

ATTACHMENTS UNDER SEPARATE  
COVER

ORDINARY COUNCIL MEETING  
9 FEBRUARY 2016



**PORT STEPHENS**  
C O U N C I L



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## ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

**CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT**

1. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc. Title	Plan Ref. No.	Sheet.	Date	Drawn By
Site Plans	1.1 Revision A 1.2 Revision B		4/5/15 4/11/15	ecoMode
Plans	2.1 – 2.11 Revision A (inclusive)		4/5/15	ecoMode
Elevations	3.1-3.5 Revision A		4/5/15	ecoMode
Section AA	4.1 Revision A		4/5/15	ecoMode
External Finishes Schedule	5.5		4/5/15	ecoMode
Landscape Plans	DA01, DA02, DA03, DA04 - Issue A	1 - 4	August 2015	Octopus Garden Design
Concept Stormwater & Road Works Plan	150005C1.02 – 15005C1.07 Revision A	2 to 7	24/8/15	Barker Ryan Stewart
<b>Document References</b>				
Bushfire Risk Assessment dated 4/5/15 prepared by Bushfire Consultancy Australia				
Stormwater Management Report dated July 2015 prepared by Barker Ryan Stewart				
Waste Management Plan dated 28/8/15 prepared by Eco Mode Design Zoltan Lipovschi				
Ecological Assessment Update dated November 2015 prepared by Peak Management				

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

**CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION**

3. **Prior of commencement of building work** a contract of insurance must be obtained in accordance with Part 6 of the Home Building Act 1987. Works cannot commence on site until the relevant insurance is in force.

**ITEM 1 - ATTACHMENT 3      CONDITIONS OF CONSENT.**

4. Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principle certifying authority for the development to which the work relates (not being Council) has given the Council written notice of the following information:
  - a. In the case of work for which a principal contractor is required to be appointed:
    - i. the name and licence number of the principal contractor, and
    - ii. the name of the insurer by which the work is insured under Part 6 of that Act.
  - b. In the case of work to be done by an owner-builder:
    - i. the name of the owner-builder, and
    - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

5. **Prior to commencement of any works**, a Plan of Management is to be submitted to and approved by Council as the Roads Authority for any works or deliveries that impact on any public roads or public land as a result of the construction of the development. The plan must include a Traffic Control Plan prepared by a person holding Roads and Maritime Services (RMS) accreditation for selecting and modifying traffic control plans. Fees and charges are applicable to the review and approval of the required management plan in accordance with Council's Plan of Management.
6. **Prior to commencement of any works** the person having the benefit of this consent is required to notify Council in writing prior to commencing work of any existing damage to public infrastructure within the vicinity of the development, the absence of such notification signifies that no damage exists.
7. **Prior to commencing any works** upon public roads the developer and their contractor will be required to:
  - a. Obtain a copy of the Council approved Civil Works plans and pavement design.
  - b. Obtain a copy of Council's *Infrastructure Construction Specification*. This is Council's Specification for Civil Works and is freely available on Council's website.
  - c. Arrange a meeting on-site with Council's Senior Development Engineer on (02) 4980 0255.

**ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.**

8. Temporary sediment and erosion control and measures are to be installed **prior to the commencement of any works** on the site. These measures must be maintained in working order during the construction works up to completion. All sediment traps must be cleared on a regular basis and after each major storm and/or as directed by the Principal Certifying Authority and Council officers.
9. **Prior to commencement of any works** It is the responsibility of the person having the benefit of this consent to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The person having the benefit of this consent is to ensure the PCA sign remains in position for the duration of works.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

10. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Civic Administration	(\$1143)	(\$11,430)
Public Open Space, Parks and Reserves	(\$2372)	(\$23,720)
Sports and Leisure Facilities	(\$5595)	(\$55,950)
Cultural and Community Facilities	(\$2810)	(\$28,100)
Fire & Emergency Services	(\$226)	(\$2,260)
Roadworks	(\$1579)	(\$15,790)
<b>TOTAL</b>		<b>\$137,250</b>

**Note:**

- a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.
- b) Contributions are to be paid **prior to issue of Construction Certificate**.
- c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months from the date of original consent.
11. **Prior to issue of the Construction Certificate**, a certificate of compliance for this development, under Section 50 of the Hunter Water Act 1991, shall be submitted to the Accredited Certifier.

**ITEM 1 - ATTACHMENT 3      CONDITIONS OF CONSENT.**

12. The submission of design drawings and specifications, prepared generally in accordance with the concept plans prepared by Barker Ryan Stewart (Plan No 150005C1.03, Rev A, Sheets 1 to 6 inclusive, and dated 24 August 2015) detailing the following design requirements/amendments:
- a. Kerb and guttering for the full Fairlands Road street frontage of the development. The proposed gutter invert levels on the northern boundaries of the development shall be amended to ensure stormwater discharge is free draining towards the east.
  - b. Full width road pavement construction. Design drawings shall be supported by a pavement design.
  - c. The intersection of Bay Road/Fairlands Road / Tanilba Road shall be formed as a standard T-intersection, with the minor leg perpendicular to the through road.
  - d. The intersection formed by Fairland Road and Tanilba Road (north-eastern corner of development) shall be formed with priority given to vehicle access to Caswell Reserve, and the minor leg formed as a vehicle access. Additionally, the location of the intersection shall be designed to minimise impact and removal of existing street trees.
  - e. Concrete footpath 2.5 metres wide for the full Fairlands Road street frontage of the development, and linking to Caswell Reserve.
  - f. Pavement marking & signage.
  - g. Street trees at a maximum of 15.0 metre spacings.
  - h. The tree located near the main driveway access should be retained (if possible), and AS4970 Protection of Trees on Development Sites should be referenced in designing the access around this tree.
  - i. Vehicle access crossings.
  - j. Any associated works to ensure satisfactory transitions to existing infrastructure.

The design drawings and specifications are to be prepared in accordance with Council's *'Infrastructure Design and Construction Specification* and must be approved by Council as the Roads Authority **prior to the issue of a Construction Certificate.**

13. The submission to the Accredited Certifier of a detailed stormwater management plan with stormwater disposal to Tanilba Road. The plan must be prepared in accordance with the Stormwater Management Report prepared by Barker Ryan Stewart (Ref HU150005 and dated July 2015), with the addition of a suitable pre-treatment filtration device upstream of the proposed infiltration system, and *AS/NZS3500.3:2004*. The detailed stormwater management plan shall be approved by the Accredited Certifier **prior to issue of the Construction Certificate.**
14. A site plan is to be lodged **prior to the Issue of Construction Certificate** showing the location of the street hydrant location to ensure Class 1a dwelling fire fighting coverage.

**ITEM 1 - ATTACHMENT 3      CONDITIONS OF CONSENT.****CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES**

15. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
16. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
  - \* Monday to Friday, 7am to 6pm;
  - \* Saturday, 8am to 1pm;
  - \* No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the  $L_{10}$  level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.
17. Suitable dust suppression measures shall be implemented and maintained by the developer during demolition, excavation and construction works associated with the development. Such measures are required to minimise the emission of dust and other impurities into the surrounding environment.
18. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete.
19. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced.
20. The development shall be constructed in accordance with the bushfire report prepared by Bushfire Consultancy Australia dated 13/8/2015, except as modified by the conditions of consent.
21. The development shall be constructed to BAL 29 on the north, south and west elevations and BAL 19 on the eastern elevation under AS3959 – 2009 'Construction of Buildings in bushfire prone areas'.
22. During the construction phase of the development, all building materials, plant and equipment must be placed on the site of the development in order to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure. A hoarding or fence must be erected between the construction site and the public place.
23. Certification is to be prepared by a register surveyor and submitted to the PCA at the following stages of construction:
  - a. On completion of ground floor construction, confirming that the minimum floor level of all habitable rooms is RL 3.2 metres AHD.

