 440 of the Local Government Act, 1993 every Council must prepare or adopt a Code of Conduct to be observed by councillors, members of staff of the Council and delegates of the Council.

Duties of disclosure apply under Part 2 of Chapter 14 to designated persons. These duties form part of general obligations imposed by the Act on councillors, members of staff and delegates to act honestly and exercise a reasonable degree of care and diligence in carrying out functions under the Act.

Notes in the text are explanatory and do not form part of the code. They are provided to assist in understanding and applying the code.

2. WHAT ARE THE PURPOSES OF THIS CODE?

To assist councillors, members of staff and delegates:

- to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and dilivence:
- to provide a practical means of identifying and resolving situations which involve conflict of interest or improper use of their positions; and
- $\bullet\$ to act in a way which enhances public confidence in the system of local government.

3. WHAT IS THE RELATIONSHIP OF THIS CODE TO THE ACT?

This code has been prepared pursuant to section 440 and is to be read in conjunction with the Act. However, nothing in this code overrides or affects the Act or any other law.

Note: Part of the following Acts also have a bearing on this code:

- the Anti-Discrimination Act 1987
- the Crimes Act 1900
- the Freedom of Information Act 1989
- the Independent Commission Against Corruption Act 1988
- the Occupational Health and Safety Act 1983; and
- the Ombudsman Act 1974

The charter in Chapter 3 of the Local Government Act 1993 comprises a set of principles to guide a council with its functions.



Code of Conduct

- 4. OTHER RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF & DELEGATES
- 4.1 Equitable treatment of people and situations

A councillor, member of staff or delegate must:

- not act contrary to the law;
- not act unreasonably, unjustly or oppressively or in a discriminatory manner;
- deal with like situations in a like manner, but treating each matter on its merits;
- take all relevant information into consideration and must not take any irrelevant information or
 opinions into consideration;
- take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained;
- treat members of the public fairly and equitably and with respect, courtesy, compassion and sensitivity;
- refrain from any form of conduct, in the performance of his or her public or professional duties, which may cause any reasonable person unwarranted offence or embarrassment or give rise to the reasonable suspicion or appearance of improper conduct or partial performance of his or her public or professional duties;
- not act on improper or irrelevant grounds; and not act in a manner that would bring council or its officers into disrepute.

Note: Section 439(1) of the Act provides that a councillor, member of staff and delegate must act 'honestly" and exercise a 'reasonable degree of care and diligence' in carrying out his or her functions under the Act.

By virtue of section 352 of the Act, a member of staff is not subject to direction by the council as to the content of any advice or recommendation made by the member. However, the council may direct a member of staff to provide advice or a recommendation

Councils wishing to retain an oath of allegiance or a declaration to faithfully fulfil the duties of a councillor, or variations of them may do so by resolution

4.2 Bribes, Gifts, Benefits

A councillor, member of staff or delegate must:

- not seek or accept a bribe, or other improper inducement;
- not take advantage of his or her official position to improperly influence other councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing a private benefit for himself or herself or for some other person; and
- not by virtue of his or her official position accept or acquire a personal profit or advantage of a pecuniary value (other than of a token kind) other than as permitted by the Act.



Code of Conduct

Note: Section 275(2) of the Act provides that a person is disqualified from holding

civic office on a council if he or she is an employee of council or holds an office or place of profit under the council.

4.3 Use of Council's Resources

A councillor, member of staff or delegate must:

- use council resources effectively and economically in the course of his or her public or
 professional duties, and must not use them for private purposes (except when supplied as part of
 a contract of employment) unless such use is lawfully authorised and proper payment is made
 where appropriate; and
- not convert to his or her own use any property of the council.

Note: A councillor, member of staff or delegate should at all times be scrupulously honest in the use of council resources of all kinds, both physical and human. Use of such resources, whether for official or authorised private purposes, should be in accordance with the council's policy concerning payment of expenses, provision of facilities and any other relevant policy. A councillor, member of staff or delegate should not use his or her position to obtain any benefit which would not otherwise be available.

See Division 5 of Part 2 of Chapter 9 of the Act as to what fees, expenses and facilities may be paid or provided to councillors

4.4 Use of Information

A councillor, member of staff or delegate must:

- conduct their duties in a manner which allows councillors, members of staff, delegates and the
 public to remain informed about local government activity and practices;
- not use confidential information gained by virtue of his or her official position for the purpose
- of securing a private benefit for himself or herself or for any other person; and
- not without lawful authority, disclose otherwise than to the council, a councillor, or a member
 of staff entitled to know, information concerning any matter referred to in section 10A(2)(a)-(g)
 of the Act.

(OM 06.08.2001 Res No. 165)

not misuse any information that is confidential or could reasonably be construed as being
confidential or sensitive or likely to lead to further Council action (including litigation or the
fulfilment of a Statutory function) provided always that such confidentiality is properly claimed
or claimable pursuant to section 10 of the Local Government Act and not used simply as a
means of covering up facts or circumstances which may be required to be aired in the public



Code of Conduct

interest or which if disclosed publicly may simply be embarrassing to Council, Councillors or Council Staff because of some failure or indiscretion on their part.

Note

See section 664 of the Local Government Act, 1993, which prohibits the unauthorised disclosure of information relating to proceedings at closed meetings. The same principles should apply even where the information in question does not relate to proceedings at closed meetings.

5. PARTICULAR OBLIGATIONS OF STAFF

A member of staff must:

- while on duty give the whole of his or her time and attention to the business of the council and
 ensure that his or her work is carried out efficiently, economically and effectively;
- carry out lawful directions given by any person having authority to give such directions; and
- give effect to the lawful policies, decisions and practices of the council, whether or not the staff
 member agrees with or approves of them.

Note:

By virtue of section 341 of the Act, a 'senior staff member' must give notice to the general manager of his or her becoming bankrupt or making a composition, arrangement or assignment for the benefit of his or her creditors.

Section 353(2) provides that a member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's council duties unless he or she has notified the general manager in writing of the employment or work.

By virtue of section 353(4) a member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council if prohibited from doing so by the general manager.

6. WHAT ARE THE LEGITIMATE EXPECTATIONS OF A COUNCILLOR, MEMBER OF STAFF & DELEGATE?

A councillor, member of staff or delegate who honestly and faithfully observes the requirements of this code and any relevant law is entitled to expect the publicly expressed support of his or her council and colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties.

REPORTING OF CORRUPT CONDUCT

ATTACHMENT 1

General Manager's Office Report No. 9 Department of Local Government - Provision of Code of Conduct Code of Conduct - Attachment 1



Code of Conduct

A councillor, member of staff or delegate who knows or has good reasons to suspect any fraud, corrupt, criminal or unethical conduct must report it immediately to the general manager or nominated alternate.

ote: Section 11 of the Independent Commission Against Corruption Act 1988, requires the principal officer to report suspected cases of corrupt conduct to the commission. Under the Act, corrupt conduct can be defined as dishonest or partial exercise of an official function by a public official. Conduct of a person who is not a public official when it adversely affects the impartial or honest exercise of official functions by a public official, comes within the definition. Reporting is generally to be immediate. This duty cannot be delegated. So that reports may be timely the general manager should develop an internal reporting system appropriate to the council. Councillors, members of staff and delegates may forward a complaint of suspected corrupt directly to the commission where the person(s) does not wish to report the matter internally.

Perceptions that complainants may be prejudiced in their employment or otherwise should be countered by emphasising that reports of suspected corrupt conduct will be treated confidentially and of the council's determination to minimise corrupt conduct. Complainants should be advised of the outcomes of their complaints.



Code of Conduct

(PART 2)

CONFLICTS OF INTEREST

 WHAT IS THE SPECIAL DUTY OF A COUNCILLOR, MEMBER OF STAFF AND DELEGATE?

A councillor, member of staff or delegate must avoid and appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.

Note:

The mere fact that a person has both a public or professional duty and a private or personal interest in relation to a particular matter does not necessarily mean that the two must be in conflict. What is important is how any conflict, if it exists, is dealt with. What is also important is the public perception of the way the person deals with any such conflict.

2. WHEN DOES A CONFLICT OF INTEREST ARISE?

A conflict of interest arises if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his or her public or professional duties by that interest, or that a reasonable person would believe that the person could be so influenced.

Note:- Council at its meeting of 4th May, 1998, resolved:-

"Councillors must not vote or participate on any item in which either the applicants, objectors or their agents who claim to be directly affected by the matter either:-

- (a) Made a gift of \$200 or more to the Councillor, or
- (b) Made a gift of \$500 or more to a registered political party for that Councillor's administrative or campaign expenses."
- 3 Pecuniary and non-pecuniary conflict of interests
- 3.1 A conflict of interests exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.



Code of Conduct

- 3.2 You must appropriately resolve any conflict or incompatibility between your private or personal interests and the impartial performance of your public or professional duties.
- 3.3 Any conflict between your interests and those of council must be resolved to the satisfaction of the council. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 3.4 It is essential that you properly address conflict of interests issues that may arise. You must:
 - try to understand the concept and practical implications of conflict of interests issues
 - accept that failure to resolve an actual or reasonably perceived conflict of interests is unacceptable in local government
 - take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interests.
- 3.5 Perceptions of a conflict of interests are as important as actual conflict of interests. The onus is on you to identify a conflict of interests, whether perceived or real, and take the appropriate action to resolve the conflict in favour of your public duty.
- 3.6 Where necessary, you must disclose an interest promptly, fully and in writing. If a disclosure is made at a council or committee meeting, both the disclosure and nature of an interest must be recorded in the minutes.
- 3.7 If you are in doubt whether a conflict of interests exists, you should seek legal or other appropriate advice.
- 3.8 A conflict of interests can be of two types:

Pecuniary - An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. (sections 442 and 443)

Non-pecuniary - A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

- 3.9 Pecuniary interest is regulated by Chapter 14 Part 2 of the Act. The Act requires that:
 - councillors and designated persons lodge an initial and an annual written disclosure of interests
 that could potentially be in conflict with their public or professional duties (section 449)
 - councillors or members of council committees disclose an interest at a meeting, leave the
 meeting and be out of sight of the meeting and not participate in discussions or voting on the
 matter (section 451)
 - designated persons immediately declare, in writing, any pecuniary interest. (section 459)



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Designated persons are defined at section 441 of the Act.

- 3.10 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.
- 3.11 If you have a non-pecuniary conflict of interests, you must disclose the nature of the conflict. If this is in a meeting, do so as soon as practicable.
- 3.12 If you have declared a non-pecuniary conflict of interests you have a broad range of options for managing the conflict. The option you choose will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. You must deal with a non-pecuniary conflict of interests in at least one of these ways:
 - It may be appropriate that no action is taken where the potential for conflict is minimal.
 However, council officials should consider providing an explanation of why they consider a conflict does not exist.
 - Limit involvement if practical (for example, participate in discussion but not in decision making
 or vice-versa). Care needs to be taken when exercising this option.
 - Remove the source of the conflict (for example, relinquishing or divesting the personal interest
 that creates the conflict or reallocating the conflicting duties to another officer).
 - Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply (particularly if you have a significant non-pecuniary conflict of interest).
 - Include an independent person in the process to provide assurance of probity (for example, for tendering or recruitment selection panels).

Other business or employment

- 3.13 A member of staff of council who is considering outside employment or contract work that relates to the business of the council or that might conflict with their council duties, must notify and seek the approval of the general manager in writing. (section 353)
- 3.14 Before you engage in outside employment or business you must ensure that it will not:
 - conflict with your official duties
 - interfere with your council work
 - involve using confidential information or council resources obtained through your work with the council
 - · require you to work while on council duty
 - discredit or disadvantage the council.

Political support



Code of Conduct

3.15 Councillors should note that matters before council involving campaign donors may give rise to a non-pecuniary conflict of interests.

Personal dealings with council

3.16 You will inevitably deal personally with your council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment for yourself or your family because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4 PERSONAL BENEFIT

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

Gifts or benefits

- 4.1 You must not:
 - seek or accept a bribe or other improper inducement
 - by virtue of your position acquire a personal profit or advantage which has a monetary value, other than one of a token value.
- 4.2 You must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:
 - act in a particular way (including making a particular decision)
 - fail to act in a particular circumstance
 - otherwise deviate from the proper exercise of your official duties.
- 4.3 You may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on your part.

Token gifts and benefits

- 4.4 Generally speaking, token gifts and benefits may include:
 - gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
 - free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business
 - free meals, of a modest nature, and/or beverages provided to council officials who formally
 represent their council at work related events such as training, education sessions, workshops
 - · refreshments, of a modest nature, provided at conferences where you are a speaker
 - ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages



Code of Conduct

 invitations to appropriate out of hours "cocktail parties" or social functions organised by groups, such as, council committees and community organisations.

Gifts of value

- 4.5 You must never accept an offer of money, regardless of the amount.
- 4.6 In general, you must not accept gifts and benefits that have more than a nominal or token value. These include tickets to major sporting events, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.
- 4.7 If you receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to your supervisor, the Mayor or the general manager. The supervisor, Mayor or general manager will ensure that any gifts received are recorded in a Gifts Register.
- 4.8 You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.
- 4.9 You must also take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.
- 4.10 Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. (required to be included in the disclosure of interests returns section 449)

Improper and undue influence

- 4.11 You must not take advantage of your position to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for yourself or for somebody else.
- 4.12 You must not take advantage (or seek to take advantage) of your status or position with, or functions performed for, council in order to obtain unauthorised or unfair benefit for yourself or for any other person or body.



Code of Conduct

3 REPORTING BREACHES, COMPLAINT HANDLING PROCEDURES & SANCTIONS

Corrupt conduct, maladministration and waste of public resources

- 3.1 You have an obligation to act honestly. You should report any instances of suspected corrupt conduct, maladministration and serious and substantial waste of public resources in accordance with council's internal reporting policy.
- 3.2 The Protected Disclosures Act 1994 provides certain protections against reprisals for council officials who report such matters. It is an offence to take detrimental action against people who make such reports.

Reporting breaches of the code of conduct

- 3.3 You should report suspected breaches of the code of conduct to the general manager, preferably in writing.
- 3.4 Where you believe that the general manager has failed to comply with this code, you should report the matter to the Mayor, preferably in writing, who will report the matter to the conduct committee.

Complaint handling procedures - staff conduct (excluding the general manager)

- 3.5 Where appropriate, the general manager will make enquiries, or cause enquiries to be made, into breaches of the code of conduct regarding members of staff of council and others engaged by the council and will determine the matter.
- 3.6 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing.
- 3.7 Enquiries made into staff conduct which might give rise to disciplinary action must occur in accordance with the relevant local government award and make provision for procedural fairness including the right of an employee to be represented by their union.

Complaint handling procedures - councillor and general manager conduct

- 3.8 Council will establish a conduct committee that will consist of the Mayor, the general manager and at least one person independent of council. The independent representative/s should comprise council's nominated legal adviser or other independent person/s of appropriate standing. In the instance of a complaint being made by or against the Mayor or the general manager, the Deputy Mayor, or another councillor who has been designated by council, will take the place of the Mayor or general manager on the committee.
- 3.9 Councillors should report suspected breaches of the code of conduct to the general manager, preferably in writing, in the first instance and refrain from making



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allegations at council meetings. Where appropriate, the general manager will report the matter to the conduct committee.

- 3.10 Where the general manager has determined not to report the matter to the conduct committee, the general manager will give the complainant the reason/s in writing.
- 3.11 Council's conduct committee is responsible for making enquiries into allegations of breaches of the code of conduct by councillors and must either:
 - determine not to make enquiries into the allegation and give the reason/s in writing
 - make enquiries into the alleged breach to determine the particular factual matters, or
 - engage an independent person to make enquiries into the allegation to determine the particular factual matters.
- 3.12 Enquiries made by the general manager, an independent person or the conduct committee will follow the rules of procedural fairness. The enquirer must:
 - inform the person/s against whose interests a decision may be made of any allegations against
 them and the substance of any adverse comment in respect of them
 - provide the person/s with a reasonable opportunity to put their case
 - hear all parties to a matter and consider submissions
 - make reasonable enquiries before making a recommendation
 - · ensure that no person is involved in enquiries in which they have a direct interest
 - act fairly and without bias, and
 - conduct the enquiries without undue delay.
- 3.13 Council's conduct committee must decide whether a matter reported to it discloses a prima facie breach of this code. The conduct committee will report its findings, and the reasons for these findings, in writing to the council, the complainant and the person subject of the complaint.
- 3.14 The conduct committee may recommend that council take any actions provided for in this code of conduct that the committee considers reasonable in the circumstances.

Sanctions

- 3.15 Where the council finds that a councillor has breached the code, it may decide by resolution to:
 - censure the councillor for misbehaviour in accordance with section 440G of the Act
 - require the councillor to apologise to any person adversely affected by the breach
 - counsel the councillor
 - make public findings of inappropriate conduct
 - refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police)
 - prosecute for any breach of law.
- 3.16 Sanctions for staff depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts.

ATTACHMENT 1

General Manager's Office Report No. 9
Department of Local Government - Provision of Code of Conduct
Code of Conduct - Attachment 1



Code of Conduct



Code of Conduct

(PART 3)

INTERNAL REPORTING SYSTEM PROTECTED DISCLOSURES ACT, 1994

BACKGROUND

AIMS OF THE ACT

The Protected Disclosures Act aims to encourage and facilitate the disclosure - in the public interest - of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these
 disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

2. WHAT DISCLOSURES ARE PROTECTED?

For information to be deemed a "protected disclosure" it must meet the following conditions:

- The disclosure has to be made by a public official, to the General Manager or in accordance with
 established reporting procedures within the Council or direct to either the ICAC, Ombudsman
 or Auditor-General. Recourse to the Auditor-General is not available to a public official
 concerning local government.
- Disclosures made to a journalist or a member of Parliament will be protected if certain
 conditions are met. The person making the disclosure to a journalist or member of Parliament
 must have already made substantially the same disclosure to an investigating authority or officer
 of a public authority, in accordance with the Protected Disclosures Act. Such protection is only
 available if the information is substantially true and the investigating authority, public authority
 or officer to whom the matter was referred:
- has decided not to investigate the matter;
- has decided to investigate the matter but not completed the investigation within six months of the original disclosure;
- has investigated the matter but not recommended any action in respect of the matter; or
- has failed to notify the person making the disclosure, within six months of the disclosure, of whether or not the matter is to be investigated.



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3. PROTECTION

The Act provides protection by imposing penalties on a person who takes "detrimental action" against another person in reprisal for a protected disclosure. The taking of detrimental action can be punished by way of fines and imprisonment.

"Detrimental action" is action that can cause, comprise or involve any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from or prejudice in employment; or
- disciplinary proceedings.

Any member of staff or councillor who believes that 'detrimental action' is being taken against them should immediately bring the allegations to the attention of the General Manager. A member of staff or councillor who feels that reprisals are not being effectively dealt with should contact the relevant investigating authority, if an external disclosure was made, or the Investigations and Review Branch of the Department of Local Government should the matter relate to an internal disclosure.

The Protected Disclosures Act protects a person against liability arising out of the making of a protected disclosure.

4. WHAT IS NOT PROTECTED?

Protection is not available for disclosures which are frivolous, vexatious, primarily question the merits of government policy or are made in an attempt to avoid dismissal or disciplinary action. It is an offence to wilfully make a false or misleading statement when making a disclosure.

5. DUTY TO NOTIFY

The investigating authority, public authority or officer to whom the disclosure is referred must notify within six months the person who made the disclosure of the action taken or proposed in respect of the disclosure.

6. KEY CONCEPTS

The three key concepts of this reporting system are corruption, maladministration and serious and substantial waste. A definition of each is described below.



Code of Conduct

6.1 Corruption

Corruption is defined in Sections 8 and 9 of the Independent Commission Against Corruption ('ICAC') Act, 1988. The definition used in the Act is intentionally quite broad - corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition

For the Commission to become involved in an issue, the conduct must involve a criminal or disciplinary offence or conduct serious enough to warrant dismissal.

Corruption can take many forms - taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are just some examples.

6.2 Maladministration

Maladministration is defined in Section 11 of the Protected Disclosures Act, 1994 as conduct that involves action or inaction of a serious nature that is:

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

It is important to remember that this definition refers to only part of the jurisdiction of the NSW Ombudsman under the Ombudsman Act, 1989. As such it needs to be kept in mind that to be protected under the Protected Disclosures Act, disclosures to the Ombudsman must comply with the definition of maladministration in that Act.

Maladministration can include conduct considered "corrupt" under the ICAC Act. Dishonest or partial exercise of official functions by a public official falls into this category. This is obviously conduct at the more serious end of the maladministration spectrum, as it must also involve criminal or disciplinary offences.

It can also include cases of serious and substantial waste if it is conduct that is contrary to law or unreasonable. This is particularly relevant to external disclosures of serious and substantial waste involving authorities not the subject of the Public Finance and Audit Act, such as councils.

The Ombudsman refers complaints concerning corrupt conduct to the ICAC. Such complaints may still be investigated by the Ombudsman - the Office of the Ombudsman and the ICAC co-ordinate their activities to ensure there is no duplication of effort.



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6.3 Serious and substantial waste

The Protected Disclosures Act does not define serious and substantial waste. The Auditor-General provides the following working definition.

'Serious and substantial waste' refers to any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste regard will be had, for example, to the dollar value, the potential for savings, the public interest etc.

A disclosure which is made by a public official (which includes an employee of a council or Councillor) that principally involves questioning the merits of government policy is not protected.

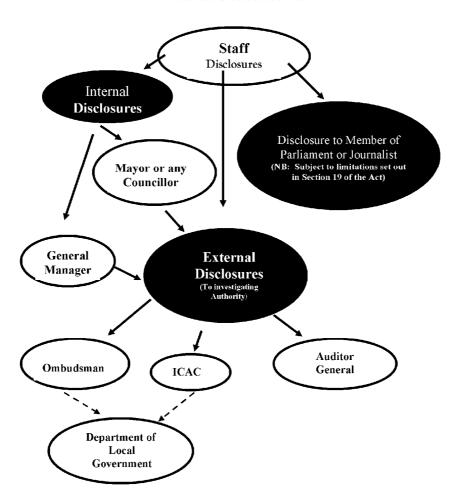
The Auditor-General has no authority to investigate serious and substantial waste in local government. Disclosures concerning serious and substantial waste in local government should be examined by the person seeking to make a disclosure as to whether the waste is the result of maladministration. If so, the disclosure should be made to the Ombudsman. Similarly, the ICAC may deal with matters of serious and substantial waste which involve corruption.



Code of Conduct

7. Internal Reporting System

Internal and External Reporting System Model for the Protected Disclosures Act 1994



---- disclosure may be referred in appropriate cases.

Note: Councillor should report all internal disclosures directly to the General Manager



Code of Conduct

8. ROLES AND RESPONSIBILITIES

As demonstrated in the preceding model everyone at Manly Council has a role in ensuring the success of this reporting system. The various responsibilities and roles are outlined below:

8.1 Employees

- Employees are encouraged to report known or suspected incidences of corruption, maladministration or serious and substantial waste to the General Manager in accordance with this internal reporting system (refer specifically to Section 7.0).
- Employees are also encouraged to identify areas where opportunities for corruption, maladministration and scrious and substantial waste may occur.
- All employees play an important role in supporting those who have made legitimate disclosures.

8.2 Supervisors

- All supervisors have a responsibility for forwarding and acting upon disclosures by advising the General Manager in accordance with the Council's established internal reporting policy.
- The supervisor must clearly explain to a person making a disclosure what will happen in relation to the information received.
- If a disclosure is received orally, it must be clearly documented by the supervisor. The supervisor should ensure that the form of disclosure as produced in writing is accepted as accurate by the person making the disclosure.
- Once received, disclosures are to be forwarded to the General Manager as appropriate.
- The supervisor must take all reasonable steps to ensure a person who has made a disclosure in not disadvantaged.
- The supervisor may assume responsibility for designing and implementing system improvements if a disclosure relates to their particular area of control.

8.3 Disclosure Co-ordinator – General Manager

The General Manager has an important role in fostering and implementing organisational reform deemed necessary as a result of a disclosure.

Disclosures must be made directly to the General Manager.

The General Manager has an obligation to report criminal offences to the police as well as actual or suspected corruption to the ICAC.

The General Manager has direct responsibility for authorising investigations as well as any disciplinary or corrective action required.

The General Manager has an important role in supporting those who make disclosures. This will positively influence organisational culture.



Code of Conduct

8.3 Disclosure Co-ordinator – General Manager (cont...)

- The General Manager acts as the clearing house for all disclosures.
- The General Manager will be responsible for making an initial assessment of each disclosure and
 ensuring appropriate follow up action is taken.
- Procedural fairness must provide the opportunity for the subject of the disclosure to explain his
 or her version of events.
- In order to enable the General Manager to comply with the ICAC Act, all staff have an
 obligation to report actual or suspected corrupt conduct to the General Manager in a timely
 manner.
- A follow up action plan is to be prepared by the General Manager. This includes determining the investigation approach and details the reporting requirements of external agencies.
- Letters of referral to external agencies will be prepared by the General Manager.
- The Public Officer and/or a Director may be responsible for co-ordinating the internal investigation subject to the direction of the General Manager.

8.4 Mayor and Councillors

- The Mayor is to receive internal disclosures concerning the General Manager.
- Any employee may make an internal disclosure directly to the Mayor and/ or any Councillor.
- The Mayor and/or any Councillor should report any internal disclosure they receive directly to the General Manager in the first instance (unless the disclosure involves the General Manager.)
- The Mayor and/or any Councillor may report an internal disclosure they have received from a
 member of staff directly to an investigating authority, ie ICAC, the Ombudsman or Auditor
 General.

9. ESSENTIAL ELEMENTS OF THE INTERNAL REPORTING SYSTEM

9.1 Organisational Improvement

Each disclosure received must be acted upon by investigation or referral. The scope and detail of the action will depend on the nature of the information provided.

Employees, management and councillors share a responsibility to seek ways of continually improving Manly Council's effectiveness. The absence of corruption, maladministration and serious and substantial waste will contribute to organisational goals being successfully met, and personnel being able to work productively in a fair and harmonious workplace.



Code of Conduct

9.1 Organisational Improvement (cont...)

The primary focus of this internal reporting system is organisational improvement. System weakness - for example, financial, performance management and asset management systems - will be examined in the course of all investigations. Details of system weaknesses identified - together with corresponding corrective action - will form the basis of an improvement-directed action plan.

9.2 Confidentiality

Confidentiality helps to protect both those who make disclosures from reprisals as well as the subjects of the disclosures. Employee perceptions that they may be adversely affected by making genuine disclosure should be countered by emphasising the confidential treatment the disclosure will receive. Confidence that only those who need to know the source of a disclosure will find out increases the likelihood that people will come forward with information.

An assurance of complete confidentiality cannot be given. Situations may arise where, in order to fully investigate a matter, the source of disclosure will have to be revealed. It is important that employees understand this limitation. The Council will however ensure that confidentiality is maintained unless it is unreasonable or not possible to do so. This should be clearly understood by those likely to handle complaints, including all supervisors. An unnecessary breach of confidentiality is a serious matter and will lead to disciplinary action.



Code of Conduct

(PART 4)

COUNCILLORS INTERACTION WITH STAFF AND ACCESS TO INFORMATION

Obligations of councillors

- 1.1 Each council is a statutory corporation. The councillors are the governing body of the corporation. Councillors have the responsibility of directing and controlling the affairs of the council in accordance with the Act.
- 1.2 Councillors must:
 - refrain from directing council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor exercising their power under section 226 of the Act (section 352)
 - refrain from, in any public or private forum, directing or influencing, or attempting
 to direct or influence, any other member of the staff of the council or a delegate of
 the council in the exercise of the functions of the member or delegate (Schedule
 6A of the Act)
 - refrain from contacting a member of the staff of the council unless in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager
 - not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor exercising their power under section 226 of the Act.

Role of the Mayor

1.3 The role of the Mayor is defined by section 226 of the Act. This role is the same whether the Mayor is popularly elected or elected by the councillors.

Obligations of staff

- 1.4 The General Manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 1.5 Members of staff of council have an obligation to:
 - give their attention to the business of council while on duty
 - ensure that their work is carried out efficiently, economically and effectively
 - carry out lawful directions given by any person having authority to give such directions
 - give effect to the lawful policies, decisions and practices of the council, whether or not the staff member agrees with or approves of them.



Code of Conduct

Obligations during meetings

- 1.6 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the Local Government (Meetings) Regulation 1999 during council and committee meetings.
- 1.7 You must respect the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council

Inappropriate interactions

- 1.8 The following interactions are inappropriate:
 - Councillors approaching council staff other than directors or senior staff for information on sensitive or controversial matters.
 - Council staff approaching councillors directly on individual staffing matters.
 - Councillors approaching council staff outside the council building or outside hours of work to discuss council business.
 - Council staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views
 - Councillors who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - Councillors being overbearing or threatening to council staff.
 - Councillors directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - Council staff providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - Councillors approaching council staff organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.
 - Council staff meeting with developers alone and outside office hours to discuss development applications or proposals.
 - Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor, exercising their power under section 226 of the Act.



Code of Conduct

Councillor access to information

- 2.1 A council must provide access to the documents available under section 12 of the Local Government Act 1993 to all members of the public, and to councillors. A council must also provide councillors with information sufficient to enable them to carry out their civic functions.
- 2.2 Any information that is given to a particular councillor in the performing of their civic duties must also be available to any other councillor who requests it.
- 2.3 Councillors who have a personal (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.
- 2.4 Members of staff of council have an obligation to provide full and timely information to councillors about matters that they are dealing with in accordance with council procedures.
- 2.5 Councillors have an obligation to properly examine and understand all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

2.6 The general manager and public officer must act reasonably in deciding whether a document sought by a councillor should be made available under section 12 of the Local Government Act 1993 or because it is relevant to the performance of the councillor's civic duty. The general manager or public officer must state the reasons for the decision if access is refused.

Use of council information

- 2.7 You must:
 - protect confidential information
 - · only access information needed for council business
 - not use confidential information for any non-official purpose
 - only release confidential information if you have authority to do so
 - only use confidential information for the purpose it is intended to be used
 - only release other information in accordance with established council policies and procedures and in compliance with relevant legislation
 - not use council information for personal purposes
 - not disclose any information discussed during a confidential session of a council meeting.
- 2.8 You must carry out your duties in a manner that allows council officials and the public to remain informed about local government activity and practices.

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Code of Conduct

2.9 You must not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person.



Code of Conduct

- 2.10 You must 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 had access in the exercise of your official functions or duties by virtue of your office or position.
- 2.11 You must not use confidential information with the intention to improperly cause harm or detriment to your council or any other person or body.

Security of information

- 2.12 You must take care to maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 21.3 When dealing with personal information you must comply with:
 - the Privacy and Personal Information Protection Act 1998,
 - the Health Records and Information Privacy Act 2002,
 - the Information Protection Principles and Health Privacy Principles,
 - · council's privacy management plan,
 - the Privacy Code of Practice for Local Government

Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

Use of council resources

- 2.14 You must use council resources ethically, effectively, efficiently and carefully in the course of your public or professional duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 2.15 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
 - · the representation of members with respect to disciplinary matters
 - · the representation of employees with respect to grievances and disputes
 - functions associated with the role of the local consultative committee.
- 2.16 You must be scrupulous in your use of council property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body.
- 2.17 You must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain.
- 2.18 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is

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Code of Conduct

- not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.
- 2.19 You must not convert any property of the council to your own use unless properly authorised.
- 2.20 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 2.21 As elected members of the council, councillors are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillor's rooms, and public areas of council's buildings during normal business hours and for meetings. Should councillors need access to these facilities at other times, authority is required from the general manager in order that necessary arrangements can be made.
- 2.22 Councillors must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 2.23 Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and /or a perception that they may bring influence to bear on council staff decisions and should conduct themselves accordingly.



Code of Conduct

4 COUNCILLOR MISBEHAVIOUR

- 4.1 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. (section 440F)
- 4.2 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 4.3 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.
- 4.4 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 4.5 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
 - formally censured for incidents of misbehaviour on two or more occasions, or
 - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.
- 4.6 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 4.7 Council cannot request suspension on this ground unless the councillor has been:
 - formally censured for the incident of misbehaviour concerned, or
 - expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 4.8 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.



Code of Conduct

APPENDIX 1

EXAMPLES OF CONFLICTS OF INTEREST PROVIDED BY THE ICAC*

The following examples show some areas within council where conflicts of interest may occur.