**ITEM 1 - ATTACHMENT 3      CONDITIONS OF CONSENT.**

24. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements. All excavations associated with the erection of the building must be properly guarded and protected to prevent them from being dangerous to life or property.
25. The construction site adjoins a public reserve. The following activities are not permitted to take place on or over the public reserve at any time during construction.
  - a. Access to public reserve;
  - b. Use of the reserve by vehicles or machinery;
  - c. Storage of site sheds, building materials, cleared vegetation, rubbish etc
  - d. Any tree pruning, lopping or removal.
26. The recommendations of Section 7 of the Ecological Assessment Update (Peak Land Management 2015) to adequately manage the potential impacts of the proposed development are to be implemented on site as part of the development during the demolition, excavation and construction phase.
27. Tree removal from the site is limited to those 12 trees assessed and identified on the Site Plan (Figure 3 of Ecological Assessment Update dated November 2015 prepared by Peak Management).

**CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE**

28. **Prior to the issue of any Occupation Certificate**, the person having the benefit of this consent shall rectify any new damage to public infrastructure to satisfaction of the Council as the Roads Authority.
29. All works within the public road must be completed in accordance with the approved design drawings, specifications and Council's *infrastructure Construction Specification*, and be approved by Council as the Roads Authority **prior to the issue of any Occupation Certificate**.
30. The construction of the stormwater management system shall be completed generally in accordance with the approved detailed Stormwater Management Plan and AS/NZS 3500.3-2004. Certification of the construction by a suitably qualified consultant shall be provided to the Principal Certifying Authority **prior to issue of the Occupation Certificate**
31. **Prior to the issue of the final Occupation Certificate**, a 'Positive Covenant' shall be created on the title of the land requiring the registered proprietor to ensure the continued maintenance and performance of the stormwater pump-out facilities. The terms of the positive covenant are to be prepared to Council's standard requirements. Port Stephens Council shall be nominated as the party to release, vary or modify the covenant.

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32. **Prior to the issue of the final Occupation Certificate**, a 'Restriction on the Use of Land' shall be created on the title of the land restricting any alteration to the on-site stormwater detention system. The terms of the Restriction are to be prepared to Council's standard requirements. Port Stephens Council shall be nominated as the party to release, vary or modify the restriction.
33. **Prior to the issue of an Occupation Certificate**, all electrical circuits below the flood planning level of 3.2 metres AHD are to be provided with a residual current device.
34. **Prior to the issue of an Occupation Certificate for each dwelling**, the Principal Certifying Authority shall be satisfied that all commitments listed in BASIX Certificate Number 660986M and dated 27 August 2015 have been complied with.
- Should there be any changes to the specifications of the development (e.g. colour, insulation, etc), except where restricted or excluded by any condition of consent, an amended/new BASIX Certificate shall be obtained and may be relied upon as having complied with this condition.
- A copy of any amended/new BASIX Certificate shall be submitted by the Principal Certifying Authority to Council within fourteen days of the receipt of the BASIX Certificate. Prior to the issue of an Interim or Final Occupation Certificate, whichever occurs first, certification of compliance with the BASIX Certificate shall be provided to the Principal Certifying Authority.
35. **Prior to the release of the Occupation Certificate**, the Principal Certifying Authority is to be satisfied that all landscape works have been undertaken in accordance with the approved plan(s) and conditions of consent.
36. Thirteen (13) replacement trees to replace the street trees removed from the site shall be planted **prior to the issue of any Occupation Certificate**. The tree(s) shall be a minimum pot size of 75 litres and taller than 2.4meters at the time of planting. These trees shall be replanted to the satisfaction of Council and **prior to the release of the Occupation Certificate** the trees shall be inspected and approved by Council's Vegetation Management Officer. The replacement tree(s) is to be maintained to maturity through use of mulch and watering to achieve natural height. All tree planting will be consistent with Attachment 2 within PSC Tree Technical Specifications.
37. The 50 meter cleared gap in connectivity over the northern part of the site as stated in the Ecological Assessment Update (Peak Land Management 2015) is to be partly reduced by re-establishing selected *Eucalyptus robusta* trees along this area to ensure consistency with the items (a) and (b) of the PS CKPoM Performance Criteria. These trees shall be planted to the satisfaction of Council and **prior to the release of the Occupation Certificate**.

**ADVICES**

- A. Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/the person having the benefit

**ITEM 1 - ATTACHMENT 3      CONDITIONS OF CONSENT.**

of the development consent to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.

- B. Prior to occupying the approved dwelling(s), whichever occurs first contact Council's Mapping Section via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) stating your Development Approval number, address of the property and the assessing officer to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
- C. It is highly recommended that prior to commencement of work that you contact the free national community service "Dial before you Dig" on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- D. Should excavation extend below the level of the base of the footings of a building structure or work on adjoining land, the person having the benefit of the development consent must, at the person's own expense
  - a. Protect and support the building structure or work from possible damage from the excavation, and
  - b. Where necessary underpin the building, structure or work to prevent any such damage.



## ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.

Development Assessment: 16-2015-572-1

2 Tanilba Rd, MALLABULA

APPLICATION REFERENCES	
<b>Application No.</b>	16-2015-572-1
<b>Property</b>	2 & 2A Tanilba Rd, MALLABULA
<b>Lot and DP</b>	LOT(S) 184 and 185; DP 11392
<b>Description of development</b>	Multi dwelling housing – 12 units
<b>Applicant</b>	Esme Statham
<b>Date lodged</b>	9/09/2015
<b>Owners Consent</b>	Yes – provided
<b>Capital Investment Value</b>	\$2,540,000
<b>Present use</b>	Vacant land
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>88B Instrument and Deposited Plan</b>	Nothing upon the deposited plan or 88B restricts the proposed development.
<b>Submissions</b>	Yes - 13
<b>Recommendation</b>	Approval subject to conditions
<b>Assessing Officer</b>	Priscilla Emmett

**SITE DESCRIPTION**

The site is located at 2 and 2A Tanilba Rd, Mallabula and is legally known as LOT 184 and 185 DP 11392. The site is located adjacent to remnant bushland and Tanilba Bay.

The site has an area of 2891.7m<sup>2</sup> and slopes towards Fairlands Rd. It is generally cleared with the exception of approximately 15 trees around the boundary lines.

The subject site is bounded to the east and south by land zoned R2 Low Density Residential, containing low density housing. To the west is Tilligerry Habitat Nature Reserve and to the north is Caswell Reserve and Tanilba Bay.

The site is also affected by a number of environmental constraints including; bushfire (category 3), acid sulfate soils (class 4), koala habitat (link, buffer and preferred) and is flood prone.

**ITEM 1 - ATTACHMENT 4      PLANNING ASSESSMENT REPORT.**

Development Assessment: 16-2015-572-1

2 Tanilba Rd, MALLABULA



Figure 1: Aerial photo (source: Statement of Environmental Effects prepared by Barker Ryan Stewart, September 2015)



Figure 2: Looking east towards Fairlands Rd



**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.**

**Development Assessment: 16-2015-572-1**

2 Tanilba Rd, MALLABULA

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Figure 3 - Left – Council reserve to the south west; Right – looking towards the Bay and Caswell Park to the northwest.

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**PROPOSAL**

The proposal is for the construction of a multi dwelling housing development comprising of 12 dwellings, car parking and associated landscaping. The development includes:

- One three bedroom dwelling with a double garage
- 11 two bedrooms dwellings with single garages
- Four visitor parking spaces

The dwellings are two storeys, each having a different layout configuration, with bedrooms located on either the ground or first floor of the dwelling. The living/kitchen areas are located on the first floor and have private opens space in the form of a deck, which will provide views to Tanilba Bay. The dwellings have been designed with a small courtyard located on the ground floor between the dwelling and the single garage. The three bedroom unit has a different layout due to its position on the corner of Tanilba Rd and Fairlands Rd. All dwellings have private pedestrian entrances from Fairlands Rd.

Vehicular access to the site is from Tanilba Rd, with a separate driveway being provided for the three bedroom unit. A common driveway is provided for the remaining dwellings which also provide access to the visitor's parking spaces, which are located on the western side of the site. To the west of the driveway there is a large common landscaped area and an area for the storage of garbage bins. The common landscaped area includes features such as large sandstone logs which act as seating and park benches.

The maximum height of the development is 7.6meters and the dwellings are attached in two groups, with six dwellings in each group. A small walkway and open space area is located in between the two buildings. A mixture of materials and finishes are proposed for the development including face bricks, cladding, cement cladding, rendered brickwork, colourbond roof and aluminium windows and door frames. Brick and metal palisade fencing has been used on the boundary of the site.

A detailed landscaping plan has been submitted with the proposal, with plantings designed to add height, shade, colour and privacy to the streetscape. Consideration has also been made to the landscaping not increasing security risks to neighbouring properties and the use of native species. Plants on site have been selected to take into account the bush fire risk of the properties.



**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.**

Development Assessment: 16-2015-572-1

2 Tanilba Rd, MALLABULA

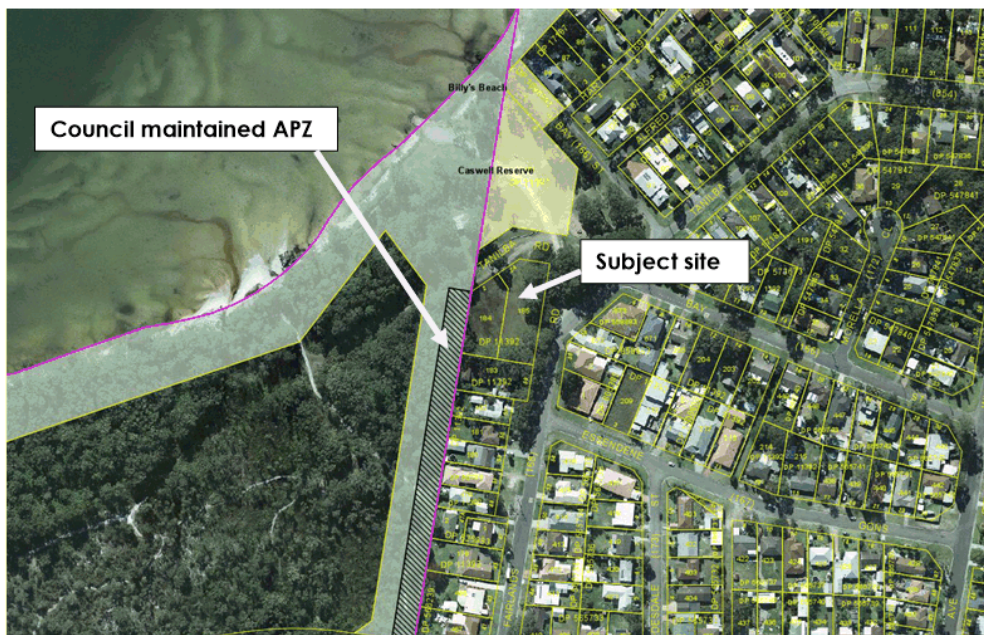
**PLANNING ASSESSMENT**

The proposal has been assessed under the relevant matters for consideration detailed in Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* as follows:

**Rural Fires Act 1997**

The *Rural Fires Act 1997* (RF Act) seeks to prevent, mitigate and suppress bush and other fires in order to ensure the protection of persons from injury or death and to protect infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. The site is identified as bushfire prone land. The application was not referred to the Rural Fire Service (RFS) as subdivision has not been proposed. However, consideration has been made to the development in accordance to section 79BA of the Rural Fires Act.

A Bushfire Risk Assessment has been submitted with the application. This report has been reviewed and has been considered in the context of the site and the development proposal. Council's assessment of the site under the Planning for Bushfire Guidelines differed in terms of the vegetation type, in that the proponent states the vegetation is woodland and Council's assessment is that it is forest. However, given the presence of a 15m wide Asset Protection Zone that is maintained by Council at the rear of the property (black hatched area shown below), the required BAL rating is identical for both vegetation types and the recommendations of the submitted Bushfire Risk Assessment can be supported. It is noted that the recommendations of the report include the north, west and south elevations – to be constructed to BAL 29 and the eastern elevation to be constructed to BAL 19. The entire site is also to be managed as an APZ (inner protection area).



**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.**

Development Assessment: 16-2015-572-1

2 Tanilba Rd, MALLABULA

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**Environmental Planning and Assessment Act 1979**

The proposal has been assessed under the relevant matters for consideration detailed in Section 79C(1) of the *Environmental Planning and Assessment Act 1979*.

**Environmental planning instruments (s.79C(1)(a)(i))****State Environmental Planning Policy No.44 – Koala Habitat**

State Environmental Planning Policy No.44 – Koala Habitat Protection, aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped as Koala Habitat – Preferred, Link and Buffer within Port Stephens Council Comprehensive Koala Plan of Management (PS CKPoM). Performance criteria identified within the Plan requires development to give consideration towards minimising impacts on koalas and native vegetation within preferred habitats and supportive linking areas.

A Seven Part Test on Threatened Flora and Fauna (Wildthing 2009) was completed and submitted as part of a previous development application on the site. Generally the assessment undertaken is acceptable but as the Flora and Fauna Report was completed several years ago (2009) further information and assessment updates were requested to account for possible threatened species, populations, communities and key threatening processes (*Threatened Species Conservation Act 1995* and *Environment Protection and Biodiversity Conservation Act 1999*) listed since 2009.

A new consultant was engaged to provide further information and to update the ecological assessment. Importantly, the revised assessment prepared by Peak Land Management (November 2015) has identified ecological impacts.

In general, the ecological assessment update (Peak Land Management 2015) provides sufficient information and assessment of additional threatened species matters for the proposed development to supplement the previous ecological assessment prepared by Wildthing in 2009 and provides adequate additional management measures to avoid significant ecological impacts.

A total of 12 trees will now be removed from site including one hollow bearing tree and four preferred koala feed trees, Swamp Mahogany (*Eucalyptus robusta*). The proposed mitigation measures to manage the potential impacts of the proposed development is to partly reduce the 50m cleared gap in connectivity over the northern part of the site by re-establishing selected *Eucalyptus robusta* trees along this area to ensure consistency with the items (a) and (b) of the PS CKPoM Performance Criteria. A condition is to be placed on the consent to offset the removal of these trees. On this basis, the proposal is considered acceptable with relation to the general aims and objectives of the PS CKPoM and provides adequate additional management measures to avoid significant ecological impacts.

**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.**

**Development Assessment: 16-2015-572-1**

2 Tanilba Rd, MALLABULA

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**State Environmental Planning Policy No.55 – Remediation of Land**

State Environmental Planning Policy No.55 – Remediation of Land, requires the consent authority to consider whether the land is contaminated and requires remediation so as to reduce the risk of harm to humans and the environment.