1 Tendering and Purchasing

Council has advertised for a firm to supply and fit office equipment. A councillor who is a representative on the council's panel assessing the tender bids, has a close friend who is a senior executive in a firm submitting a bid. This may affect, or may be suspected to affect, the councillor's ability to make an unbiased decision.

2 Staff Recruitment

A member of a selection panel has a close personal relationship with an applicant for the job. This conflict of interest could bias, or could reasonably be expected to bias the decision of the panel member concerned and could affect the decision of the panel.

3 Secondary Employment

A building surveyor has been drawing house plans privately in his/her own time for people wanting to undertake renovations and additions. Some of his/her plans have been submitted to his/her employing council and have been assessed and recommended for approval by his colleagues.

The impartiality of the council officer has been compromised as it may be perceived that he/she is using his/her influence to make sure that the plans are approved. The impartiality of the building surveyor's colleagues could also be compromised if they were aware that the building surveyor had drawn the house plans.

4 Dealing with former council staff (and councillors)

A senior employee of the council recommended that a particular firm be awarded a valuable council contract. The council accepted the recommendation and awarded the contract to the firm. Shortly after the contract was awarded, the senior employee resigned from his/her job and went to work for the firm.

It could appear that the offer of employment was a personal benefit, in return for favours given. Other competitors might be disadvantaged if staff at the council were influenced by their previous colleague and continued to award contracts to his firm. This situation must be carefully managed to ensure favouritism or the perception of favouritism does not occur.

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5 Gifts, Benefits and Hospitality

A regular supplier offered the council's purchasing officer a free weekend for two at a beach resort. The officer's impartiality when dealing with the supplier could be compromised if he or she accepts the offer.

In some Council's planning and building staff are regularly offered alcohol, food, tickets to major sporting events and free lunches by developers, builders, project managers and suppliers. Staff of these Councils sometimes accept these gifts without declaring them and argue that they are in return for providing good service and are an accepted way of "doing business". Again, it could be perceived that the impartiality of the staff concerned may be compromised.

6 Planning Approvals

A conflict can occur when councils have a dual role as developer and regulator. Councils that decide to develop a piece of land they own may make decisions in their own commercial interest and unfairly disadvantage other developers. It may be difficult for councils to be impartial when they are effectively having to assess their own applications.

7 Licensing

A health inspector is friendly with the owner of a local restaurant and often gets free meals. As part of his/her job, the inspector has to inspect the restaurant to check it complies with health regulations.

The personal relationship between restaurant owner and the inspector, and his/her acceptance of free meals, could reasonably be expected to influence his/her assessment of the health standards in the restaurant.

8 Elected Officials - Business Interests

Councillors sometimes have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests.

For example, a councillor may be tempted to influence an application to set up a new business in the area if his/her own business could lose custom as a result.

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9 Election Support

A conflict can arise for a councillor when a campaign donor who contributed financially to the councillor's election campaign, or a campaign supporter who worked on the election of the councillor by handing out how-to-vote cards or erecting election posters, has a matter before the council for determination. This could have potential to place the councillor in a position of having a conflict of interest.

Extreme care should be taken if the nature of the relationship may constitute a pecuniary interest (for example, where it could be perceived that an election donation has been given on the understanding that the councillor will provide support on a particular matter should he or she be elected)

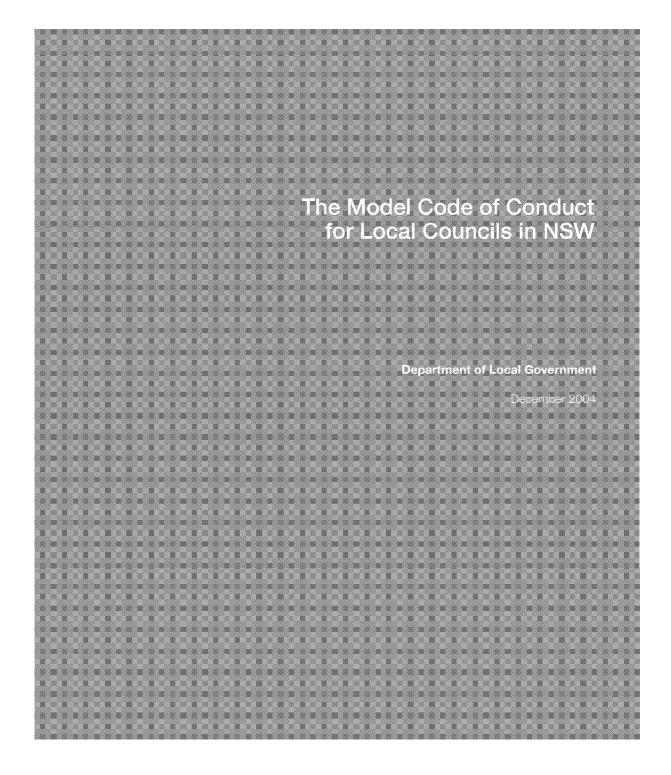
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Department of Local Government

The Model Code of Conduct for Local Councils in NSW

DECEMBER 2004

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1 Introduction

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1 introduction

The Local Government Act 1993 requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW. Councillors, members of staff of council and delegates of the council must comply with the applicable provisions of council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

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

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2 Definitions

In the model code of conduct the following definitions apply:

Council official includes councillors, members of staff of

council and delegates of council

Delegates of council a delegate of council is a person or body to

whom a function of council is delegated

Designated person see the definition in section 441 of the Local

Government Act 1993

Act of disorder see the definition in clause 29 of the Local

Government (Meetings) Regulation 1999

The Act the Local Government Act 1993

The term "you" used in the model code of conduct refers to council

officials.

References to sections in the model code of conduct are references to sections in the Local Government Act 1993.

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3 Purpose of the code of conduct

The Model Code of Conduct for Local Councils in NSW sets the minimum requirements of behaviour for council officials in carrying out their functions. The model code is prescribed by regulation.

The model code of conduct has been developed to assist council officials to:

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

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4 Key principles

The Model Code of Conduct for Local Councils in NSW is based on the following key principles:

4.1 Integrity

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

4.2 Leadership

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council. This means promoting public duty to others in the council and outside, by your own ethical behaviour.

4.3 Selflessness

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

4.4 Objectivity

You must make decisions solely on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.

4.5 Accountability

You are accountable to the public for your decisions and actions and must consider issues on their merits, taking into account the views of others. This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.

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4.6 Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.

4.7 Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.

4.8 Respect

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

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5 General conduct obligations

General conduct

- You must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, you must avoid conduct
 - · contravenes the Act, associated regulations and council's relevant administrative requirements
 - is detrimental to the pursuit of the charter of a council
 - · is improper or unethical
 - is an abuse of power or otherwise amounts to misconduct
 - · causes, comprises or involves intimidation, harassment or verbal abuse
 - · causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
 - · causes, comprises or involves prejudice in the provision of a service to the community. (Schedule 6A of the Act)
- 5.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (section 439)
- 53 You must treat others with respect at all times.

Fairness and equity

- 5.4 You have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a nondiscriminatory manner.
- 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.

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Harassment and discrimination

5.6 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, disability, homosexuality or transgender.

Development decisions

- 5.7 It is your duty to ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid impropriety. You must also avoid any occasion for suspicion and any appearance of improper conduct.
- 5.8 In determining development applications, it is essential that you are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide concessions or preferential treatment.

Guide to ethical decision-making

- 5.9 If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:
 - · Is the decision or conduct lawful?
 - Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
 - What will the outcome be for the employee or councillor. work colleagues, the council and any other parties?
 - · Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?

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• Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

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

Independent Commission Against Corruption 8281 5999

NSW Ombudsman 9286 1000

4428 4100 NSW Department of Local Government

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6 Conflict of interests

Pecuniary and non-pecuniary conflict of interests

- A conflict of interests exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duly.
- 6.2 You must appropriately resolve any conflict or incompatibility between your private or personal interests and the impartial performance of your public or professional duties.
- 6.3 Any conflict between your interests and those of council must be resolved to the satisfaction of the council. When considering whether or not you have a conflict of interests, it is always important to think about now others would view your situation.
- 6.4 It is essential that you properly address conflict of interests issues that may arise. You must:
 - · try to understand the concept and practical implications of conflict of interests issues
 - · accept that failure to resolve an actual or reasonably perceived conflict of interests is unacceptable in local government
 - take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interests.
- 6.5 Perceptions of a conflict of interests are as important as actual conflict of interests. The onus is on you to identify a conflict of interests, whether perceived or real, and take the appropriate action to resolve the conflict in favour of your public duty.
- 6.6 Where necessary, you must disclose an interest promptly, fully and in writing. If a disclosure is made at a council or committee meeting, both the disclosure and nature of an interest must be recorded in the minutes.

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- 6.7 If you are in doubt whether a conflict of interests exists, you should seek legal or other appropriate advice.
- 6.8 A conflict of interests can be of two types:

Pecuniary - An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. (sections 442 and 443)

Non-pecuniary - A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

- 6.9 Pecuniary interest is regulated by Chapter 14 Part 2 of the Act. The Act requires that:
 - · councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (section 1191
 - councillors or members of council committees disclose an interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)
 - · designated persons immediately declare, in writing, any pecuniary interest. (section 459)

Designated persons are defined at section 441 of the Act.

6.10 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

General Manager's Office Report No. 9 Department of Local Government - Provision of Code of Conduct **Model Code of Conduct - Attachment 2**

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- 6.11 If you have a non-pecuniary conflict of interests, you must disclose the nature of the conflict. If this is in a meeting, do so as soon as practicable.
- 6.12 If you have declared a non-pecuniary conflict of interests you have a broad range of options for managing the conflict. The option you choose will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. You must deal with a non-pecuniary conflict of interests in at least one of these ways:
 - It may be appropriate that no action is taken where the potential for conflict is minimal. However, council officials should consider providing an explanation of why they consider a conflict does not exist.
 - Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
 - · Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer).
 - Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply (particularly if you have a significant non-pecuniary conflict of interest).
 - Include an independent person in the process to provide assurance of probity (for example, for tendering or recruitment selection panels).

Other business or employment

A member of staff of council who is considering outside employment or contract work that relates to the business of the council or that might conflict with their council duties, must notify and seek the approval of the general manager in writing. (section 353)

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- 6.14 Before you engage in outside employment or business you must ensure that it will not:
 - · conflict with your official duties
 - · interfere with your council work
 - involve using confidential information or council resources obtained through your work with the council
 - · require you to work while on council duty
 - · discredit or disadvantage the council.

Political support

Councillors should note that matters before council involving campaigh donors may give rise to a non-pecuniary conflict of interests.

Personal dealings with council

6.16 You will inevitably deal personally with your council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment for yourself or your family because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

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7 Personal benefit

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

Gifts or benefits

- 7.1 You must not:
 - seek or accept a bribe or other improper inducement
 - by virtue of your position acquire a personal profit or advantage which has a monetary value, other than one of a token value.
- 7.2 You must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:
 - act in a particular way (including making a particular decision)
 - fail to act in a particular circumstance
 - otherwise deviate from the proper exercise of your official duties.
- 7.3 You may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on your part.

Token gifts and benefits

- 7.4 Generally speaking, token gifts and benefits may include:
 - gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)

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 - free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business
 - free meals, of a modest nature, and/or beverages provided to council officials who formally represent their council at work related events such as training, education sessions, workshops
 - refreshments, of a modest nature, provided at conferences where you are a speaker
 - ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages
 - invitations to appropriate out of hours "cocktail parties" or social functions organised by groups, such as, council committees and community organisations.

Gifts of value

- 7.5 You must never accept an offer of money, regardless of the amount.
- 7.6 In general, you must not accept gifts and benefits that have more than a nominal or token value. These include tickets to major sporting events, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.

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- 7.7 If you receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to your supervisor, the Mayor or the general manager. The supervisor, Mayor or general manager will ensure that any gifts received are recorded in a Gifts Register.
- 7.8 You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.
- 7.9 You must also take all reasonable steps to ensure that your immediate lamily members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.
- 7.10 Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding S500 made by the same person during a period of 12 months or less. (required to be included in the disclosure of interests returns - section 449)

Improper and undue influence

- 7.11 You must not take advantage of your position to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for yourself or for somebody else.
- 7.12 You must not take advantage (or seek to take advantage) of your status or position with, or functions performed for, council in order to obtain unauthorised or unfair benefit for yourself or for any other person or body.

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8 Relationship between council officials

Obligations of councillors

- 8.1 Each council is a statutory corporation. The councillors are the governing body of the corporation. Councillors have the responsibility of directing and controlling the affairs of the council in accordance with the Act.
- 8.2 Councillors must:
 - refrain from directing council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor exercising their power under section 226 of the Act (section 352)
 - refrain from, in any public or private forum, directing or influencing, or attempting to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (Schedule 6A of the Act)
 - refrain from contacting a member of the staff of the council unless in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager
 - not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor exercising their power under section 226 of the Act.

Role of the Mayor

8.3 The role of the Mayor is defined by section 226 of the Act.

This role is the same whether the Mayor is popularly elected or elected by the councillors.

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Obligations of staff

- 8.4 The General Manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 8.5 Members of staff of council have an obligation to:
 - give their attention to the business of council while on duty
 - ensure that their work is carried out efficiently, economically and effectively
 - carry out lawful directions given by any person having authority to give such directions
 - give effect to the lawful policies, decisions and practices of the council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

- 8.6 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the Local Government (Meetings) Regulation 1999 during council and committee meetings.
- 8.7 You must respect the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 8.8 The following interactions are inappropriate:
 - Councillors approaching council staff other than directors or senior staff for information on sensitive or controversial matters
 - Council staff approaching councillors directly on individual staffing matters.

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- - · Councillors approaching council staff outside the council building or outside hours of work to discuss council business.
 - Council staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views
 - Councillors who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - · Councillors being overbearing or threatening to council staff.
 - · Councillors directing or pressuring council staff in the performance of their work, or recommendations they should
 - Council staff providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - Councillors approaching council staff organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.
 - · Council staff meeting with developers alone and outside office hours to discuss development applications or proposals.
 - Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor, exercising their power under section 226 of the Act.

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9 Access to information and council resources

Councillor access to information

- 9.1 A council must provide access to the documents available under section 12 of the Local Government Act 1993 to all members of the public, and to councillors. A council must also provide councillors with information sufficient to enable them to party out their civic functions.
- 9.2 Any information that is given to a particular councillor in the performing of their civic duties must also be available to any other councillor who requests it.
- 9.3 Councillors who have a personal (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.
- 9.4 Members of staff of council have an obligation to provide full and timely information to councillors about matters that they are dealing with in accordance with council procedures.
- 9.5 Councillors have an obligation to properly examine and understand all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

9.6 The general manager and public officer must act reasonably in deciding whether a document sought by a councillor should be made available under section 12 of the *Local Government Act 1993* or because it is relevant to the performance of the councillor's civic duty. The general manager or public officer must state the reasons for the decision if access is refused.

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Use of council information

- 9.7 You must:
 - · protect confidential information
 - only access information needed for council business
 - · not use confidential information for any non-official purpose
 - only release confidential information if you have authority to do so.
 - only use confidential information for the purpose it is intended to be used
 - only release other information in accordance with established council policies and procedures and in compliance with relevant legislation
 - not use council information for personal purposes
 - not disclose any information discussed during a confidential session of a council meeting.
- 9.8 You must carry out your duties in a manner that allows council officials and the public to remain informed about local government activity and practices.
- 9.9 You must not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person.
- 9.10 You must 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 had access in the exercise of your official functions or duties by virtue of your office or position.
- 9.11 You must not use confidential information with the intention to improperly cause narm or detriment to your council or any other person or body.

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Security of information

- 9.12 You must take care to maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 9.13 When dealing with personal information you must comply with:
 - the Privacy and Personal Information Protection Act 1998,
 - the Health Records and Information Privacy Act 2002,
 - the Information Protection Principles and Health Privacy Principles,
 - · council's privacy management plan,
 - · the Privacy Code of Practice for Local Government

Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

Use of council resources

- 9.14 You must use council resources ethically, effectively, efficiently and carefully in the course of your public or professional duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 9.15 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
 - the representation of members with respect to disciplinary matters
 - the representation of employees with respect to grievances and disputes
 - functions associated with the role of the local consultative committee.