The site is not listed on Council's land contamination register so no concerns have been raised under the SEPP.

**State Environmental Planning Policy No.71 – Coastal Protection**

State Environmental Planning Policy No.71 – Coastal Protection, aims to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales Coast and foreshore. Furthermore, the SEPP aims to ensure the visual amenity of the coast is protected and preserved for future generations. This application has been assessed having regard to the aims of the SEPP.

The site is located within an existing residential precinct which is located within close proximity to the coastline. The impacts of the development on the coastline have been considered and the development does not restrict access to the foreshore or impact on the coastal systems or processes. Consideration has also been made to clause 8 of the SEPP and the development will maintain the visual amenity of the coastal area; will not impact on threatened species or water quality; will not impact on heritage or archaeological items and will not have a negative cumulative environmental impact. It is not expected that the proposed development will have an adverse impact on achieving the aims of the SEPP.

**Local Environmental Plan 2013 (LEP2013)****Zoning**

The site is zoned R2 Low Density Residential. Multi dwelling housing and subdivision is permitted with development consent in accordance with cl. 2.3 and 2.6. The proposed development is consistent with the objectives of the R2 zone as the residential use of land provides for the housing needs of the community and protects and enhances the existing residential character of the area. The development is also compatible with the flood risk of the area (see further comments in the flooding section of this report).

**Clause 4.1B – Minimum lot size for dual occupancies, multi dwelling housing and residential flat buildings**

A minimum lot size of 750m<sup>2</sup> is required for multi dwelling housing. The site has an area of 2891.7m<sup>2</sup> and complies with this requirement.

**Clause 4.3 – Height of buildings**

A maximum height of 9m applies to the site. The proposed development has a maximum height of 7.6m and complies with this requirement.



**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.**

**Development Assessment: 16-2015-572-1**

2 Tanilba Rd, MALLABULA

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Clause 5.5 – Development within coastal zones

The site is identified as being in the coastal zone and the objectives of this clause have been met. The development does not impede access to the foreshore; it connects to the existing stormwater network and will not discharge untreated stormwater into any nearby water bodies. The flood risks and coastal hazards of the development have been considered in the design of the development.

Clause 5.9 - Preservation of trees or vegetation

The objective of clause 5.9 is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and vegetation. Trees shown to remain in the road verge will be impacted upon during the construction of the masonry fence along the external boundary line. On this basis, the proponent will need to either delete the external boundary fence from the proposed development or remove and replace the existing street trees. If the fence is to remain, it is recommended that 13 replacement trees (minimum pot size of 75 litres and taller than 2.4m at the time of planting) are planted on site prior to the issue of any occupation certificate. A condition has been included in the consent to address this issue.

Clause 7.1 - Acid sulphate soils

The site is mapped as having acid sulphate soils class 4 occurring on site. The development requires minimal excavation works and an Acid Sulfate Soils Management Plan is not required to be submitted.

Clause 7.2 - Earthworks

The objective of clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact upon environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Minimal earthworks are proposed as part of the development and they will not have a detrimental impact upon the environment or adjacent properties.

Clause 7.3 - Flood planning

Development consent must not be granted to development on flood prone land unless the consent authority is satisfied that the development incorporates appropriate measures to manage risk to life from flood and will not adversely affect the environment. The subject site includes flood affected land on the north western portion of the site.

The proposal doesn't include the water quality measures identified by Small Scale Stormwater Water Quality Model (SSSQM) or water quality modelling, such as MUSIC Modelling as required by B4 Drainage and Water Quality section of Development Control Plan 2014. The flood level mentioned is at 2050. Given that the life of the proposal is likely to be greater than 35 years, the 2100 1% AEP level is more appropriate. In this location it is 2.7m AHD and, with the 0.5m freeboard, the Flood Planning Level is therefore 3.2m AHD. The drawings currently show the lowest finished floor level at 3.25m AHD which is sufficient.

**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.****Development Assessment: 16-2015-572-1**

2 Tanilba Rd, MALLABULA

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On this basis, the development is compatible with the flood hazard of the land and will not significantly affect flood behaviour resulting in detrimental increases to the potential flood hazard to other development or properties.

**Clause 7.6 - Essential services**

Clause 7.6 specifies that development consent cannot be granted unless essential services are available to the development. Arrangements for essential services are available to the development including, water, electricity, telecommunications, sewer, stormwater drainage and vehicular access. The proposal satisfies clause 7.6.

**Clause 7.9 - Wetlands**

There is a small portion of the south western part of the site that is mapped as wetlands. The development has been designed taking into consideration this area, in that no building works are occurring in this area and it will be maintained as landscaped open space.

**Draft environmental planning instrument (Section 79C(1)(a)(ii))**

There are no draft Environmental Planning Instruments that are or have been placed on public exhibition that are relevant to this proposal.

**Development control plan (s.79C(1)(a)(i))****Development Control Plan 2014**

Section A.10 of the DCP contains a savings provisions where applications lodged within three months of the date of commencement of DCP 21014 (3 August 2014) may either use the provisions of DCP 2013 or DCP 2014. The applicant has elected to use the provisions of DCP 2013.

**Development Control Plan 2013****A.1.10 – Developer Contributions**

The development attracts developer contributions under s.94 of the *EP&A Act 1979* and in accordance with the Port Stephens Section 94 Development Contributions Plan. A contribution amounting to a total of \$137,250 is required to be levied in stages prior to the release of construction certificate.

**A.1.9 – Community Participation**

The development was advertised and notified to adjoining neighbours for a period of 14 days from 17 September 2015 to 1 October 2015, a total of thirteen submissions were received. The concerns raised within the submission related to: increased traffic arising from the development, impact on the road network; fencing; construction waste; drainage; access; visual impact; social impact; density; impacts on character and loss of views. A detailed response to the submissions received during the exhibition period has been provided under the 'public submission' section of this report.



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**Part B2 – Environmental and Construction Management**

The application has been assessed against the provisions of B2 – Environmental and Construction Management and is considered satisfactory. Matters pertaining to contamination, vegetation management, water quality management, mosquito control and the like have been addressed as part of the application. Further erosion and sediment control measures shall be implemented prior to the commencement of works on site. The stormwater management and drainage infrastructure has also been assessed and has been found to be satisfactory subject to conditions of consent.

**Part B3 – Parking, traffic and transport**

The application has been assessed against the provisions of B3 – Parking, traffic and transport. The Engineering assessment of the application has raised a few concerns in relation to the design of the access into the site. As a result a number of conditions have been placed on consent to ensure that the road design and access into the development are satisfactory.

The DCP requires one space per two bedroom dwelling, two spaces per three bedroom dwelling and one visitor space per three dwellings. 13 spaces have been provided for the dwellings and four visitor spaces have been provided on site, which meets the requirements.

**Part B7 – Multi dwelling housing**

The development has been assessed against the criteria in B7, with the key development standards listed in the table below.

Criteria	Requirement	Proposal and compliance
Front setback	6m (or 4.5m with a deck or porch encroachment)  Secondary setback – 3m (or 2m with a deck or porch encroachment)	4.5-4.86m  2.75m to the garage/deck  The variations are acceptable due to the need for the development to maintain a 20m APZ on the site, which pushes the development closer to the street. The design has included articulation on the façade of the development and proposes high quality landscaping which minimises the impact of this minor variation to the front and secondary setback.
Dwellings to address the street	Dwellings to be designed to face the street to allow for casual surveillance	The dwellings have been designed to face the street and allow for casual surveillance due to the positioning of entrances and windows.
Location near	Dwellings adjacent to	Complies with this requirement.