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- 9.16 You must be scrupulous in your use of council property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body.
- 9.17 You must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain.
- 9.18 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.
- 9.19 You must not convert any property of the council to your own use unless properly authorised.
- 9.20 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 9.21 As elected members of the council, councillors are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillor's rooms, and public areas of council's buildings during normal business hours and for meetings. Should councillors need access to these facilities at other times, authority is required from the general manager in order that necessary arrangements can be made.
- 9.22 Councillors must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.

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9.23 Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and /or a perception that they may bring influence to bear on council staff decisions and should conduct themselves accordingly.

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10 Reporting breaches, complaint handling procedures & sanctions

Corrupt conduct, maladministration and waste of public resources

- 10.1 You have an obligation to act honestly. You should report any instances of suspected corrupt conduct, maladministration and serious and substantial waste of public resources in accordance with council's internal reporting policy.
- 10.2 The Protected Disclosures Act 1994 provides certain protections against reprisals for council officials who report such matters. It is an offence to take detrimental action against people who make such reports.

Reporting breaches of the code of conduct

- 10.3 You should report suspected breaches of the code of conduct to the general manager, preferably in writing.
- 10.4 Where you believe that the general manager has failed to comply with this code, you should report the matter to the Mayor, preferably in writing, who will report the matter to the conduct committee.

Complaint handling procedures – staff conduct (excluding the general manager)

- 10.5 Where appropriate, the general manager will make enquiries, or cause enquiries to be made, into breaches of the code of conduct regarding members of stall of council and others engaged by the council and will determine the matter.
- 10.6 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing.

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10.7 Enquiries made into staff conduct which might give rise to disciplinary action must occur in accordance with the relevant local government award and make provision for procedural fairness including the right of an employee to be represented by their union.

Complaint handling procedures – councillor and general manager conduct

- 10.8 Council will establish a conduct committee that will consist of the Mayor, the general manager and at least one person independent of council. The independent representative/s should comprise council's nominated legal adviser or other independent person/s of appropriate standing. In the instance of a complaint being made by or against the Mayor or the general manager, the Deputy Mayor, or another councillor who has been designated by council, will take the place of the Mayor or general manager on the committee.
- 10.9 Councillors should report suspected breaches of the code of conduct to the general manager, preferably in writing, in the lirst instance and refrain from making allegations at council meetings. Where appropriate, the general manager will report the matter to the conduct committee.
- 10.10 Where the general manager has determined not to report the matter to the conduct committee, the general manager will give the complainant the reason/s in writing.
- 10.11 Council's conduct committee is responsible for making enquiries into allegations of breaches of the code of conduct by councillors and must either:
 - determine not to make enquiries into the allegation and give the reason/s in writing
 - make enquiries into the alleged breach to determine the particular factual matters, or
 - engage an independent person to make enquiries into the allegation to determine the particular factual matters.

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- 10.12 Enquiries made by the general manager, an independent person or the conduct committee will follow the rules of procedural fairness. The enquirer must:
 - inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them
 - provide the person/s with a reasonable opportunity to put their case
 - hear all parties to a matter and consider submissions
 - make reasonable enquiries before making a recommendation
 - ensure that no person is involved in enquiries in which they have a direct interest
 - · act fairly and without bias, and
 - · conduct the enquiries without undue delay.
- 10.13 Council's conduct committee must decide whether a matter reported to it discloses a prima facie breach of this code. The conduct committee will report its findings, and the reasons for these findings, in writing to the council, the complainant and the person subject of the complaint.
- 10.14 The conduct committee may recommend that council take any actions provided for in this code of conduct that the committee considers reasonable in the circumstances.

Sanctions

- 10.15 Where the council finds that a councillor has breached the code, it may decide by resolution to:
 - censure the councillor for misbenaviour in accordance with section 440G of the Act
 - require the councillor to apologise to any person adversely affected by the breach
 - · counsel the councillor

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- make public findings of inappropriate conduct
- refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police)
- prosecute for any breach of law.
- 10.16 Sanctions for staff depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts.

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11 councillor misbehaviour

11 Councillor misbehaviour

- 11.1 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. (section 440F)
- 11.2 Under section 440G a council may by resolution at a meeting lormally censure a councillor for misbehaviour.
- 11.3 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.
- 11.4 The first ground on which a councillor may be suspended from civic office is where the councillor's benaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 11.5 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
 - formally censured for incidents of misbehaviour on two or more occasions, or
 - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.
- 11.6 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.

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11 councillor misbehaviour

- 11.7 Council cannot request suspension on this ground unless the councillor has been:
 - formally censured for the incident of misbehaviour concerned, or
 - expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 11.8 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

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Draft Code of Conduct - Attachment 3

Counc Manly

Attachment Three



Draft Code of Conduct

Revised as at April 2005

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Department of Local Government - Provision of Code of Conduct
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(PART 1) GENERAL

1. INTRODUCTION

Under the provisions of section 440 of the Local Government Act, 1993 every Council must prepare or adopt a Code of Conduct to be observed by councillors, members of staff of the Council and delegates of the Council.

Duties of disclosure apply under Part 2 of Chapter 14 to designated persons. These duties form part of general obligations imposed by the Act on councillors, members of staff and delegates to act honestly and exercise a reasonable degree of care and diligence in carrying out functions under the Act.

Notes in the text are explanatory and do not form part of the code. They are provided to assist in understanding and applying the code.

2. WHAT ARE THE PURPOSES OF THIS CODE?

To assist councillors, members of staff and delegates:

- to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence;
- to provide a practical means of identifying and resolving situations which involve conflict of interest or improper use of their positions; and
- to act in a way which enhances public confidence in the system of local government.

KEY PRINCIPLES AND LEGISLATIVE RELATIONSHIPS

KEY PRINCIPLES

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

Integrity

3.1 A councillor, member of staff or delegate must not place himself or herself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence him or her in the performance of his or her duties.

Leadership

3.2 A councillor, member of staff or delegate has a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council. This means promoting public duty to others in the council and outside, by his or her own ethical behaviour.

<u>Selflessness</u>

3.3 A councillor, member of staff or delegate has a duty to make decisions solely in the public interest. He or she must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker.

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Objectivity

3.4 A councillor, member of staff or delegate must make decisions solely on merit and in accordance with his or her statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.

Accountability

3.5 A councillor, member of staff or delegate is accountable to the public for your decisions and actions and must consider issues on their merits, taking into account the views of others. This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.

<u>Openness</u>

3.6 A councillor, member of staff or delegate has a duty to be as open as possible about his or her decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.

<u>Honesty</u>

3.7 A councillor, member of staff or delegate has a duty to act honestly. He or she must declare any private interests relating to his or her public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.

Respect

3.8 A councillor, member of staff or delegate must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

WHAT IS THE RELATIONSHIP OF THIS CODE TO THE ACT?

3.9 This code has been prepared pursuant to section 440 and is to be read in conjunction with the Act. However, nothing in this code overrides or affects the Act or any other law.

Note: Part of the following Acts also have a bearing on this code:

- the Anti-Discrimination Act 1987
- the Crimes Act 1900
- the Freedom of Information Act 1989
- the Independent Commission Against Corruption Act 1988
- the Occupational Health and Safety Act 1983; and
- the Ombudsman Act 1974

The charter in Chapter 3 of the Local Government Act 1993 comprises a set of principles to guide a council with its functions.

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- OTHER RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF & DELEGATES
- 4.1 Equitable treatment of people and situations

A councillor, member of staff or delegate must:

- · not act contrary to the law;
- not act unreasonably, unjustly or oppressively or in a discriminatory manner;
- · deal with like situations in a like manner, but treating each matter on its merits;
- take all relevant information into consideration and must not take any irrelevant information or opinions into consideration;
- take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained:
- treat members of the public fairly and equitably and with respect, courtesy, compassion and sensitivity;
- refrain from any form of conduct, in the performance of his or her public or
 professional duties, which may cause any reasonable person unwarranted offence or
 embarrassment or give rise to the reasonable suspicion or appearance of improper
 conduct or partial performance of his or her public or professional duties;
- not act on improper or irrelevant grounds; and not act in a manner that would bring council or its officers into disrepute;
- When dealing with development matters, ensure that decisions are properly made and that parties involved in the development process are dealt with fairly. He or she must avoid impropriety and avoid any occasion for suspicion and any appearance of improper conduct.;
- When dealing with development matter, ensure that he or she is highly conscious of
 the potential for even the slightest impropriety to lead to suspicion of misconduct. This
 means he or she must ensure that no action, statement or communication between
 himself or herself and applicants or objectors conveys any suggestion of willingness
 to provide concessions or preferential treatment.

Note: Section 439(1) of the Act provides that a councillor, member of staff and delegate must act 'honestly" and exercise a 'reasonable degree of care and diligence' in carrying out his or her functions under the Act.

By virtue of section 352 of the Act, a member of staff is not subject to direction by the council as to the content of any advice or recommendation made by the member. However, the council may direct a member of staff to provide advice or a recommendation

Councils wishing to retain an oath of allegiance or a declaration to faithfully fulfil the duties of a councillor, or variations of them may do so by resolution

4.2 Bribes, Gifts, Benefits

A councillor, member of staff or delegate must:

· not seek or accept a bribe, or other improper inducement;

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- not take advantage of his or her official position to improperly influence other councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing a private benefit for himself or herself or for some other person; and
- not by virtue of his or her official position accept or acquire a personal profit or advantage of a pecuniary value (other than of a token kind) other than as permitted by the Act.

Note: Section 275(2) of the Act provides that a person is disqualified from holding

civic office on a council if he or she is an employee of council or holds an office or place of profit under the council.

4.3 Use of Council's Resources

A councillor, member of staff or delegate must:

- use council resources effectively and economically in the course of his or her public or
 professional duties, and must not use them for private purposes (except when
 supplied as part of a contract of employment) unless such use is lawfully authorised
 and proper payment is made where appropriate; and
- not convert to his or her own use any property of the council.

Note: A councillor, member of staff or delegate should at all times be scrupulously honest in the use of council resources of all kinds, both physical and human. Use of such resources, whether for official or authorised private purposes, should be in accordance with the council's policy concerning payment of expenses, provision of facilities and any other relevant policy. A councillor, member of staff or delegate should not use his or her position to obtain any benefit which would not otherwise be available.

See Division 5 of Part 2 of Chapter 9 of the Act as to what fees, expenses and facilities may be paid or provided to councillors

4.4 Use of Information

A councillor, member of staff or delegate must:

- conduct their duties in a manner which allows councillors, members of staff, delegates and the public to remain informed about local government activity and practices;
- not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself or for any other person; and
- not without lawful authority, disclose otherwise than to the council, a councillor, or a
 member of staff entitled to know, information concerning any matter referred to in
 section 10A(2)(a)-(g) of the Act.

(OM 06.08.2001 Res No. 165)

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 not misuse any information that is confidential or could reasonably be construed as being confidential or sensitive or likely to lead to further Council action (including litigation or the fulfilment of a Statutory function) provided always that such confidentiality is properly claimed or claimable pursuant to section 10 of the Local Government Act and not used simply as a means of covering up facts or circumstances which may be required to be aired in the public interest or which if disclosed publicly may simply be embarrassing to Council, Councillors or Council Staff because of some failure or indiscretion on their part.

Note: See section 664 of the Local Government Act, 1993, which prohibits the unauthorised disclosure of information relating to proceedings at closed meetings. The same principles should apply even where the information in question does not relate to proceedings at closed meetings.

5. PARTICULAR OBLIGATIONS OF STAFF

A member of staff must:

- while on duty give the whole of his or her time and attention to the business of the council and ensure that his or her work is carried out efficiently, economically and effectively;
- carry out lawful directions given by any person having authority to give such directions; and
- give effect to the lawful policies, decisions and practices of the council, whether or not the staff member agrees with or approves of them.

Note: By virtue of section 341 of the Act, a 'senior staff member' must give notice to the general manager of his or her becoming bankrupt or making a composition, arrangement or assignment for the benefit of his or her creditors.

Section 353(2) provides that a member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's council duties unless he or she has notified the general manager in writing of the employment or work.

By virtue of section 353(4) a member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council if prohibited from doing so by the general manager.

6. WHAT ARE THE LEGITIMATE EXPECTATIONS OF A COUNCILLOR, MEMBER OF STAFF & DELEGATE?

A councillor, member of staff or delegate who honestly and faithfully observes the requirements of this code and any relevant law is entitled to expect the publicly expressed support of his or her council and colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties.

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REPORTING OF CORRUPT CONDUCT

A councillor, member of staff or delegate who knows or has good reasons to suspect any fraud, corrupt, criminal or unethical conduct must report it immediately to the general manager or nominated alternate.

Note: Section 11 of the Independent Commission Against Corruption Act 1988, requires the principal officer to report suspected cases of corrupt conduct to the commission. Under the Act, corrupt conduct can be defined as dishonest or partial exercise of an official function by a public official. Conduct of a person who is not a public official when it adversely affects the impartial or honest exercise of official functions by a public official, comes within the definition. Reporting is generally to be immediate. This duty cannot be delegated. So that reports may be timely the general manager should develop an internal reporting system appropriate to the council. Councillors, members of staff and delegates may forward a complaint of suspected corrupt directly to the commission where the person(s) does not wish to report the matter internally.

Perceptions that complainants may be prejudiced in their employment or otherwise should be countered by emphasising that reports of suspected corrupt conduct will be treated confidentially and of the council's determination to minimise corrupt conduct. Complainants should be advised of the outcomes of their complaints.

8. GUIDE TO ETHICAL DECISION-MAKING

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

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

Advice may be sought the Department of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

Independent Commission Against Corruption 8281 5999
NSW Ombudsman 9286 1000
NSW Department of Local Government 4428 4100

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(PART 2) CONFLICTS OF INTEREST

 WHAT IS THE SPECIAL DUTY OF A COUNCILLOR, MEMBER OF STAFF AND DELEGATE?

A councillor, member of staff or delegate must avoid and appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.

Note: The mere fact that a person has both a public or professional duty and a private or personal interest in relation to a particular matter does not necessarily mean that the two must be in conflict. What is important is how any conflict, if it exists, is dealt with. What is also important is the public perception of the way the person deals with any such conflict.

WHEN DOES A CONFLICT OF INTEREST ARISE?

A conflict of interest arises if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his or her public or professional duties by that interest, or that a reasonable person would believe that the person could be so influenced.

Note:- Council at its meeting of 4th May, 1998, resolved:-

"Councillors must not vote or participate on any item in which either the applicants, objectors or their agents who claim to be directly affected by the matter either:-

- (a) Made a gift of \$200 or more to the Councillor, or
- (b) Made a gift of \$500 or more to a registered political party for that Councillor's administrative or campaign expenses."

3. PECUNIARY AND NON-PECUNIARY CONFLICT OF INTERESTS

- 3.1 A conflict of interests exists when a councillor, member of staff or delegate could be influenced, or a reasonable person would perceive that they could be influenced by a personal interest when carrying out one's public duty.
- 3.2 A councillor, member of staff or delegate must appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.
- 3.3 Any conflict between a councillor's, member of staff's or delegate's interests and those of council must be resolved to the satisfaction of the council. When considering whether or not a councillor, member of staff or delegate has a conflict of interests, it is always important to think about how others would view the situation.

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- 3.4 It is essential that as a councillor, member of staff or delegate properly address conflict of interests issues that may arise. A councillor, member of staff or delegate must:
 - · try to understand the concept and practical implications of conflict of interests issues
 - accept that failure to resolve an actual or reasonably perceived conflict of interests is unacceptable in local government
 - take timely and appropriate action to avoid, or if not, to disclose any actual, potential
 or reasonably perceived conflict of interests.
- 3.5 Perceptions of a conflict of interests are as important as actual conflict of interests. The onus is on a councillor, member of staff or delegate to identify a conflict of interests, whether perceived or real, and take the appropriate action to resolve the conflict in favour of his or her public duty.
- 3.6 Where necessary, a councillor, member of staff or delegate must disclose an interest promptly, fully and in writing. If a disclosure is made at a council or committee meeting, both the disclosure and nature of an interest must be recorded in the minutes.
- 3.7 If a councillor, member of staff or delegate is in doubt whether a conflict of interests exists, he or she seek legal or other appropriate advice.
- 3.8 A conflict of interests can be of two types:

Pecuniary - An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. (sections 442 and 443)

Non-pecuniary - A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

- 3.9 Pecuniary interest is regulated by Chapter 14 Part 2 of the Act. The Act requires that:
 - councillors and designated persons lodge an initial and an annual written disclosure
 of interests that could potentially be in conflict with their public or professional duties
 (section 449)
 - councillors or members of council committees disclose an interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)
 - designated persons immediately declare, in writing, any pecuniary interest. (section 459)
 - Designated persons are defined at section 441 of the Act.
- 3.10 In the case of staff of council, other than a designated person (as defined by section 441), he or she must disclose to his or her supervisor or the general manager, the nature of any pecuniary interest he or she has in a matter they are dealing with as soon as practicable.