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reserves	reserves must have habitable windows facing this space	
Front fences	Maximum 1.5m with 50% being transparent	The fencing along Fairland Rd complies with it being 1.2m and 50% transparent. The fence along the secondary frontage is 2.3m and is considered acceptable as it allows for private open space on the secondary frontage of the development. It is also partly transparent and has planting in front of the fence which will soften its appearance.
Garage and parking design	<p>Gun barrel driveways should be avoided and garages setback form the building frontage.</p> <p>Garages should not abut each other</p>	<p>The garages and driveway are located at the rear of the site and are not visible from the main street frontage. This is a suitable design solution as it provides a more appropriate streetscape with no garages facing Fairland Rd.</p> <p>The garages are located adjacent to each other to enable sufficient room for landscaping and sunlight on the site. Given the layout and design of the site, this option is acceptable as the facade is broken up and articulated with different materials and is also not located on a street frontage.</p>
Bulk and scale	FSR – 0.5: 1 and site coverage of 60%	The FSR is 0.45:1 and the site coverage is 58% and complies.
Cut and fill	Maximum 1m	Max 600mm cut – complies
Height	9m under LEP and max two storeys	Complies
Setbacks	<p>Side setback - 900mm</p> <p>Upper level – 2m</p> <p>Rear setback to reserve – 4.5m</p>	<p>Side setback - 1.54m complies</p> <p>Upper – 1.54m on southern side. This variation is acceptable as there will be no privacy impacts as only highlight windows are located on the first floor.</p> <p>Reserve setback - 20m complies</p>
Design elements	Development should use articulation and design elements to contribute to the character of the street.	A mixture of finishes and materials are used in the design to create an attractive street facade for the development. The dwellings have been separated into two buildings and a range of colours and materials have been

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		used to break up the bulk and scale of the development.
BASIX	Compliance with BASIX SEPP	A BASIX certificate has been supplied with the application.
Private open space	35m <sup>2</sup> of open space – or terrace area of 20m <sup>2</sup>	A combination of terrace areas and courtyard areas are available for each dwelling, with units 1 to 11 having 45m <sup>2</sup> each and unit 12 has a deck of 35m <sup>2</sup> plus a separate grassed area, being located on the corner.
Sunlight to private open space	Minimum three hours access to private open space in winter.	Shadow diagrams showing solar access to the first floor open space were submitted as concerns were raised over sunlight access due to the orientation of the site. These plans show that a reasonable amount of sunlight can be achieved per unit. It is noted that the DCP does not state exactly the amount of sunlight required, just that three hours are to be achieved. The open space areas receive an adequate amount of sunlight which allows for a sufficient area for outdoor furniture to be located in the sun at the winter solstice. In addition, there is a communal open space area on the site which achieves adequate solar access in winter. On this basis, this provision has been met.
Privacy and amenity	Minimise privacy impacts on site and between dwellings	Privacy screens are proposed between the decks.
Stormwater and drainage		Drainage information has been submitted with the application and appropriate conditions have been placed on the consent.
Landscaping	Landscaping plan and details to be supplied	The landscaping proposal enhances the appearance of the development. In addition, the open space landscaped area at the rear of the site has been designed to add amenity to the development through the provision of seating and a grassed area. This also acts as an inner protection area for the bushfire constraints on the site.

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**Planning agreements under 93F (s.79C(1)(a)(iii))**

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

**The Regulations (s.79C(1)(a)(iv))**

There are not relevant matters for consideration under s.79C(1)(a)(iv).

**Likely impacts (s.79C(1)(b))**

The development proposes the construction of multi dwelling housing on a vacant site that is largely cleared of vegetation. The development is of a scale and density that is permissible in Council's DCP and LEP. It is noted that the style of dwellings is different to that in the immediate vicinity, in that the majority of dwellings are detached single dwellings or dual occupancies. However multi dwelling housing is permissible on the site and the development generally complies with the requirements of the DCP, in terms of private open space, parking, site coverage and height. The development has been designed with the car parking at the rear of the site, which improves the appearance of the development along the main street frontage of Fairlands Rd. This minimises any impact on the street frontage and encourages street interaction and casual surveillance through the absence of vehicles.

The development is of a scale, being two storeys in height that is comparable and consistent with the surrounding development. The modern design of the development and landscaping treatment would add interest and character to the street. The number of dwellings in the development is of higher density than currently exists in the street; however, there are no substantial impacts as a result of the development. There are no overshadowing impacts on adjacent properties, there is limited impact in terms of privacy and the vehicular impacts are minimal.

**Suitability of the site (s.79C(1)(c))**

The site is considered to be suitable for the proposed development as it is zoned residential and sufficient land size is available for multi dwelling housing, as per the requirements of the LEP 2014. The site is located in a residential area and offers housing opportunities in a tranquil setting located adjacent to Tanilba Bay and Caswell Reserve. The development has been designed taking into the constraints of the site, such as bushfire and flooding.

**Submissions (s.79C(1)(d))****Public submissions**

The development application and accompanying information were placed on public exhibition for a period of 14 days. As a result of the notification process, thirteen (13) submissions were received. Given the number of submissions received opposing the application, the applicant provided a response to Council on the concerns raised during the exhibition period. This response has been considered in the assessment of the application.

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The concerns raised within the submissions are discussed below:

Issue
<p>Density and character</p> <ul style="list-style-type: none"><li>- area is not conducive to high density</li><li>- the number and size of the dwellings is out of character with the area</li><li>- the existing character of area is large setbacks, single storey and landscaped front yards</li><li>- minimal setback to Fairlands Rd</li><li>- little streetscape appeal</li><li>- footprint of the development is over 80%</li><li>- quality - cheap construction materials and size of the dwellings would cause noise issues between the units</li></ul> <p><u>Comment</u></p> <p>The site is zoned R2 and multi dwelling housing is permissible in the zone and meets the height and lot size requirements. There are no requirements in terms of how many dwellings can be placed on the site, this is assessed on merit. However, the number of dwellings are somewhat dictated by meeting other controls such as private open space, landscaping and car parking requirements. These requirements have generally been met with the design of the development. The variation to the front setback is minimal and the articulated facade of the development has streetscape appeal which is increased through the lack of garages facing Fairlands Rd and the mixture of finishes and landscaping used in the design. The current character of the area is quite mixed, mainly with single storey dwellings with garages facing the street. The density of the development at a floor space ratio of 0.45:1 and site coverage of 58% is of a similar scale to single dwellings and dual occupancies in the area.</p>
<p>Social impact</p> <ul style="list-style-type: none"><li>- design encourages antisocial behaviour and the housing would just accommodate the people who are causing the trouble in the area</li><li>- the development will promote lower socio economic morality to the area by attracting dysfunctional families and youth</li><li>- Police presence in the area is not reliable due to the distances they need to travel from Raymond Terrace or Nelson Bay</li><li>- the development presents as public housing/slum housing and will attract low income families</li><li>- the area will not be desirable as the housing will be for rental accommodation only</li></ul> <p><u>Comment</u></p> <p>The dwellings will be placed on the open market which will dictate who will reside in the property. The dwellings have been designed to allow for casual surveillance of all</p>



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frontages through the placement of habitable windows and decks.