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- 3.11 If a councillor, member of staff or delegate has a non-pecuniary conflict of interests, they must disclose the nature of the conflict. If this is in a meeting, do so as soon as practicable.
- 3.12 If a councillor, member of staff or delegate has declared a non-pecuniary conflict of interests there are a broad range of options for managing the conflict. The option that is selected will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. A councillor, member of staff or delegate must deal with a non-pecuniary conflict of interests in at least one of these ways:
 - It may be appropriate that no action is taken where the potential for conflict is minimal.
 However, council officials should consider providing an explanation of why they consider a conflict does not exist.
 - Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
 - Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer).
 - Have no involvement by absenting himself or herself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply (particularly if there exists a significant non-pecuniary conflict of interest).
 - Include an independent person in the process to provide assurance of probity (for example, for tendering or recruitment selection panels).

Other business or employment

- 3.13 A member of staff of council who is considering outside employment or contract work that relates to the business of the council or that might conflict with their council duties, must notify and seek the approval of the general manager in writing. (section 353)
- 3.14 Before a member of staff engages in outside employment or business he or she must ensure that it will not:
 - · conflict with his or her official duties
 - · Interfere with his or her council work
 - involve using confidential information or council resources obtained through his or her work with the council
 - require him or her to work while on council duty
 - · discredit or disadvantage the council.

Political support

3.15 Councillors should note that matters before council involving campaign donors may give rise to a non-pecuniary conflict of interests.

Personal dealings with council

3.16 A councillor, member of staff or delegate will inevitably deal personally with his or her council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). A councillor, member of staff or delegate must not expect or request preferential treatment for themselves or their family because of a councillor's, member of staff's or delegate's position. A councillor, member of

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staff or delegate must avoid any action that could lead members of the public to believe that he or she is seeking preferential treatment.

4 PERSONAL BENEFIT

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

Gifts or benefits

- 4.1 A councillor, member of staff or delegate must not:
 - seek or accept a bribe or other improper inducement
 - by virtue of his or her position acquire a personal profit or advantage which has a monetary value, other than one of a token value.
- 4.2 A councillor, member of staff or delegate must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence them to:
 - act in a particular way (including making a particular decision)
 - · fall to act in a particular circumstance
 - otherwise deviate from the proper exercise of his or her official duties.
- 4.3 A councillor, member of staff or delegate may accept gifts or benefits of a nominal or token value that do not create a sense of obligation. Staff must then surrender and place them in a register with the Manager, Corporate Governance.

Token gifts and benefits

- 4.4 Token gifts and benefits may include, but not limited to:
 - gifts of single bottles of reasonably priced alcohol to individual council officials at end
 of year functions, public occasions or in recognition of work done (such as providing a
 lecture/training session/address)
 - free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business
 - free meals, of a modest nature, and/or beverages provided to council officials who formally represent their council at work related events such as training, education sessions, workshops
 - refreshments, of a modest nature, provided at conferences where he or she is a speaker
 - ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages
 - invitations to appropriate out of hours "cocktail parties" or social functions organised by groups, such as, council committees and community organisations.

Gifts of value

- 4.5 A councillor, member of staff or delegate must never accept an offer of money, regardless of the amount.
- 4.6 In general, a councillor, member of staff or delegate must not accept gifts and benefits that have more than a nominal or token value. These include tickets to major

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sporting events, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.

- 4.7 If a councillor, member of staff or delegate receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, a councillor, member of staff or delegate should accept the gift and disclose this promptly to the Manager, Corporate Governance in the case of staff or the Mayor in the case of a Councillor, and recorded in a Gifts Register.
- 4.8 A councillor, member of staff or delegate must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from the council.
- 4.9 A councillor, member of staff or delegate must also take all reasonable steps to ensure that his or her immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.
- 4.10 Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. (required to be included in the disclosure of interests returns section 449)

Improper and undue influence

- 4.11 A councillor, member of staff or delegate must not take advantage of his or her position to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for himself or herself or for somebody else.
- 4.12 A councillor, member of staff or delegate must not take advantage (or seek to take advantage) of his or her status or position with, or functions performed for, council in order to obtain unauthorised or unfair benefit for himself or herself or for any other person or body.
- 5 REPORTING BREACHES, COMPLAINT HANDLING PROCEDURES & SANCTIONS

Corrupt conduct, maladministration and waste of public resources

- 5.1 A councillor, member of staff or delegate has an obligation to act honestly. They should report any instances of suspected corrupt conduct, maladministration and serious and substantial waste of public resources in accordance with council's internal reporting policy.
- 5.2 The Protected Disclosures Act 1994 provides certain protections against reprisals for council officials who report such matters. It is an offence to take detrimental action against people who make such reports.

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Reporting breaches of the code of conduct

- 5.3 A councillor, member of staff or delegate should report suspected breaches of the code of conduct to the general manager, in writing.
- 5.4 Where a councillor, member of staff or delegate believe that the general manager has failed to comply with this code, he or she should report the matter to the Mayor, in writing, who will report the matter to the conduct committee.

Complaint handling procedures - staff conduct (excluding the general manager)

- 5.5 Where appropriate, the general manager will make enquiries, or cause enquiries to be made, into breaches of the code of conduct regarding members of staff of council and others engaged by the council and will determine the matter.
- 5.6 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing.
- 5.7 Enquiries made into staff conduct which might give rise to disciplinary action must occur in accordance with the relevant local government award and make provision for procedural fairness including the right of an employee to be represented by their union.

Complaint handling procedures - councillor and general manager conduct

- 5.8 Council will establish a conduct committee that will consist of the Mayor, the general manager and at least one person independent of council. The independent representative/s should comprise council's nominated legal adviser or other independent person/s of appropriate standing. In the instance of a complaint being made by or against the Mayor or the general manager, the Deputy Mayor, or another councillor who has been designated by council, will take the place of the Mayor or general manager on the committee.
- 5.9 Councillors should report suspected breaches of the code of conduct to the general manager, in writing, in the first instance and refrain from making allegations at council meetings. Where appropriate, the general manager will report the matter to the conduct committee.
- 5.10 Where the general manager has determined not to report the matter to the conduct committee, the general manager will give the complainant the reason/s in writing.
- 5.11 Council's conduct committee is responsible for making enquiries into allegations of breaches of the code of conduct by councillors and must either:
 - determine not to make enquiries into the allegation and give the reason/s in writing
 - make enquiries into the alleged breach to determine the particular factual matters, or
 - engage an independent person to make enquiries into the allegation to determine the particular factual matters.

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- 5.12 Enquiries made by the general manager, an independent person or the conduct committee will follow the rules of procedural fairness. The enquirer must:
 - inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them
 - · provide the person/s with a reasonable opportunity to put their case
 - · hear all parties to a matter and consider submissions
 - make reasonable enquiries before making a recommendation
 - . ensure that no person is involved in enquiries in which they have a direct interest
 - · act fairly and without bias, and
 - conduct the enquiries without undue delay.
- 5.13 Council's conduct committee must decide whether a matter reported to it discloses a prima facie breach of this code. The conduct committee will report its findings, and the reasons for these findings, in writing to the council, the complainant and the person subject of the complaint.
- 5.14 The conduct committee may recommend that council take any actions provided for in this code of conduct that the committee considers reasonable in the circumstances.

Sanctions

- 5.15 Where the council finds that a councillor has breached the code, it may decide by resolution to:
 - censure the councillor for misbehaviour in accordance with section 440G of the Act
 - · require the councillor to apologise to any person adversely affected by the breach
 - · counsel the councillor
 - · make public findings of inappropriate conduct
 - refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police)
 - · prosecute for any breach of law.
- 5.16 Sanctions for staff depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts.

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(PART 3) RELATIONSHIP BETWEEN COUNCIL OFFICIALS AND ACCESS TO INFORMATION

1 OBLIGATIONS OF COUNCILLORS AND STAFF

Obligations of councillors

1.1 Each council is a statutory corporation. The councillors are the governing body of the corporation. Councillors have the responsibility of directing and controlling the affairs of the council in accordance with the Act.

1.2 Councillors must:

- refrain from directing council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor exercising their power under section 226 of the Act (section 352)
- refrain from, in any public or private forum, directing or influencing, or attempting
 to direct or influence, any other member of the staff of the council or a delegate of
 the council in the exercise of the functions of the member or delegate (Schedule
 6A of the Act)
- refrain from contacting a member of the staff of the council unless in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager
- not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor exercising their power under section 226 of the Act.

Role of the Mayor

1.3 The role of the Mayor is defined by section 226 of the Act. This role is the same whether the Mayor is popularly elected or elected by the councillors.

Obligations of staff

- 1.4 The General Manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 1.5 Members of staff of council have an obligation to:
 - · give their attention to the business of council while on duty
 - · ensure that their work is carried out efficiently, economically and effectively
 - carry out lawful directions given by any person having authority to give such directions
 - give effect to the lawful policies, decisions and practices of the council, whether
 or not the staff member agrees with or approves of them.

Obligations during meetings

1.6 Councillors and delegates must act in accordance with council's Code of Meeting Practice, and the Local Government (Meetings) Regulation 1999 during council and committee meetings.

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1.7 Councillors must respect the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 1.8 The following interactions are inappropriate:
 - Councillors approaching council staff other than directors or senior staff for information on sensitive or controversial matters.
 - · Council staff approaching councillors directly on individual staffing matters.
 - Councillors approaching council staff outside the council building or outside hours of work to discuss council business.
 - Council staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views.
 - Councillors who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - Councillors being overbearing or threatening to council staff.
 - Councillors directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - Council staff providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - Councillors approaching council staff organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.
 - Council staff meeting with developers alone and outside office hours to discuss development applications or proposals.
 - Councillors attending on-site inspection meetings with lawyers and/or
 consultants engaged by council associated with current or proposed legal
 proceedings unless permitted to do so by council's general manager or, in the
 case of the Mayor, exercising their power under section 226 of the Act.

2 ACCESS TO INFORMATION AND OTHER RESOURCES OF THE COUNCIL

Access to information

- 2.1 A council must provide access to the documents available under section 12 of the Local Government Act 1993 to all members of the public, and to councillors. A council must also provide councillors with information sufficient to enable them to carry out their civic functions.
- 2.2 Any information that is given to a particular councillor in the performing of their civic duties must also be available to any other councillor who requests it.
- 2.3 Councillors who have a personal (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

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- 2.4 Members of staff of council have an obligation to provide full and timely information to councillors about matters that they are dealing with in accordance with council procedures.
- 2.5 Councillors have an obligation to properly examine and understand all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

2.6 The general manager and public officer must act reasonably in deciding whether a document sought by a councillor should be made available under section 12 of the Local Government Act 1993 or because it is relevant to the performance of the councillor's civic duty. The general manager or public officer must state the reasons for the decision if access is refused.

Use of council information

- 2.7 A councillor, member of staff or delegate must:
 - · protect confidential information
 - · only access information needed for council business
 - · not use confidential information for any non-official purpose
 - only release confidential information where there is prior authority to do so.
 - only use confidential information for the purpose it is intended to be used
 - only release other information in accordance with established council policies and procedures and in compliance with relevant legislation
 - not use council information for personal purposes
 - not disclose any information discussed during a confidential session of a council meeting.
- 2.8 A councillor, member of staff or delegate must carry out his or her duties in a manner that allows council officials and the public to remain informed about local government activity and practices.
- 2.9 A councillor, member of staff or delegate must not use confidential information gained through his or her official position for the purpose of securing a private benefit for himself or herself or for any other person.
- 2.10 A councillor, member of staff or delegate must not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for him or her, or any other person or body, from any information to which he or she had access in the exercise of his or her official functions or duties by virtue of his or her office or position.
- 2.11 A councillor, member of staff or delegate must not use confidential information with the intention to improperly cause harm or detriment the council or any other person or body.

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Security of information

- 2.12 A councillor, member of staff or delegate must take care to maintain the integrity and security of confidential documents or information in his or her possession, or for which he or she is responsible.
- 21.3 When dealing with personal information a councillor, member of staff or delegate must comply with:
 - · the Privacy and Personal Information Protection Act 1998,
 - the Health Records and Information Privacy Act 2002,
 - · the Information Protection Principles and Health Privacy Principles,
 - · council's privacy management plan,
 - · the Privacy Code of Practice for Local Government

Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

Use of council resources

- 2.14 A councillor, member of staff or delegate must use council resources ethically, effectively, efficiently and carefully in the course of his or her public or professional duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 2.15 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
 - · the representation of members with respect to disciplinary matters
 - · the representation of employees with respect to grievances and disputes
 - functions associated with the role of the local consultative committee.
- 2.16 A councillor, member of staff or delegate must be scrupulous in his or her use of council property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body.
- 2.17 A councillor, member of staff or delegate must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for themselves or any other person or body's private benefit or gain.
- 2.18 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.
- 2.19 A councillor, member of staff or delegate must not convert any property of the council to his or her own use unless properly authorised.
- 2.20 A councillor, member of staff or delegate must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

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- Councillor access to council buildings 2.21 As elected members of the council, councillors are only entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillor's rooms, and public areas of council's buildings during normal business hours and for meetings. Should councillors need access to these facilities at other times, authority is required from the general manager in order that necessary arrangements can be made.
- 2.22 Councillors must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 2.23 Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and /or a perception that they may bring influence to bear on council staff decisions and should conduct themselves accordingly.

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(PART 4) MISBEHAVIOR, BREACHES AND SANCTIONS

1 COUNCILLOR MISBEHAVIOUR

- 1.1 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. (section 440F)
- 1.2 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 1.3 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.
- 1.4 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 1.5 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
 - · formally censured for incidents of misbehaviour on two or more occasions, or
 - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.
- 1.6 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 1.7 Council cannot request suspension on this ground unless the councillor has been:
 - · formally censured for the incident of misbehaviour concerned, or
 - expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 1.8 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

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(PART 5) INTERNAL REPORTING SYSTEM - PROTECTED DISCLOSURES ACT, 1994

BACKGROUND

AIMS OF THE ACT

The Protected Disclosures Act aims to encourage and facilitate the disclosure - in the public interest - of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- · providing for those disclosures to be properly investigated and dealt with.

2. WHAT DISCLOSURES ARE PROTECTED?

For information to be deemed a "protected disclosure" it must meet the following conditions:

- The disclosure has to be made by a public official, to the General Manager or in accordance with established reporting procedures within the Council or direct to either the ICAC, Ombudsman or Auditor-General. Recourse to the Auditor-General is not available to a public official concerning local government.
- Disclosures made to a journalist or a member of Parliament will be protected if certain
 conditions are met. The person making the disclosure to a journalist or member of
 Parliament must have already made substantially the same disclosure to an
 investigating authority or officer of a public authority, in accordance with the Protected
 Disclosures Act. Such protection is only available if the information is substantially
 true and the investigating authority, public authority or officer to whom the matter was
 referred:
- · has decided not to investigate the matter;
- has decided to investigate the matter but not completed the investigation within six months of the original disclosure;
- has investigated the matter but not recommended any action in respect of the matter;
 or
- has failed to notify the person making the disclosure, within six months of the disclosure, of whether or not the matter is to be investigated.

3. PROTECTION

The Act provides protection by imposing penalties on a person who takes "detrimental action" against another person in reprisal for a protected disclosure. The taking of detrimental action can be punished by way of fines and imprisonment.

"Detrimental action" is action that can cause, comprise or involve any of the following:

- injury, damage or loss;
- · intimidation or harassment;
- · discrimination, disadvantage or adverse treatment in relation to employment;
- · dismissal from or prejudice in employment; or
- · disciplinary proceedings.

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Any member of staff or councillor who believes that 'detrimental action' is being taken against them should immediately bring the allegations to the attention of the General Manager. A member of staff or councillor who feels that reprisals are not being effectively dealt with should contact the relevant investigating authority, if an external disclosure was made, or the Investigations and Review Branch of the Department of Local Government should the matter relate to an internal disclosure.

The Protected Disclosures Act protects a person against liability arising out of the making of a protected disclosure.

4. WHAT IS NOT PROTECTED?

Protection is not available for disclosures which are frivolous, vexatious, primarily question the merits of government policy or are made in an attempt to avoid dismissal or disciplinary action. It is an offence to wilfully make a false or misleading statement when making a disclosure.

5. DUTY TO NOTIFY

The investigating authority, public authority or officer to whom the disclosure is referred must notify within six months the person who made the disclosure of the action taken or proposed in respect of the disclosure.

KEY CONCEPTS

The three key concepts of this reporting system are corruption, maladministration and serious and substantial waste. A definition of each is described below.

6.1 Corruption

Corruption is defined in Sections 8 and 9 of the Independent Commission Against Corruption ('ICAC') Act, 1988. The definition used in the Act is Intentionally quite broad - corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

For the Commission to become involved in an issue, the conduct must involve a criminal or disciplinary offence or conduct serious enough to warrant dismissal.

Corruption can take many forms - taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are just some examples.

6.2 Maladministration

Maladministration is defined in Section 11 of the Protected Disclosures Act, 1994 as conduct that involves action or inaction of a serious nature that is:

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

It is important to remember that this definition refers to only part of the jurisdiction of the NSW Ombudsman under the Ombudsman Act, 1989. As such it needs to be kept in mind

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that to be protected under the Protected Disclosures Act, disclosures to the Ombudsman must comply with the definition of maladministration in that Act.

Maladministration can include conduct considered "corrupt" under the ICAC Act. Dishonest or partial exercise of official functions by a public official falls into this category. This is obviously conduct at the more serious end of the maladministration spectrum, as it must also involve criminal or disciplinary offences.

It can also include cases of serious and substantial waste if it is conduct that is contrary to law or unreasonable. This is particularly relevant to external disclosures of serious and substantial waste involving authorities not the subject of the Public Finance and Audit Act, such as councils.

The Ombudsman refers complaints concerning corrupt conduct to the ICAC. Such complaints may still be investigated by the Ombudsman - the Office of the Ombudsman and the ICAC co-ordinate their activities to ensure there is no duplication of effort.

6.3 Serious and substantial waste

The Protected Disclosures Act does not define serious and substantial waste. The Auditor-General provides the following working definition.

'Serious and substantial waste' refers to any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss/wastage of public funds/resources.

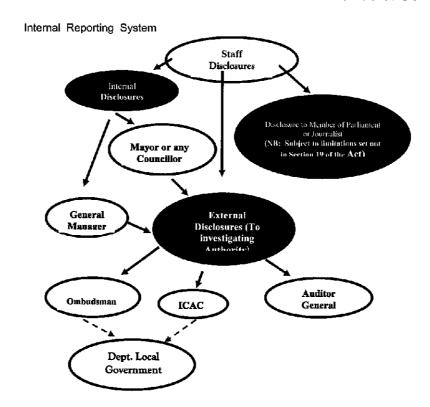
In addressing any complaint of serious and substantial waste regard will be had, for example, to the dollar value, the potential for savings, the public interest etc.

A disclosure which is made by a public official (which includes an employee of a council or Councillor) that principally involves questioning the merits of government policy is not protected.

The Auditor-General has no authority to investigate serious and substantial waste in local government. Disclosures concerning serious and substantial waste in local government should be examined by the person seeking to make a disclosure as to whether the waste is the result of maladministration. If so, the disclosure should be made to the Ombudsman. Similarly, the ICAC may deal with matters of serious and substantial waste which involve corruption.

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- - disclosure may be referred in appropriate cases.

8. ROLES AND RESPONSIBILITIES

As demonstrated in the preceding model everyone at Manly Council has a role in ensuring the success of this reporting system. The various responsibilities and roles are outlined below:

8.1 Employees

7.

- Employees are encouraged to report known or suspected incidences of corruption, maladministration or serious and substantial waste to the General Manager in accordance with this internal reporting system (refer specifically to Section 7.0).
- Employees are also encouraged to identify areas where opportunities for corruption, maladministration and serious and substantial waste may occur.
- All employees play an important role in supporting those who have made legitimate disclosures.

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8.2 Supervisors

- All supervisors have a responsibility for forwarding and acting upon disclosures by advising the General Manager in accordance with the Council's established internal reporting policy.
- The supervisor must clearly explain to a person making a disclosure what will happen in relation to the information received.
- If a disclosure is received orally, it must be clearly documented by the supervisor.
 The supervisor should ensure that the form of disclosure as produced in writing is accepted as accurate by the person making the disclosure.
- Once received, disclosures are to be forwarded to the General Manager as appropriate.
- The supervisor must take all reasonable steps to ensure a person who has made a
 disclosure in not disadvantaged.
- The supervisor may assume responsibility for designing and implementing system improvements if a disclosure relates to their particular area of control.

8.3 Disclosure Co-ordinator – General Manager

- The General Manager has an important role in fostering and implementing organisational reform deemed necessary as a result of a disclosure.
- Disclosures must be made directly to the General Manager.
- The General Manager has an obligation to report criminal offences to the police as well as actual or suspected corruption to the ICAC.
- The General Manager has direct responsibility for authorising investigations as well as any disciplinary or corrective action required.
- The General Manager has an important role in supporting those who make disclosures. This will positively influence organisational culture.
- The General Manager acts as the clearing house for all disclosures.
- The General Manager will be responsible for making an initial assessment of each disclosure and ensuring appropriate follow up action is taken.
- Procedural fairness must provide the opportunity for the subject of the disclosure to explain his or her version of events.
- In order to enable the General Manager to comply with the ICAC Act, all staff have an
 obligation to report actual or suspected corrupt conduct to the General Manager in a
 timely manner.
- A follow up action plan is to be prepared by the General Manager. This includes
 determining the investigation approach and details the reporting requirements of
 external agencies.
- · Letters of referral to external agencies will be prepared by the General Manager.
- The Public Officer and/or a Director may be responsible for co-ordinating the internal investigation subject to the direction of the General Manager.

8.4 Mayor and Councillors

- The Mayor is to receive internal disclosures concerning the General Manager.
- Any employee may make an internal disclosure directly to the Mayor and/ or any Councillor.
- The Mayor and/or any Councillor should report any internal disclosure they receive directly to the General Manager in the first instance (unless the disclosure involves the General Manager.)

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 The Mayor and/or any Councillor may report an internal disclosure they have received from a member of staff directly to an investigating authority, ie ICAC, the Ombudsman or Auditor General.

ESSENTIAL ELEMENTS OF THE INTERNAL REPORTING SYSTEM

9.1 Organisational Improvement

Each disclosure received must be acted upon by investigation or referral. The scope and detail of the action will depend on the nature of the information provided.

Employees, management and councillors share a responsibility to seek ways of continually improving Manly Council's effectiveness. The absence of corruption, maladministration and serious and substantial waste will contribute to organisational goals being successfully met, and personnel being able to work productively in a fair and harmonious workplace.

The primary focus of this internal reporting system is organisational improvement. System weakness - for example, financial, performance management and asset management systems - will be examined in the course of all investigations. Details of system weaknesses identified - together with corresponding corrective action - will form the basis of an improvement-directed action plan.

9.2 Confidentiality

Confidentiality helps to protect both those who make disclosures from reprisals as well as the subjects of the disclosures. Employee perceptions that they may be adversely affected by making genuine disclosure should be countered by emphasising the confidential treatment the disclosure will receive. Confidence that only those who need to know the source of a disclosure will find out increases the likelihood that people will come forward with information.

An assurance of complete confidentiality cannot be given. Situations may arise where, in order to fully investigate a matter, the source of disclosure will have to be revealed. It is important that employees understand this limitation. The Council will however ensure that confidentiality is maintained unless it is unreasonable or not possible to do so. This should be clearly understood by those likely to handle complaints, including all supervisors. An unnecessary breach of confidentiality is a serious matter and will lead to disciplinary action.

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TO: Planning and Strategy Committee - 11 April 2005

REPORT: Corporate Planning and Strategy Division Report No. 16

SUBJECT: Tender Acceptance - Manly Ocean Beach Coastline Management Study and

Coastline Management Plan - Contract Number 04/08

FILE NO:

SUMMARY

Tenders were received for the Manly Ocean Beach Coastline Management Study and Coastline Management Plan, a joint project funded by Manly Council and State government funds received under DIPNR'S Coastal Management Program. The tender submissions have been assessed by an elected panel comprised of members from the Manly Coastline Management Committee. The selection panel's recommendation is the subject of this report.

REPORT

Having established a Coastline Management Committee and undertaken a number of studies (The Manly Ocean Beach Coastline Hazard Definition Study and the Manly Ocean Beach Seawall & Beach Amenity Risk Assessment & Remedial Options), the next stage in the coastal management process as prescribed by the NSW State Government is the preparation of the Manly Ocean Beach Coastline Management Study and development of the Coastline Management Plan.

'Adherence to the proper coastline management process not only represents sound coastal planning & management but also optimises Council's opportunities for future State Government funding for implementation of works'- DIPNR.

Management options identified in the Coastline Management Study would be formalised in the Draft Coastline Management Plan, in full consultation with the local community. Management recommendations would be developed with sufficient supporting documentation to enable the granting of consent in anticipation of emergency, short and long term implementation.

In January 2005 Council advertised for tender submissions for the Manly Ocean Beach Coastline Management Study and Coastline Management Plan (Contract #. 04/08). The Tender closed on Friday 4th February 2005.

Listed in apparent ascending order, four tender submissions were received from the following consultants:

- UNSW Water Research Laboratory
- Manly Hydraulics Laboratory NSW Dept of Commerce.
- Cardno Lawson Treloar Pty Ltd
- Patterson Britton & Partners Pty Ltd

The tender submissions have been assessed by an elected panel comprised of the following members from the Manly Coastline Management Committee:

- Mr Mark Moratti, DIPNR
- Dr Peter Mitchell, SAP
- Dr Armstrong Osborne, SAP
- Mr Ben Wotton, Manly SLSC
- Mr Steve Grieve, Manly Council, and
- Ms Christine Chapman, Manly Council.

The selection panel, with the exception of Mr Ben Wotton met on Wednesday 30th March 2005 to discuss the tender submissions and recommend to Council their preferred tenderer:

It was the unanimous decision of those that attended the meeting that the preferred tenderer to undertake the Manly Ocean Beach Coastline Management Study & Coastline Management Plan is Patterson Britton & Partners Pty Ltd. Refer **Confidential Attachment 1** – Tender Assessment.

The Selection Panel made the following recommendation:

- 1. That subject to funding availability it is the unanimous decision of those that attended the meeting that the preferred tenderer to undertake the Manly Ocean Beach Coastline Management Study & Coastline Management Plan is Patterson Britton & Partners Pty Ltd.
- 2. That should sufficient funds not be available it is the unanimous decision of those that attended the meeting that the tender be re-advertised with a more specific brief and scope of works. The Budget provision for this work was \$120,000 including 50% grant funding by the Department of Infrastructure Planning and Natural Resources (DIPNR). DIPNR advise that they have a contingency provision in their grants allocation system and they are a party in the Tender Selection process recommending Patterson Britton and Partners Pty Ltd.

RECOMMENDATION

That Council accept the tender of Patterson Britton & Partners Pty Ltd for the lump sum of \$139,000 + GST for the Manly Ocean Beach Coastline Management Study & Coastline Management Plan (Contract Number 04/08), subject to funding being met within Budget and grant resources.

ATTACHMENTS

AT-1 Confidential Tender Assessment Matrix - CONFIDENTIAL ATTACHMENT - 2 page(s) for the information of Councillors

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***** End of Corporate Planning and Strategy Division Report No. 16 *****

TO: Planning and Strategy Committee - 11 April 2005

REPORT: Corporate Planning and Strategy Division Report No. 17

SUBJECT: Manly Housing Strategy

FILE NO:

SUMMARY

The ineffectiveness of the private development market to meet the housing needs of a cross section of socio-economic groups has led to government involvement in the provision and retention of affordable housing stock.

Research carried out under the Local Government Housing Initiative Program revealed that affordability concerns are beginning to impact key employment sectors. Key workers who are mainly low to moderate income earners are increasingly unable to afford to live in the local area.

This report presents the issue and proposes a range of actions for Council to expand its role in affordable housing.

The report recommends that Council makes a commitment to address the issue of affordable housing need.

REPORT

Background

The past decade has seen a growing involvement from local government in the private housing market. In addition to the traditional role of regulating the physical design and location of housing, local councils in NSW and across Australia have increasingly taken on a responsibility to provide low cost housing and implement affordable housing strategies. The trend was in part a result of the recognition that housing needs are not defined solely by ratio of income to household spending, but are also driven by social, economic and environmental prerequisites such as employment opportunities, geographic location and transportation, proximity to services and social network, the physical form and performance of buildings and the cultural and lifestyle requirements of individuals.

With a good understanding of the environmental assets and the social and economic composition of the local area, local governments are in a unique position to influence the quantity and variety of housing supply. In addition to this facilitative role is the implicit expectation that the decisions made at the local level would not impose adverse impact on the quantity, quality and affordability of existing housing stock (Gurran, N 2003, Housing Policy and Sustainable Urban Development: Evaluating the use of local housing strategies in Queensland, New South Wales and Victoria, Australian Housing and Urban Research Institute, University of Sydney Research Centre, 2003). It is this context that makes local government involvement in the housing market crucial in shaping a sustainable and balanced outcome for the local community.

Within Manly Council, an extensive body of research has been carried out since the 1980s to examine the housing needs of residents and the efficiency of the housing market to match these needs. A summary of this research is provided in **Attachment 1**. The emphasis of these studies was placed on the implication of urban gentrification on low income earners or people with special needs due to escalating housing costs. The findings have provided input to the preparation of the Social Plan 2004 - 2009. which has to date identified strategies to retain existing boarding houses and low cost housing, convene forums to address the issue in a partnership effort, and lobby relevant State agencies for opportunities for affordable housing development.

This report presents Council's achievements to date in this respect, and proposes a case for Council to expand its responsibilities in relation to the supply of affordable housing within the LGA.

It also seeks to propose a framework for Council to influence the housing market in relation to the identified housing needs.

The Current Housing Role of Manly Council

The housing role currently assumed by Council can be categorised into 2 interrelated functions: planning mechanisms and research and advocacy.

Planning Mechanisms

Council has traditionally demonstrated a strong commitment to promote environmental objectives through the planning framework. The current LEP 1988 introduced specific objective to provide a broad range of housing types to cater for all socio-economic groups without adverse effects on the character and amenity. This objective demonstrates a clear social responsibility to meet the needs of residents from a cross section of socio-economic backgrounds while placing priority on regulating the environmental impact of private development. The objective is partly realised in the development control table which permits a variety of housing and related activities within the residential zone. The LEP is accompanied by the Residential DCP that advocates a strong environmental design focus. Design guidelines under the DCP draw a nexus to the unique environmental character of Manly of which a significant portion is within a Foreshore Scenic Protection zone. The objective is to encourage ecologically sustainable building and site design, while protecting environmental amenity to adjoining and nearby residences.

The combination of these instruments has lead to a proven achievement in protecting the environmental assets. This can be measured through an overall maintenance of a desirable level of housing location, building scale, view corridors, heritage conservation and housing type diversity, despite the historic pressure for large scale tourism development.

Other than these environmental imperatives, there are limited mechanisms within the existing planning framework to promote the housing agenda. This deficiency was recognised by Council at its meeting on 15 June 2004 when a resolution was passed to amend the LEP to introduce a definition for affordable housing and an objective to encourage the retention and provision of affordable housing stock. The amendment has been incorporated into the comprehensive LEP review which is currently underway.

Research and Advocacy

As indicated above, Council has undertaken several research projects in the area of housing affordability. These studies were mainly oriented to the analysis of current and future housing needs, identification of opportunities to increase housing supply and choice, and development of strategic options for affordable housing. Several of these studies were funded by the Department of Housing under the Local Government Housing Initiatives Program (LGHIP) a joint project between State agency and Council.