**Caswell Reserve**

- visual impact of the development on the park and the neighbourhood
- loss of view to the park and its outlook
- parking impact will change the serenity and ambience of the park as the development will use the park for overflow parking
- current problems with youth and noise in the area – this will be worse with more people in the area and the development blocking the view of these people in the park
- safety impact – no barriers on the road separating the development and the park
- the foreshore is eroding
- rubbish and damage to the park will increase
- impact on the feel and use of the park, as it will become the backyard of the development

**Comment**

The current site is vacant so it is anticipated that the development will have a visual impact on the park as it is a change to the existing situation. However, the design of the development is of architectural merit and meets Council's planning requirements. The development provides sufficient parking for the site and it is not anticipated that this will impact on the parking area for the Reserve. Additional people living near the park will allow for greater opportunities for natural surveillance of the park, which is a positive impact. The development will not impact on the foreshore as the site is located approximately 93m from the foreshore and appropriate erosion and sedimentation measures will be imposed on the development.

**Flora and fauna**

- impact on koalas and other wildlife in the area
- development is out of character with Tiligerry Koala Habitat adjoining the site
- loss of trees
- current status of flora and fauna report (prepared for previous application)
- impact on Tawny frogmouth owls that live in the reserve

**Comment**

The applicant provided an updated Flora and Fauna Report with the application which identifies there are no significant impacts from the development. A number of trees will be removed as part of the development and a condition will be placed on the consent to offset the loss of these trees through additional planting of selected species on site.

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**Drainage**

- the extra housing will cause flooding in an area that is already subject to tidal flooding
- drainage impacts from the development

**Comment**

Council's Engineers have reviewed the proposal and have considered the flooding and drainage impacts associated with the site. A suitable solution has been achieved for the site as the finished floor level meets the required flood planning level and sufficient drainage has been provided as part of the development.

**Housing type**

- the site is better suited for family housing as it is not suited for older people or younger families, which is the main demand in the area
- no demand for this type of housing in the area (no work, no shops in the area to cater for the demand)

**Comment**

The market will determine who purchases the properties. The development provides an alternate housing option (smaller dwellings with less maintenance) which is currently in limited supply in the area.

**Traffic and parking**

- safety for families and pets using the park due to cars accessing the development site
- inadequate parking on site
- interference with bus routes and cars parking in this area. This would create a traffic hazard on the corner with the additional cars entering the site
- width of Fairlands Rd would impede garbage trucks accessing the site
- access should be from Fairlands Rd not Tanilba Rd – too close to playground

**Comment**

The proposed parking on site meets Council's requirements. The site once developed will provide a clear distinction between the private space and the adjacent Reserve, which will assist users of the park in terms of being cautious near driveways and roads. Council's Engineers have reviewed the access points to the site and have recommended a number of changes which are addressed via conditions of consent, to improve the safety of the site and for surrounding users. The development will not impact on bus routes or on street car parking in Fairlands Rd.

**Bushfire**

- irresponsible parking could prevent access to the fire trail

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- Evacuation in a fire is difficult for medium density housing

Comment

A bushfire assessment was submitted with the application and the appropriate measures will be included in the construction of the development in terms of fire rating and asset protection zones. The parking on site is not located near the fire trail.

Impacts on solar panels on adjacent houses.

Comment

The shadow diagrams indicate that there will be minimal impact on adjacent houses and there are no solar panels in this location.

Previous applications not supported.

- Concern that numbers of proposed dwellings have increased

Comment

The current proposal is different to previous applications. The application in 2009 was for 9 dwellings. However, the current application has been assessed on its own merits regardless of previous applications.

Impact on property values in the area.

Comment

This is not a planning consideration considered as part of this proposal.

Location of garbage storage area should be closer to the street.

Comment

Relocating the garbage area closer to street may cause visual impact from the street. The location of the garbage area is currently screened from the public street which is supported. If the bins were located closer to the street it may encourage users of the park to use the private bins which may become a concern for future residents.

Privacy screens should be erected on the boundary of the property to prevent overlooking.

Comment

Privacy screens have been included on the decks of the properties as part of the proposal.



**ITEM 1 - ATTACHMENT 4 PLANNING ASSESSMENT REPORT.**

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**Public interest (s.79C(1)(e))**

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The proposed development is in the public interest as additional housing opportunities are to be provided in a residential area that has a tranquil setting near Tanilba Bay and Caswell Reserve.

The proposed development offers an alternative housing type to that currently available in the area in that it will be suitable for people who desire less maintenance in a location close to Tanilba Bay and Caswell Reserve. The design fits in with the coastal character of the area and has architectural merit.

**RECOMMENDATION**

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An assessment of the application has been carried out under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* as amended. The proposed development is considered satisfactory in terms of the relevant matters for consideration under the Act and the development application is recommended for approval subject to conditions of consent.



## ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.

## CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>TRIM container No</b>	A2004-0284	<b>TRIM record No</b>	
<b>Audience</b>	Elected Council, administrators, council employees, volunteers and contractors		
<b>Process owner</b>	Governance Manager		
<b>Author</b>	Governance Manager		
<b>Review timeframe</b>	Four years	<b>Next review date</b>	30 October 2019
<b>Adoption date</b>			

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	12.2.2013	Executive Officer	Adopted by Council	023
2.0	25.2.2014	Executive Officer	Adopted by Council	043
2.1		Governance Manager	Updated introduction and inserted clause 4.29 (b) in line with the Local Government Act relating to misconduct provisions, updated the Council values, updated the Office of Local Government title and definitions. Council's branding and style guide updated.	

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**ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.**

The Port Stephens Council has adopted the Model Code of Conduct developed by the Department of Local Government. This Code enhances the Model Code providing Councillors, staff and other council officials with the requirements of Council to ensure Council's commitment to transparency and accountability is maintained in the Port Stephens local government area.

**PART 1 INTRODUCTION**

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

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

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

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

**Note:** The reference to Council's Policies and Management Directives contained in the Code are provided to allow council officials to become better informed on policy and management directive requirements where appropriate. ie: **Refer to Council's Workplace Equity & Diversity Management Directive.**

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

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

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

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

**ITEM 10 - ATTACHMENT 1      REVISED CODE OF CONDUCT.****COUNCIL CHARTER**

The *Local Government Act 1993* set the Charter for all Local Government Councils in New South Wales. Port Stephens Council endorses this Charter and also has adopted Values for the organisation. The Council Charter and Values are set out below:

(1) A council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible
- to engage in long-term strategic planning on behalf of the local community
- to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants
- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
- to be a responsible employer.

(2) A council, in the exercise of its functions, must pursue its charter but nothing in the charter or this section gives rise to, or can be taken into account in, any civil cause of action.

ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.

COUNCIL VALUES





ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.

**PART 3 GENERAL CONDUCT OBLIGATIONS**

General conduct

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

- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)

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

3.3 You must treat others with respect at all times.

A Statement is shown at **Appendix 1 of the Procedures**, which all Council officials are required to sign, stating that they have received, read and understand their obligations under the Code of Conduct.

***Refer to Council's Alcohol & other Drugs Management Directive.***

Fairness and equity

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

3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

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

***Refer to Council's Workplace Equity & Diversity Management Directive.***



**ITEM 10 - ATTACHMENT 1      REVISED CODE OF CONDUCT.**

Development decisions

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

Binding caucus votes

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

Public Comment

- 3.13 Staff should not make public comment on Council related activities unless they have the appropriate delegations. If you are unsure you should speak with your supervisor or manager. When staff are speaking to the media on Council issues, staff should only provide factual information and not their personal view on the matter.

Councillors should be aware that when speaking publicly on Council issues there is a need to consider the impact on the whole organisation, as the comments made by individuals is just that, an individuals comment and not necessarily the view of the organisation. Whilst Councillors can provide a personal view on matters they do not have the authority to speak on behalf of the organisation as a whole, unless granted authority by resolution of Council or the Mayor.

There will be occasions where the General Manager and/or the Mayor may be the only representatives authorised to speak to the media on certain matters, this is generally done by resolution of Council.