The most recent initiative by Council is the regional housing research partnership project between Manly and Warringah councils, Department of Infrastructure, Planning and Natural Resources (DIPNR) and Department of Housing (DOH), funded under LGHIP. The study is considering housing issues in a broader regional perspective and seeks to derive a Regional Housing Strategy for Manly and Warringah Councils to address regional and local housing needs. The program has to date completed a *Key Workers Study (Epic DotGov and Glazebrook & Associates 2004 Northern Beaches Key Workers Study Commissioned by Department of Infrastructure, Planning and Natural Resources, NSW Department of Housing, Manly Council and Warringah Council. Report funded by the Local Government Initiatives Program)* and is in the process of developing the main strategy and implementation plan.

In terms of its advocacy role, Council is a key member of the Northern Beaches Affordable Housing Steering Committee, which comprises of the Northern Beaches councils, key community housing organisations (eg. Garrigal Housing, Northern Beaches Neighbourhood Service) and State agencies such as DOH. The Committee acts as a forum to discuss affordability issues in the Northern Beaches and provides a venue for information sharing between these councils.

Council is also a strong advocate in the SHOROC planning group for issues relating to affordable housing. A joint submission has been made at the SHOROC level to the Sydney Metropolitan Strategy in respect of its lack of attention to the provision or retention of affordable housing.

A review of these research projects and advocacy activities found that these programs succeeded in providing the required statistical and empirical data on local and regional housing issues, as well as raising Council's awareness to address these issues. However few recommendations from these programs have been developed into concrete strategies. This is partly because of the absence of State government support, which is critical to provide councils with a legal platform to encourage affordable housing supply and retention. The lack of an integrated framework to guide policy development also precludes any proactive responses to the issue.

Ideally, the information gathered from these research projects should inform both policy making and plan preparation. The Regional Housing Strategy funded by the latest LGHIP will help to clarify the policy and planning issues.

Housing Issues

Demographic and market analysis have been conducted to illustrate the market characteristics and the lack of affordable housing options in Manly. The latest reports being the Needs Assessment in the Social Plan 2004 -2009 and the Key Workers Study completed in late 2004. While the intention of this report is not to restate the statistical data on housing stress levels and market forces, the trends identified by the recent studies are highlighted here:

- Research from overseas experience has drawn a close connection between housing cost and employment. Anecdotal evidence suggested that rising housing cost in the Northern Beaches has driven the market to a state where existing residents who have close connection to the services and social network are unable to afford to live in this area.
- People being displaced are mostly workers in key industries on which a healthy local economy is based. This is creating a burden to the key service providers and will ultimately affect the type of services available in the area, including nursing services, child care, etc.
- The Key Workers Study was therefore based on the hypothesis that increasing housing cost and reducing housing affordability in the Northern Beaches is displacing key industry workers, which in turn creates a shortage of these workers, and affects the local employment sector in the longer term.
- The Study defines Key Workers as those in low income occupations, and providing key services to the community, such as in the areas of health, education, transport, child care and property protection. As such, 16 occupations were selected in the Study, including: registered nurses, enrolled nurses, personal care and nursing assistants, ambulance offices and paramedics, school teachers, education aids, fire fighters, police officers, child care workers, train/bus drivers and assistants, cleaners, gardeners, motor mechanics, automotive electricians and elementary service workers. This group would not be eligible public housing but also not able to compete in the private rental market.

- The study concluded that up until the current census in 2001, there is little evidence of any major relocation of key workers away from Northern Beaches between 1996 and 2001. This is largely because of the large proportion of key workers who previously entered the Northern Beaches housing market when housing was more affordable.
- While there is a current surplus of key workers in the Northern Beaches with 72 key worker jobs for every 100 key workers; this situation is changing and a simulation model conducted as part of the study showed that as the proportion of key workers who own their own home outright reduces over time, the employment shortage will worsen.
- The Study recommended a series of housing, public transport improvement and employment strategies to address the issue in the medium and long term.

The above trend reinforces the need for Council to review its housing related functions and commit to policies that assist in the retention and provision of affordable accommodation.

In addition housing for special supported groups (eg. culturally and linguistically diverse communities, single parents, disabled and aged people) have been identified as a priority under the Social Plan.

Proposed Framework

Any future housing policy for Manly should first recognise the fundamental characteristics of local development:

- Manly is relatively built up and large sites are limited in number. Urban re-development in Manly is mainly through redevelopment, infill, or retro-fitting existing buildings. This creates the negative social effect of removing existing low cost housing and displacing existing residents.
- Experience across NSW shows that there is a genuine acceptance from the private development sector that affordable housing is a feasible market, with evidence suggesting that 40% of household in Australia are suffering from housing stress. Many affordable housing investments in NSW (eg. City West in Ultimo/Pyrmont, Green Square and Landcom in South West Sydney have proven success in achieving a profit margin, with Councils facilitating such provision by incorporating the requirement in the planning mechanisms.
- One of the prerequisites for private sector investment in affordable housing is the availability of large brown field or green field sites that are capable for large scale development and allow cross subsidisation. For the limited development opportunities outlined above, it is unlikely that this mechanism would be financially viable.
- The challenge is therefore to seek opportunities to incorporate affordable housing in new development; retain existing low cost housing for existing residents; and balance the economic and social effects of urban development.

The Regional Housing Strategy will take into account the above constraints and create the necessary foundation for Council to assist in provision of affordable housing and also retaining existing low cost housing through a series of planning mechanisms.

Specifically, it will address the following:

1. Housing Data

Prepare the following:

- Methodology for Boarding Housing Survey;
- Template for a housing database. The database will provide a picture of housing needs and supply in Manly to inform policy making. The database will include the source of information for continued update and monitoring.
- Investigate current housing supply in the market and determine whether the supply of housing is appropriate for the Manly demography.

2. Planning Mechanism

Identify the following

- Housing mix controls to ensure that new development matches the demographic needs in Manly.
- Different planning mechanisms for different development scenarios, eg. in-fill sites, surplus government land, boarding house demolition and new subdivision.
- Template for Social Impact Assessment for different types of development.
- Suggestions for a whole-of-government approach towards housing strategy.
- Legal procedure for the acquisition of affordable housing units and on-going housing management requirements

3. Communication Strategy

Prepare a Strategy

To inform the community about the extent of affordable housing issues in the community.

A further report will be prepared for Council upon finalisation of the Strategy. However, at the meantime, it is recommended that Council start generating community awareness to improve understanding of the issues by reference to the Key Worker Study and other research projects and in consultation with the Northern Beaches Affordable Housing Committee.

Conclusion

Local councils ability to influence the housing market is extremely limited. However, council's potential lies in its close connection to the local community and its understanding of social, economic and environmental issues. Council has already demonstrated success in driving environmental consciousness in the built environment. It has also shown its social imperative in committing to various research projects in housing affordability. Real actions to improve the situation and address the issues are timely.

With the finalisation of the Regional Housing Strategy, Council will have a good foundation for future housing activities consistent with it's social objectives for the Manly community.

RECOMMENDATION

That Council receive and note this report.

ATTACHMENTS

AT-1 History and Research 6 page(s)

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***** End of Corporate Planning and Strategy Division Report No. 17 *****

Attachment 1

HISTORY of REPORTS and PAPERS

The documents below have been retained by Manly Council. They are listed in chronological order. This summary was prepared to give an historical context to any proposal which may address the provision of affordable housing in the Manly LGA. The list is a selection only.

Manly Council

Planning Workshop Pty Ltd 1981, <u>Results of In-Home Survey of People Likely to be Affected by a Freeway in the Warringah Transport Corridor</u>, prepared for Northside councils, North Sydney

Purpose: To determine population characteristics of those indirectly affected by the proposal, their transport usage and attitudes to the freeway. The majority of survey respondents were long term residents who owned their home and did not intend to move from the area. For those who did intend to move, reasons were related to house size and job transfers. The survey results indicated support for the freeway proposal.

Manly Municipal Council 1983, <u>Memo to Town Clerk Re: Task Force to Review Building and Licensing Regulations affecting Low-Cost Residential Accommodation</u>, Town Planning Department 10th February 1983

Council records on strata subdivision approvals showed that from 1973/74 to 1981/2, there was an increase in investment in rehabilitation of blocks of rental flats for owner occupation, and a decrease in the erection of new residential flat buildings. During this period there were 374 strata subdivision plans approved, with the majority being conversion from company title [therefore already owner occupied].

The records also show a steady decline in the number of boarding houses licensed within the Municipality - from 192 in 1962, to 90 in 1981 - with most of the conversions within the smaller boarding houses.

The report notes that during the 1970s there was a growth in share accommodation, stating that "only in recent years that the local newspaper has included special "share accommodation" in its advertising section".

Sivaciyan S 1985, <u>Manly Municipal Council Housing Research Project</u>, funded by the New South Wales Housing Commission under the Local Government Housing Initiatives Program

Purpose: To investigate recent changes in human and housing structures and to make recommendations. The study found:

Corporate Planning and Strategy Division Report No. 17 Manly Housing Strategy History and Research

- those in most housing need were the 'single' groups single parent families, single aged, single disabled, single and young unemployed;
- average weekly rentals in Manly for each dwelling type, were considerably higher than Sydney-wide averages;
- expenditure of 50% 60% of income on rent was common for single households and those on statutory incomes;
- · demand exceeded supply in the lower cost end of the rental market;
- 78% of the boarding house survey respondents, considered their boarding house accommodation as their permanent home;
- the stock of low cost rental housing was diminishing through conversions and strata subdivisions of older dwellings, and there was less public housing than in 1971.

The study recommended a housing policy and action strategy within Manly Council, based on advocacy and facilitation and possible joint provision, including:

- maintaining and increasing the number of boarding houses, in recognition
 of their role in providing long term accommodation for low income
 residents including age and invalid pensioners;
- monitoring of housing trends, including conversions from older dwellings to strata title;
- exploring the possibility of Government departments selling or book transferring their Manly property to the Housing Commission; and
- establishing a protocol between the council departments of Community Services, Health and Building, and Town Planning.

Winnem M 1987, An Analysis of the Current State of the Rental Housing Market in the Municipality of Manly, Hawkesbury Agricultural College

This research used census data, council records and a survey of real estate agents. It concluded that all indicators [rent increases, vacancy rates, new enquiries for stock] showed that demand exceeded supply in the lower segment of the rental housing market, including boarding houses.

Community Services Section 1987, <u>Boarding Houses - Managed by Real Estate Agents</u>, Manly Municipal Council, August 1987

Manly: 54 Darley Road [7 bedrooms]; 22 East Esplanade [4]; 18-19
East Esplanade [18]; 102 North Steyne [18]; 140 North Steyne [7];
14 Ocean Road [10]; 61 Pittwater Road [53]; 2&2a Steinton
Street [12]; 27-29 Victoria Parade [100]; 22-24 Victoria Parade

[40].

Balgowlah: 235 Woodland Street [11].

Secomb L 1988, Report on the Effect of Tourism and Commercial Development of Low Income Tenants in the Manly-Warringah Area, on behalf of the Community

Corporate Planning and Strategy Division Report No. 17 Manly Housing Strategy History and Research

Industry Training Services for the Northern Suburbs Tenants Advice and Housing Referral Service

Purpose: To examine the housing situation for low income earning tenants in the Manly Municipality and Warringah Shire, and evaluate the impact of commercial development and tourism development on housing supply and demand, and housing costs in the rental market. The report describes the process of conversion of residential housing into tourist accommodation, resulting in the displacement of residents. The Report found that:

- compared to Sydney as a whole, Manly Warringah has higher rental costs and a declining level of Department of Housing accommodation;
- there was a dramatic loss of boarding houses in Manly from 1982/3 -1987/8 [Council report 23 February 1988] - involving the loss of 516 bedspaces, with 230 lost to tourist accommodation, and 113 lost to single occupancy use; and
- there was conversion from permanent rental properties to holiday rentals.

The report recommended that:

- the level of Department of Housing accommodation be increased, including joint ventures with Manly Council;
- SEPP 10 coverage be extended to Manly Warringah and to conversion and demolition of all low cost accommodation;
- Section 90(1)(d) EPA 1979 assessment be undertaken on commercial development applications, in view of the impact on housing for low income residents; and
- developers of commercial projects donate \$800 per employee in the new development, for the purposes of a Low-Cost Accommodation Trust Fund.

Yann, Campbell, Hoare, Wheeler 1989, <u>Attitudes Towards Housing Development in the Manly Municipality - A Residents Survey</u>, market research, Mosman

Purpose: To determine the attitudes of Manly residents to housing redevelopment in the Municipality. A survey was commissioned by Manly Council. 644 residents were surveyed using face-to-face interviews [door knocking], on weekends, during July 1989. The results showed that - within the survey group - 74% owned their home and 26% rented. Three quarters had lived in Manly more than 4 years.

The survey found that:

- the preferred housing option is a separate house on its own block of land;
- one in two respondents would consider a town house and less than four in ten would consider a unit or flat;
- there was opposition to blocks of units higher than two storeys, with 75% of respondents opposed to blocks over eight storeys;
- this opposition was predominant in the areas of Seaforth, Clontarf and Fairlight North;
- concerns focused on the character of Manly and the need to monitor with care.

Corporate Planning and Strategy Division Report No. 17 Manly Housing Strategy History and Research

Robyn Kennedy & Co Pty Ltd 1997, <u>Draft Manly Affordable Housing Study</u> [amended in September 1998 by the Department of Housing after consultation with Manly Council]

Purpose: To identify affordable housing needs, development opportunities and strategic directions for Council and the Department. It found that there were indicators of housing shortage such as high recorded demand for public housing, homelessness, and lack of affordable housing for young people. The market showed high and rapidly increasing private rent levels, a supply of private rental housing in the medium to upper price ranges and an ongoing decline in the supply of boarding houses.

The study recommended strategic directions involving joint ventures, planning mechanisms, an affordable housing fund, boarding house measures and a housing strategy; and organisation strengthening through a working group and a housing officer position.

Rose Saltman Urban Planning 1998, <u>Review of Planning Mechanisms to Facilitate</u>
<u>Low Income Rental Housing</u>, prepared for Manly Council

Purpose: To present Council with options to consider for maintaining and increasing the supply of affordable rental housing. The report contextualised the market and identified the high demand for public housing and affordable rental housing for young people; the increase in rent levels; the increase in the private rental market primarily at the medium to upper price range; and the ongoing decline in boarding house supply. It also noted the 1996 NSW Government Task Force recommendations encouraging joint State and Local Government initiatives to facilitate the provision and management of affordable housing.

The report evaluated seven planning mechanisms - inclusionary zoning; linkage programs, developer agreements; incentive mechanisms; density bonuses / maximisation; development / planning concessions; and transferable development rights. The advantages and disadvantages were outlined, and options were evaluated in consideration of the legal issues, and the stakeholder perceptions within local government, the development industry and the community. The report recommended that Council not proceed with a Section 94 mechanism; that it should continue discussions with the NSW Department of Housing; that it should keep informed on other council initiatives in relation to inclusionary zoning; that it should consider varying development standards; and that it should keep informed of State Government funding and support opportunities.

Punales M 2001, <u>Housing and Accommodation: Social Implications and Affordability in the Manly Local Government Area</u>, a report for Manly Council, November 2001

Corporate Planning and Strategy Division Report No. 17 Manly Housing Strategy History and Research

Purpose: To update information about the type and cost of housing in the Manly LGA and provide an understanding of the wider social issues connected to housing, such as employment.

State and Commonwealth Government

Commonwealth Government 1992, National Housing Strategy

Twenty five papers were produced between 1991 and 1992, including a research paper exploring options for Local Government involvement in housing. Options ranged from tax incentives to capital joint venture projects.

NSW Government 1998, <u>Affordable Housing in New South Wales. The Need for Action</u>, the Report of a Ministerial Task Force on Affordable Housing, established by the Hon Craig Knowles MP, Minister for Urban Affairs and Planning and Minister for Housing

The report assessed the extent of the unaffordability problem in NSW. The Task Force recommended that affordable housing in NSW should become a major priority for the community and all levels of government. The report measured affordability, using the expenditure on housing cost benchmark of 25-30% of a low income household's income. It noted that between 1986 and 1994 the number of lower income households who were unaffordably housed almost doubled to a quarter of a million. In Sydney in 1994, almost 75% of low income renters were unaffordably housed.

The report recommended numerical targets for reducing the proportion of households who incur housing costs above a specified level, and supply measures involving investment intermediaries, surplus government land and reconfiguration of government assistance. Recommendations 12 – 19 focussed on planning controls through the EPA Act and local government residential strategies.