***Refer to Council's Media Policy.***

**ITEM 10 - ATTACHMENT 1      REVISED CODE OF CONDUCT.**

**PART 4      CONFLICT OF INTERESTS**

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

What is a pecuniary interest?

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

**ITEM 10 - ATTACHMENT 1      REVISED CODE OF CONDUCT.**

What are non-pecuniary interests?

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

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

Managing non-pecuniary conflict of interests

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

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

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

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

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

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

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

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

**ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.**

4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.

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

A standard form/s are shown at **Appendix 2 of the Procedures** for use by Council officials.

***Refer to Council's Pecuniary Interest Return Policy.***

Reportable political donations

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

4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:

- a) made by a major political donor in the previous four years, and
- b) where the major political donor has a matter before council,

then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).

4.22 For the purposes of this Part:

- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
- b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.

4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

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Loss of quorum as a result of compliance with this Part

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

Other business or employment

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

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

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

A standard form is available to assist staff in advising Council of outside employment and is shown at ***Appendix 3 of the Procedures.***

Personal dealings with council

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

**ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.****PART 5 PERSONAL BENEFIT**

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

Gifts and benefits

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

Token gifts and benefits

5.3 Generally speaking, token gifts and benefits include:

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

Gifts and benefits of value

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

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

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

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

A standard form is available to assist staff in advising Council of Gifts & Benefits and is shown at ***Appendix 4 of the Procedures***.

Improper and undue influence

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



**ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.****PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS**Obligations of councillors and administrators

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

6.2 Councillors or administrators must not:

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

Obligations of staff

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

6.4 Members of staff of council must:

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

Obligations during meetings

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

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

Inappropriate interactions

6.7 You must not engage in any of the following inappropriate interactions:

- a) Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
- b) Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
- c) Council staff refusing to give information that is available to other councillors to a particular councillor.
- d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
- e) Councillors and administrators being overbearing or threatening to council staff.
- f) Councillors and administrators making personal attacks on council staff in a public forum.
- g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
- h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

***Refer to Council's Code of Meeting Practice.***

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

Councillor and administrator access to information

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

***Refer to Council's Accessing Information Policy***

Councillors and administrators to properly examine and consider information

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

Refusal of access to documents

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

Use of certain council information

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

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Use and security of confidential information

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

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

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

Personal information

7.11 When dealing with personal information you must comply with:

- a) *the Privacy and Personal Information Protection Act 1998*
- b) *the Health Records and Information Privacy Act 2002*
- c) the Information Protection Principles and Health Privacy Principles
- d) Council's privacy management plan
- e) the Privacy Code of Practice for Local Government

Any enquiries concerning personal information, please contact Council's Privacy Officer on 49800187.

Use of council resources

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

7.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

- a) the representation of members with respect to disciplinary matters
- b) the representation of employees with respect to grievances and disputes
- c) functions associated with the role of the local consultative committee.

7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

7.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

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7.16 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.

7.17 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:

- a) the purpose of assisting your election campaign or the election campaign of others, or
- b) for other non-official purposes.

7.18 You must not convert any property of the council to your own use unless properly authorised.

7.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

7.20 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.

7.21 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.

7.22 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

***Refer to Council's Use & security of the council chambers (including the committee & training rooms) of the administration building Management Directive.***

**ITEM 10 - ATTACHMENT 1      REVISED CODE OF CONDUCT.**

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

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

Complaints made for an improper purpose

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

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

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

Detrimental action

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

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

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

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

Compliance with requirements under this code

8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.



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8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.

8.9 You must comply with a practice ruling made by the Office of Local Government.

8.10 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

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

8.11 You must report breaches of this code in accordance with the reporting requirements under this code.

8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.

8.13 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

8.14 Complaints alleging a breach of this Part (Part 8) by a councillor, the general manager or an administrator are to be made to the Office of Local Government.

8.15 Complaints alleging a breach of this Part by other council officials are to be made to the general manager.

Council is required under the *Public Interest Disclosure Act 1994*, to appoint an officer/s that can receive disclosures. The Council officer that can receive disclosures under the Act other than the General Manager is Council's Public Officer – Ph: 49800187

## ITEM 10 - ATTACHMENT 1 REVISED CODE OF CONDUCT.

**PART 9 DEFINITIONS**

In the Model Code of Conduct the following definitions apply:

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

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the Regulation

the Local Government (General) Regulation 2005

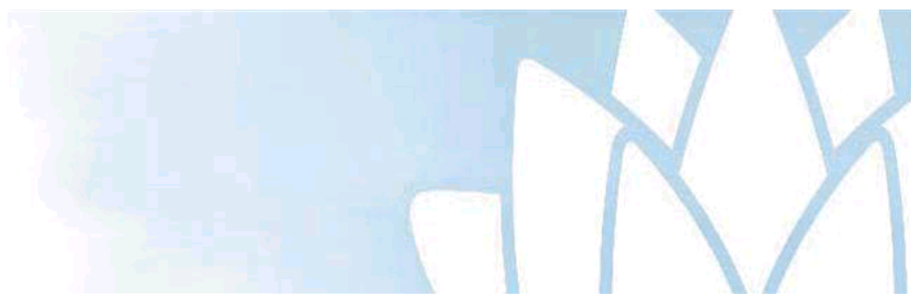
The term "you" used in the Model Code of Conduct refers to council officials.

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

**ITEM 10 - ATTACHMENT 2    REVISED PROCEDURES FOR THE  
ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS  
IN NSW.**



**Procedures for the Administration  
of the Model Code of Conduct  
for Local Councils in NSW**



**March 2013**

**ITEM 10 - ATTACHMENT 2    REVISED PROCEDURES FOR THE  
ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS  
IN NSW.**

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Division of Local Government

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**ITEM 10 - ATTACHMENT 2    REVISED PROCEDURES FOR THE  
ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS  
IN NSW.**

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**ITEM 10 - ATTACHMENT 2 REVISED PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW.**

**PART 1 INTRODUCTION**

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

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

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

**PART 2 DEFINITIONS**

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

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

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

**PART 3        ADMINISTRATIVE FRAMEWORK**

The establishment of a panel of conduct reviewers

3.1 The council must by resolution establish a panel of conduct reviewers.

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

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- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

The appointment of complaints coordinators

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

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

What is a "code of conduct complaint"?

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

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conduct complaint” are to be dealt with under council’s routine complaints management processes.

When must a code of conduct complaint be made?

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

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

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

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

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

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complainant in writing as soon as possible after the receipt of the complaint.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

- 5.21 The Mayor must refer the following code of conduct complaints about the general manager to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
  - b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
  - c) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.
- 5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Division under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.25.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

Referral of code of conduct complaints to external agencies

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

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

Disclosure of the identity of complainants

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

Code of conduct complaints made as public interest disclosures



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

Special complaints management arrangements

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

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

**PART 6        PRELIMINARY ASSESSMENT**

Referral of code of conduct complaints to conduct reviewers

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

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

Preliminary assessment by a conduct reviewer

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

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- not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or
- d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police, or
  - e) to investigate the matter, or
  - f) to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.
- 6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.
- 6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.
- 6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.14 The conduct reviewer must refer to the Division any complaints referred to him or her that should have been referred to the Division under clauses 5.16 and 5.21.
- 6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.
- 6.17 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
- a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and

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

- 6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with the complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.
- 6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

Referral back to the general manager or Mayor for resolution

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

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Complaints assessment criteria

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

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

**PART 7        OPERATIONS OF CONDUCT REVIEW COMMITTEES**

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

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

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

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

- ## PART 8 INVESTIGATIONS

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



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

How are investigations to be commenced?