Australian Government 2004, Productivity Commission <u>Inquiry Into First Home</u> <u>Ownership</u>

The inquiry's final report was forwarded to the Australian Government for its consideration and release within 25 Parliamentary sitting days of receipt [March 2004].

A discussion draft was released in December 2003 for public comment, before the Commission formulated its findings and recommendations. Its key points were that affordability was now relatively low and the upswing in housing prices since the mid 1990s has been bigger than in previous cycles; there is a role for policy to address any forces that cause prices to be excessive over time; and that the First Home Owner Scheme would have more impact on home ownership if targeted at lower income households.

Corporate Planning and Strategy Division Report No. 17 Manly Housing Strategy History and Research

Various, 2000 - 2004

The Australian Housing Urban Research Institute [AHURI] continues to lead research into housing affordability issues, in Australia. Its research program follows themes set annually by its national board [www.ahuri.edu.au].

The Brotherhood of St Laurence in Melbourne is a non-government association and a leader in affordable housing commentary. It draws on well respected academics to inform its position on affordable housing, such as Dr Judy Yates and Professor Mike Berry.

The Affordable Housing National Research Consortium and individual peaks and consulting groups have made contributions to the various government enquiries and task forces conducted in this period. Consortium members are the Housing Industry Association, the Australian Council of Social Service, The Real Estate Institute of Australia, the Australian Council of Trade Unions, the Planning Institute of Australia, the Urban Development Institute of Australia, the Property Council of Australia, the Royal Australian Institute of Architects, the Master Builders Australia Inc and the National Community Housing Forum.

The Allen Consulting Group released a report in 2004 on private investment in affordable housing. The report found that the housing market shows many examples of conventional market failure and that the bulk of housing assistance [indirect tax incentives] flows to households that do not need it. It investigated modes for institutional investment and proposed three policy options - Bonds, Partnership or Tax Credits.

TO: Planning and Strategy Committee - 11 April 2005

REPORT: Corporate Planning and Strategy Division Report No. 18

SUBJECT: Manly Development Control Plan for the Business Zone 1989 (Draft Amendment

No. 4)

FILE NO:

SUMMARY

At its meeting on 14 February 2005, Council resolved to prepare and exhibit the Business Zone DCP amendment no. 4.

The draft amendment has been placed on public exhibition for 28 days. Seven submissions have been received. Three of the submissions were duplicate copies from different organisations.

The draft amendment is recommended for adoption by Council subject to the minor changes as outlined in the Recommendation.

REPORT

Background

This DCP amendment was prompted by the Section 94 Contribution Plan review, which projected an increase in the demand for car parking within the next 25 years. This additional demand will impose a burden on existing parking facilities.

A copy of the draft amendment to the DCP is **circulated** under separate cover for the information of Councillors and a copy will be **tabled** at the meeting.

Public Exhibition and Assessment of Submissions

The draft amendment was placed on public exhibition between 28th February and 28th March 2005. Five submissions were received. Their grounds of objection are assessed below:

1. Retail Complex and Supermarket

 2 submissions objected to the use of Gross Floor Area (GFA), as inappropriate and inconsistent with the RTA Guidelines which use Gross Lettable Floor Area (GLFA) as a base

Comment

The difference between GLFA and GFA is that GLFA refers specifically to the factor that generates/attracts trips and excludes stairs, amenities, lifts, corridors and other public areas. The RTA Guideline states that GLFA is generally about 75% of GFA.

To now introduce GLFA as the basis for the parking requirement in the DCP will generate an unnecessary complexity in the Development Application process. All Manly DCP's are currently based on GFA. The introduction of GLFA will require a new definition to be included in the Business DCP and possibly the Manly LEP, and for applicants to submit not only the total GFA for all retail complex DAs, but also the total GLFA. This has the potential to create confusion.

The current amendment retains GFA as the unit to measure development area to reduce such conflict and simplify the DA process.

In addition, if the difference between GFA and GLFA is taken into account, the RTA Guideline will equate to 1.17 spaces per 25m² GFA. The proposed amendment in relation to retail complexes and supermarkets is for 1 space per 25 m² GFA, which is thus consistent with the RTA requirement.

2 submissions requested a reduction in the proposed parking rate for supermarket and retail complex for the Manly Town Centre. They considered that the Town Centre is well served by public transport and there is potential to reduce the parking rate.

Comment

The proposed parking rates are based on the RTA guidelines. The Guidelines provide that where public transport is sufficient, the demand for car parking spaces will reduce and lower levels of parking provision may be acceptable.

The major business centres in Manly except the CBD are not so well served with efficient public transport so this provision is acceptable to areas like Seaforth and Balgowlah. For the Manly Town Centre, development opportunity for another retail complex is fairly limited. Where a new supermarket is proposed, it is likely that parking demand will be substantial due to the limited availability of on-street parking. Without any short term commitment to improve public transport within the Town Centre, the requirement for additional off street parking is considered appropriate.

2. Commercial Premises

 1 submission opposed the proposed parking requirement for Commercial Premises of 1 space per 40m² GFA on the grounds that this increase does not recognise Manly's "unique" public transport facilities.

Comment

While the proposed requirement increases the parking rate from 1 space per 70m² GFA to 1 space per 40m² GFA, the new requirement includes a provision requiring a minimum of 50% of this car parking spaces be provided by way of a S94 levy. In reality, this slightly reduces the on site parking rate to 1:80m² GFA.

The new requirement is intended in part to be consistent with the RTA Guidelines, and in part to address the need to recover funds for the existing public carparking as identified in the proposed new Sec 94 Plan.

3. Refreshment Rooms

 2 submissions questioned the appropriateness of the parking provision for refreshment rooms.

Comment

The proposed requirement of 15 spaces per 100m² or 1 space per 3 seats is in accordance with the RTA Guidelines.

4. On-site Parking Provision

- 3 submissions objected to the proposed on-site parking provision.
- 1 submission stated that the development consent generated from this provision will be unlawful.

Comment

The new provision requires that for 'all uses other than dwellings, tourist accommodation and backpacker accommodation, up to a maximum of 50% of the required parking may be provided on site, with the balance being met by way of contribution in accordance with Council's Section 94 Contribution Plan'.

This provision is consistent with the intent of the draft S94 Plan, which is based on intergenerational principles to generate funding to replace the existing public infrastructure including carparking.

The intention of this provision and the overall DCP amendment is to update the car parking requirements to be consistent with the RTA Guidelines and to generate funding through the Sec 94 Plan. The draft S94 Contribution Plan has provided the rationale and appropriate calculation of the proposed levy. The Report on the Sec 94 Plan is included in this Agenda and it is not the intention to repeat its rationale in this report.

However, it is noted the current Business DCP allows car parking to be provided for the Balgowlah Town Centre by way of a Section 94 levy (Clause 2.5(4)). For other centres, it is noted that further car parking facilities have not been planned under the draft S94 Plan. Requiring this levy is not consistent with the draft S94 Plan. It is recommended that the On-site Parking Provision be deleted from the Balgowlah, Seaforth and other town centres, except the Manly Town Centre.

 1 submission raised the confusion of the term 'dwelling' in the provision, stating that it is not clear what types of dwelling it is referring to.

Comment

The term 'dwelling' here refers to all residential. This is clear in the clause related to car parking requirements in the Manly Town Centre (Clause 1.5), but is not so clear in the car parking requirements for all other areas (Attachment 1 to the DCP). However, for the reasons outlined in the previous section, this requirement it to be deleted altogether. There the issue raised can be said to be resolved.

5. Lack of Consultation

4 submissions expressed concern about the amount of consultation with business owners.
 They suggested that Council should write to all individual business owners, advising the intention and outcome of the amendments.

Comment

The draft DCP amendment has been exhibited for 28 days in accordance with the *Environmental Planning and Assessment Regulation*. Separate letters were sent to the Manly Chamber of Commerce and to all Precinct Committees seeking their comments on the proposed amendment in accordance with Council's resolution.

CHANGES TO THE DRAFT DCP

Review of the Draft DCP in response to the submissions has prompted some minor changes to the wordings of the clauses to avoid potential confusion. These changes are listed and explained in Table 1 below (proposed changes highlighted):

Table 1: Changes to draft Business DCP

Proposed Changes		Explanation
1.	Clause 1.5 Car parking spaces shall be provided on-site (except as provided for below) in conjunction with developments in accordance with the following rates	This change (the addition of the highlighted words) seeks to clarify the intention to require on-site parking subject to a percentage of S94 contribution in accordance with the onsite parking provision.
2.	Clause 1.5 Supermarket and Shopping Centres	This change (from 'retail complex' to 'shopping centres' is to bring the terminology in line with the RTA Guidelines.
3.	Clause 1.5 On Site Parking Provision In respect of parking for all uses other than dwelling, tourist accommodation and backpacker accommodation, a maximum of 50% only of car parking spaces required is permitted to be provided on-site, with the remainder being provided by way of contribution in accordance with the Council's Section 94 Contributions Plan.	This change clarifies the intention that a maximum of 50% of car parking spaces only can be provided on-site.
4.	Attachment 1 Supermarket and Shopping Centres	This change is to bring the terminology in line with the RTA Guidelines as number 3 above.
5.	Attachment 1 Delete On-Site Parking Provisions clause	See paragraph 4 On-site Parking Provision above under "Public Exhibition and Assessment of Submissions"

Conclusion

The intention of this amendment is to bring the Business Zone DCP into line with the new requirements in the draft Section 94 Contribution Plan (and which is to be reported to Council on this Agenda). Part of this is to ensure that parking provisions are consistent with the RTA Guidelines, which is based on long standing research. The additional provision to capture a certain amount of required parking as a form of monetary contribution (rather than as on-site parking) will enable Council to recover the costs of providing existing public infrastructure and to cater for the demand of the future generations.

RECOMMENDATION

- 1. That the Manly Business DCP Amendment No 4 be adopted as exhibited, subject to the changes presented in the Table 1.
- 2. That those who made submissions be notified of Council's decision.

ATTACHMENTS

There are no attachments for this report.

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***** End of Corporate Planning and Strategy Division Report No. 18 *****

TO: Planning and Strategy Committee - 11 April 2005

REPORT: Corporate Planning and Strategy Division Report No. 19

SUBJECT: Items for Brief Mention - Minutes for Adoption by Council - Special Purpose

Committees and Joint Committees

FILE NO:

1. Minutes Of Meetings:

(i) Sydney Water and Manly Council Partnership - Minutes of a Meeting Held 3rd February, 2005.

- (ii) Manly Sustainability Strategy Management Group Minutes of a Meeting held 1st March, 2005.
- (iii) Manly's Future Forum Steering Committee Minutes of a Meeting held 9th March, 2005.
- (iv) Warringah, Manly, Mosman and Pittwater Council Joint Services Committee Minutes of a Meeting held on 10th March, 2005.
- (v) Manly Council Bicycle Committee Minutes of a Meeting Held 10th March, 2005.
- (vi) Manly Aboriginal and Torres Strait Islander Committee Minutes of a Meeting held on 14th March, 2005.
- (vii) Social Plan Implementation Committee Minutes of a Meeting held on 15th March, 2005.
- (viii) Manly Council Community Environment Committee Minutes of a Meeting held on 17th March, 2005.
- (ix) Landscape Management and Urban Design Committee Minutes of a Meeting held on 31st March, 2005.
- (x) Manly Traffic Committee Minutes of a Meeting Held on 4th April, 2005.
- 2. The following Minutes contain recommendations of a substantial nature requiring formal Council adoption as follows:
- 2(a) Manly Council Bicycle Committee Minutes of a Meeting held 10th March, 2005

Item Number: 6 - SHOROC Regional Bike Plan Report

Recommendation:

"That the Bike Committee supports the SHOROC Bike Plan and allocates the funding of \$2655.00 to participate in the SHOROC Regional Bike Plan."

2(b) Manly Council Bicycle Committee - Minutes of a Meeting held 10th March, 2005

Item Number: 7 - Fairlight Foreshore Family Bike Route - Submission to Council

Recommendation:

"1. That the Bicycle Committee supports the organisation of a forum with all

stakeholders including the:

- Bicycle Committee
- MSW Committee
- Access Committee
- Traffic Committee
- Fairlight Precinct Committee
- 2. That the Committee are very disappointed with the Council reporting process and the lack of dialogue with the Committee before the report was submitted."
- **2(c)** Manly Aboriginal and Torres Strait Islander Committee Minutes of a Meeting held on 14th March, 2005

Item Number: 6.1 - Dual Naming Policy

Recommendation:

"The Committee recommended that Manly Council proceed with a nomination to the Geographical Names Board for dual naming of North Head as *Car-rang-gel*, a Country Name traditionally associated with North Head"

2(d) Social Plan Implementation Committee - Minutes of a Meeting held 15th March, 2005

Item Number: 7.1 - Affordable Housing

Recommendation:

"It is important to ensure the forthcoming budget will allocate approximately \$1-2 million for the purchase of boarding houses when opportunities arise. This can be carried out with a joint venture partnership with community housing agency."

2(e) Social Plan Implementation Committee - Minutes of a Meeting held 15th March, 2005

Item Number: 8 - Safety Committee

Recommendation:

- "1. All future development applications involving alcohol licensing be required to submit a Social Impact Assessment (SIA) consistent with appropriate SIA guidelines.
- 2. This recommendation is to be referred to the Safety Committee for their consideration and recommendation to Council."
- **2(f)** Manly Council Community Environment Committee Minutes of a Meeting held 17th March, 2005

Item Number: 5(b) - Manly Environment Centre Premises

Recommendation:

"This Committee:

a. Deplores the lack of consultation in making transitional arrangements for moving the MEC to the second floor of the library and

- b. Seeks an assurance that the floor space provided will be at least equal to that currently used by MEC.
- c. Before determining the final location for the MEC that all available community options be thoroughly reviewed in consultation with the community.
- d. Diana Deeley and Keelah Lam represent the committee on the Community Reference Group."
- **2(g)** Landscape Management and Urban Design Committee Minutes of a Meeting held 31st March, 2005

Item Number: 4.1 - The Corso Masterplan Review - Footpath Outside Coles/Darley Road Intersection (Review of Options)

Recommendation:

"That the LMUD Committee supports the implementation of footpath widening Option 2A that removes existing parallel parking outside Coles (southern footpath) and widens the northern footpath, while retaining parallel parking, subject to the following:

- 1. That the carriageway in front of Coles be kept as generous a width as possible (suggest 3.6m)
- 2. That the widening of the northern footpath be subject to evaluation of a favourable traffic impact analysis outcome, following widening of the southern footpath.

It was also recommended that The Corso Sub-committee re-convene to discuss detail design considerations including paving type, pattern, lighting and street furniture."

2(h) Landscape Management and Urban Design Committee - Minutes of a Meeting held 31st March, 2005

Item Number: 4.2 - Fairlight Shops Urban Design Study (Review of Options)

Recommendation:

"That the LMUD Committee supports Fairlight Shops Urban Design Option 2 and the proposal to present the scheme to the local community at an Ivanhoe Precinct meeting with Fairlight Precinct invited to attend, noting the following:

- 1. That the 2 post box alternative options be presented for consideration.
- 2. The "Village Green" include some seating.
- 3. The advantages and disadvantages of any tabled options (for comparative purposes) be listed on the plans.
- 4. An external consultant be engaged to undertake a photo montage of how the preferred option would look."
- **2(i)** Landscape Management and Urban Design Committee Minutes of a Meeting held 31st March. 2005

Item Number: 5.1 - Balgowlah Shops - Brick Planter Refurbishment

Recommendation:

"That the Landscape & Urban Design Committee review the 1999 Balgowlah Shopping Centre Urban Design Plan before committing to any landscape refurbishment works at Balgowlah shops in the near future."

2(j) Manly Traffic Committee - Minutes of Meeting held 4th April, 2005

Item Number: 30/05 - Road Safety Action Plan 2005/2006

Recommendation:

"That the Traffic Committee approve the draft 2005/2006 Road Safety Action Plan."

RECOMMENDATION

- 1. That the recommendations of Minutes of Meetings, as listed in Item 1 above, being 1(i) to 1(x), be adopted.
- 2. That in relation to all matters of a substantial nature listed in Item 2 above, being 2(a) to 2(j), be adopted as per the recommendations of the Committees.

ATTACHMENTS

There are no attachments for this report.

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***** End of Corporate Planning and Strategy Division Report No. 19