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

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

Written and oral submissions

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

How are investigations to be conducted?

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



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

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

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

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Draft investigation reports

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

Final investigation reports

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

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8.34 The investigator's final report must:

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

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

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

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

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

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

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

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

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

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

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

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

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

Consideration of the final investigation report by council

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

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



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

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

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

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

**PART 9 RIGHTS OF REVIEW**

Failure to comply with a requirement under these procedures

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

Practice rulings

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

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

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

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

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Requests for review

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

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

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

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

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

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

**PART 10 PROCEDURAL IRREGULARITIES**

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

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

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

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**PART 11      PRACTICE DIRECTIONS**

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

**PART 12      REPORTING ON COMPLAINTS STATISTICS**

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

**PART 13      CONFIDENTIALITY**

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

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**APPENDIX 1**



**CODE OF CONDUCT  
STATEMENT**

I, \_\_\_\_\_ declare that I

have received, read and understand my obligations under the Code of Conduct,  
through my role as a:

**Tick the appropriate box:**

<input type="checkbox"/>	Mayor/Councillor
<input type="checkbox"/>	Council employee
<input type="checkbox"/>	Volunteer
<input type="checkbox"/>	Contractor

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

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APPENDIX 2



Local Government Act 1993

Declaration of Interest  
form

Item No. in agenda \_\_\_\_\_

Brief Description of Item \_\_\_\_\_

**Councillor** \_\_\_\_\_ declared a

Tick the box for the relevant response:

<input type="checkbox"/>	<b>pecuniary</b> conflict of interest
<input type="checkbox"/>	<b>significant</b> non pecuniary conflict of interest
<input type="checkbox"/>	<b>less than significant</b> non- pecuniary conflict of interest

in this item. The nature of the interest is \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
**If a Councillor declares a less than significant conflict of interest and intends to remain in the meeting, the councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict. (Attach a separate sheet if required.)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Councillor** \_\_\_\_\_ left the Chamber and thereby did not take part in the discussion or voting on the Item.

Time Councillor retired from the Chamber \_\_\_\_\_pm.

**Councillor** \_\_\_\_\_ returned to the Chamber and resumed his/her usual place at the meeting.

Time Councillor returned to the Chamber \_\_\_\_\_pm.

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APPENDIX 3

**Local Government (General)  
Regulation 2005  
Schedule 3A Form of special  
disclosure of pecuniary interest  
(Clause 195A)  
Local Government Act 1993**

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**Form of Special Disclosure of Pecuniary Interest**

1. The particulars of this form are to be written in block letters or typed.
2. If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

**Important information**

This information is being collected for the purpose of making a special disclosure of pecuniary interests under sections 451 (4) and (5) of the *Local Government Act 1993*. You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred by the Director-General to the Local Government Pecuniary Interest and Disciplinary Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting in respect of which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**Special disclosure of pecuniary interests**

by [full name of councillor] \_\_\_\_\_

in the matter of [insert name of environmental planning instrument] \_\_\_\_\_

which is to be considered at a meeting of the [name of council or council committee  
(as the case requires)] \_\_\_\_\_

to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.



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<b>Pecuniary interest</b>	
Address of land in which councillor or an associated person, company or body has a proprietary interest ( <i>the identified land</i> )	
Relationship of identified land to councillor [Tick or cross one box.]	<input type="checkbox"/> Councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> Associated person of councillor has interest in the land. <input type="checkbox"/> Associated company or body of councillor has interest in the land.
<b>Matter giving rise to pecuniary interest</b>	
Nature of land that is subject to a change in zone/planning control by proposed LEP ( <i>the subject land</i> ) [Tick or cross one box]	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	
Proposed change of zone/planning control [Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]	
Effect of proposed change of zone/planning control on councillor [Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature \_\_\_\_\_

Date \_\_\_\_\_



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**[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]**

<sup>1</sup> Section 443 (1) of the *Local Government Act 1993* provides that you may have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative<sup>4</sup> or because your business partner or employer has a pecuniary interest. You may also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

<sup>1</sup> Section 442 of the *Local Government Act 1993* provides that a **pecuniary interest** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section 448 of that Act (for example, an interest as an elector or as a ratepayer or person liable to pay a charge).

<sup>1</sup> A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in section 443 (1) (b) or (c) of the *Local Government Act 1993* has a proprietary interest—see section 448 (g) (ii) of the *Local Government Act 1993*.

<sup>4</sup> **Relative** is defined by the *Local Government Act 1993* as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

ITEM 10 - ATTACHMENT 2 REVISED PROCEDURES FOR THE  
ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS  
IN NSW.

APPENDIX 4



OUTSIDE EMPLOYMENT  
APPLICATION

**Details of your employment with Port Stephens Council**

Applicant Name: \_\_\_\_\_

Position: \_\_\_\_\_

Summary of current duties: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Proposed Outside Employment**

Name of Employer/Company: \_\_\_\_\_

Nature of Company: \_\_\_\_\_

Nature of Duties (attach a copy of the job description if required): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Hours of Employment: \_\_\_\_\_

Relationship of Employer/Company to Council, ie contractor, supplier, etc. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Extract from Council's Code of Conduct;**

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

**ITEM 10 - ATTACHMENT 2 REVISED PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW.**

- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) conflict with your official duties
  - b) involve using confidential information or council resources obtained through your work with the council
  - c) require you to work while on council duty
  - d) discredit or disadvantage the council.

**Statement by Applicant**

I acknowledge that, should approval be granted for my Outside Employment, it shall be for the period of / / to / / only and that I shall have to reapply for approval at that time. I acknowledge that any such approval is subject to the following conditions, and may be revoked by the General Manager at any time should these conditions not be met:

The outside employment:

- Will not affect the actual or perceived integrity of Council, or involve an actual or perceived conflict of interest.
- Shall not be related in any way to any regulatory or inspectorial role I undertake for Council
- Shall not affect the efficient performance of my normal duties or my health and safety.
- Shall not entail the use of any Council resources or information either in the conduct of that secondary employment or to help gain private employment.
- Shall not use Council vehicles, materials and equipment to do part time work in off-duty hours.
- Shall not entail the release or misuse confidential information which is accessible to Council staff but not to the general public.

Applicant Name (Print): \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Recommended/Not Recommended** (delete whichever is not applicable)

Name of Section Manager (Print): \_\_\_\_\_

Signature of Section Manager: \_\_\_\_\_ Date: \_\_\_\_\_

**Recommended/Not Recommended** (delete whichever is not applicable)

Name of Group Manager (Print): \_\_\_\_\_

Signature of Group Manager: \_\_\_\_\_ Date: \_\_\_\_\_

**Approved/Not Approved** (delete whichever is not applicable)

General Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Reasons for approval/disapproval: \_\_\_\_\_

# ITEM 10 - ATTACHMENT 2 REVISED PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW.

## APPENDIX 4



## GIFTS AND BENEFITS FORM

### Procedure:

1. Complete the following form including your signature.
2. Forward to your Section Manager/Group Manager/General Manager for signature.
3. Forward to the Governance Manager to enter into register and file.

<b>Date:</b>	
<b>Name of person</b> receiving offer of Gift/Benefit:	
<b>Name of person/organisation</b> offering the Gift/Benefit:	
<b>Relationship with person/organisation</b> offering Gift:	
<b>Description</b> of Gift/Benefit:	
<b>Decision:</b> Accepted/rejected	
Reason for decision:	
Signature of recipient:	
Decision authorised/disallowed by Section Manager/Group Manager/General Manager (signature):	

OFFICE USE ONLY	
Details entered in register by:	
Register No.	
Date:	
File No.	PSC2010-04225